Gopal Chandra Chakraborti and Another Vs Emperor and Others

Court: Calcutta High Court

Date of Decision: May 14, 1929

Citation: 121 Ind. Cas. 308

Hon'ble Judges: Pearson, J; Mallik, J

Bench: Division Bench

Judgement

Pearson, J.
This is an application on behalf of two accused persons for stay of certain criminal proceedings against them and three others,

one of whom joined in support of the rule before the Court of the Deputy Magistrate, at Alipur, pending the disposal of a Civil Suit No. 40 of

1929 before the Court of the Additional Subordinate Judge, Alipur.

2. The first accused was an officer employed by one Srimati Sailasuta Debi, mother and certificated guardian of her two minor sons. The civil suit

was filed by her on 25th September, 1928, on behalf of the minors against the present petitioners 2nd and 3rd defendants and the 1st accused 1st

defendant. It was alleged that in February, 1928 the 1st defendant, the manager of Sailasuta, was instructed to purchase a Touzi No. 151 notified

for sale under the Revenue Laws, and was entrusted with rupees one lakh for the purpose, but purchased in his own name though informing

Sailasuta that it had been purchased on behalf of the estate for Rs. 85,000. Then it is said she was further informed by the manager that there

would be delay in getting the matter completed, as the defaulting proprietors had instituted proceedings to have the sale set aside, and for injunction

meanwhile. Upon the injunction application, it is said, it came to light that the 1st defendant had fraudulently declared himself as the purchaser. This

led to further enquiries and it is alleged that the 1st defendant had collusively made certain further entries in the books and utilized the one lakh to

purchase the touzi in his own name, and for alleged payment upon a hand-note for Rs. 36,000 to Gopal Ch. Chakrabarty (accused No. 4), none

of which transactions were authorised by the plaintiffs'' mother. It is then alleged that the 1st defendant is attempting to get the sale certificate in his

name and deal with the property, while the 2nd and 3rd defendants (the present petitioners) claim certain interests therein. Consequently the relief

claimed is a declaration of the plaintiffs'' title and injunction restraining defendants from dealing with the property.

3. It appears further that in October 1928, plaintiffs applied for amendment of plaint and appointment of Receiver. The petitioners replied to that

application on the 3rd December 1928 alleging that'' the original purchase was made to the knowledge of the plaintiffs'' mother and with her

knowledge and that she knew of the hand-note and had accepted it, and the subsequent transfer to him of a portion of the touzi was with her

consent and knowledge.

4. On the 29th January, 1929, the petitioners filed their written statement to the same effect. On the 12th March, 1929, issues were settled in the

suit and the next date fixed is the 1st June. The issues are as follows:

1. Have the plaintiffs any cause of action?

2. Is the suit maintainable if the plaintiffs are not in possession of the property?

3. Is the Court-fee paid sufficient?

4. Is the suit barred by the provisions of Sections 36 and 8 of the Revenue Sale Law under the facts of the present case?

5. Is the suit barred by estoppel, waiver and acquiescence?

6. Have the plaintiffs their alleged title to the property in suit?

7. Did the defendant No. 1 advance a loan of Rs. 36,000 to the defendants No. 2 out of the money of the estate on a pro-note in the name of the

plaintiffs mother in order to enable him to purchase the Ohhota Hudda and one-third share of the Burra Hudda in the Revenue Sale under

instructions from the plaintiffs'' mother and guardian Sailasuta Debi?

8. Did the defendant No. 1 make over the pro-note to the said Sailasuta Debi?

9. Did the plaintiff purchase the whole of the Touzi No. 151 in the name of the defendant No. 1 or two third share of Barra Hudda only as stated

in the written statement under arrangement made by their mother?

10. Did the defendant No. 1 inform the mother of the plaintiffs on the 23rd February, 1928, that the Touzi No. 151 had been purchased on behalf

of the estate?

11. Did the defendant No. 1 commit any act of fraud in the matter of the said purchase or make any fraudulent entries in the account book as

alleged in the plaint?

12. Was the Touzi No. 151 purchased by the defendant No. 1 on behalf of the plaintiffs alone as alleged in the plaint or was it purchased by the

defendant No. 1 as trustee and agent of the plaintiffs and defendant No. 2 in pursuance of the arrangement as stated in paras. 12 and 13 of the

written statement of defendant No. 2? If so, what are the respective interests of the plaintiff and defendant No. 2 in the said touzi?

13. Are the plaintiffs entitled to the declaration and injunction as prayed for?

14. What reliefs, if any, are the plaintiffs entitled to?

5. On the 7th December, 1928, information was given to the Police regarding the transaction, and accused No. 1 was arrested on 12th December

1928, accused Nos. 2 and 3 on 14th December and the present petitioners on 24th March 1929. The Police on the 9th April 1929, after four

months'' investigation submitted a charge-sheet against accused No. 1 u/s 409 for criminal breach of trust as an [agent in respect of the sum of

rupees one lakh and misappropriation by purchasing the property in his own name and fraudulently transferring portion to accused No. 4. The

further charge against all the accused is under Sections 120-B and 409, with having entered into a criminal conspiracy to commit the said oSence

u/s 409. There is also a charge of falsification u/s 477-A against accused Nos. 1 and 2 as to the entries in the account book.

6. The petitioners then allege that the object of the criminal prosecution is to put pressure upon them in the civil suit. They add that the issues

involved are the same and they will be prejudiced in the civil suit if the criminal matter is first decided. They point to the fact that the civil

proceedings were first instituted and say that the matter can best be disposed of by a Civil Court.

7. An affidavit has been filed on behalf of the Crown by the investigating officer to the following effect. It is there stated that on 25th February,

1928, accused No. 1 executed a conveyance in favour of accused No. 4 in respect of the ""Ohoto Hudda"" part of the property for Rs. 4,269 paid

by accused No. 4 out of the Rs. 36,000 and it is also recited that accused No. 1 had received Rs. 29,911 for one-third of the ""Bara Hudda"" part.

A conveyance for the one-third was executed on 23rd August 1928 but not registered. On the 22nd March, 1928, accused No. 4, it is said,

transferred to his father accused No. 5, half of the Chota Hudda, thus restoring to him the interest which the latter originally had in the property.

According to the prosecution case the whole story of the hand-note and the loan is a figment. Then it is said the plaintiff''s mother only became

aware of the nature of the transactions in the course of an application, in the suits filed by the owner for setting aside the revenue sale, namely, on

the 10th September, and it therefore, became necessary to file the civil suit forthwith to prevent further dealing with the property.

8. Certain authorities have been placed before us by the learned Advocate-General on bebalf of the Crown and by the learned Advocate for the

petitioners to indicate the cosiderations by which a Court ought to be guided in such matters. The result is only to show that no hard and fast rule

can be laid down, and that each case must be determined upon its own facts. Even if sme or all of the matters materially in issue are the same that,

in itself, cannot be a reason for staying the criminalproceedings Brojobashi Panda v. Emperor y. There proceedings had been taken u/s 476, C

riminal Procedure Code, and accused tried to stifle them by filing a civil suit, and no stay was allowed. So no stay was granted in Raj Kumari Debi

v. Bama Sundari Debi y, a case where the proceedings related to an injury of an essentially personal nature u/s 499, of the nature of a private

prosecution, and even there the subsequent filing of a civil suit by the accused relating to, the same subject-matter was not allowed as good cause

for a stay. It was there pointed out that if the stay were granted the civil proceedings would be dragged out, and the decision would not affect the

action of the Magistrate who must decide on the accused''s criminality for himself. It was also said that the discretion to stay or not should

ordinarily be left to the Magistrate. Ghose, says, at page 620 ""I am not myself prepared to say that, as a general rule, a proceeding in a Oriminal

Court should be stayed pending the decision of a civil suit in regard to the same subject-matter; but what I think I might properly say (is that

ordinarily it is not desirable if the parties to the two proceedings are substantially the same and the prosecution before the Magistrate is but a

private prosecution, and the issues in the two Courts are substantially identical, that both the cases should go on at one and the same time."" So in

Jahangir Pestonji v. Framji Rustomji 112 I. C 477 : 30 B. L.R. 962 : 29 Cri. L.J. 153. another case of defamation, it was said that the test seems

to be whether the prosecution is public or private. Where it is public, the Court as a rule in the exercise of its inherent jurisdiction, would not stay

criminal proceedings, where it was private(as in that case) there would not be the same reluctance of the Curt to interfere.

9. The petitioners have relied on Lucus v. Official Assignee of Bengal 56 I. C 577 : 24 C.W.N. 418 : 21 Cri.L.J. 481 where Jenkins, C.J., said

Though no invariable rule can be laid down, it is ordinarily undesirable to institute criminal proceedings until dtermination of civil proceedings in

which the same issues are involved. It is too well-known to need elaboration that criminal proceedings lend themselves to the unscrupulous

application of improper pressure with a view to influencing the course of the civil proceedings: and beyond that there is the mischief, illustrated by

this case of criminal proceedings being instituted with an imperfect appreciation of the facts where they have not been ascertained in the more

searching investigation of a civil court while agreeing generally with the views there expressed we must not forget that that case was one where the

penal sections of the insolvency law had been invoked against the insolvent--much more in the nature of a private prosecution, and much more

open to the suggestion of improper pressure on behalf of the creditors. So if the object of the criminal proceedings be in reality to prejudice the trial

of the civil suit or coerce accused to a compromise the Magistrate shall as a general rule postpone the enquiry: In re, Subramanian Chetti 2 Weir

415. Then of other cases referred to, they are mostly of a particular class to which particular considerations would apply relating to documents

forming the basis of attack or defence in civil suits, where the other party says they are forgeries or fraudulently obtained or the like and the criminal

proceedings on that count have been stayed : See Sasi Bhusan Seal v. Manik Lal Nundy 7 I. C 317 : 38 C. 106 : 12 C.L.J. 270, Janki Das v.

Emperor y, Gober dhone Pramanick v. Iswar Chunder Pramanick, Anna Ayyar v. Emperor 30 M. 226 : 6 Cri.L.J. 130 and Ram Charan Singh v.

King-Emperor y where however, there was no appearance to show cause. In Debi Mahto v. Emperor 37 I. C 477 : 20 C.W.N. 1116 : 18 Cri.

L.J. 125, a stay was ordered for proceedings under Sections 193 and 209, Indian Penal Code, pending an appeal against an order of the Civil

Court revoking a succession certificate on the ground that appellant was not related to deceased : in this case also no cause was shown. Then there

may be cases where the proper course may be to expedite civil proceedings where a question of fact involved therein is also raised in criminal

proceedings: Raj Kunwar Singh v. Emperor y.

10. An examination of these cases shows that no hard and fast rule can be laid down and that each must stand upon its own facts. Here one may

agree that in some of the issues in the civil suit especially 7, 11 and 12, the matters to be agitated will be in substance the same as in the criminal

proceedings: and the parties are substantially the same. It may be of course that the suit will fail upon one of the technical issues such as No. 4,

when the merits would never be gone into. Again, it is all very well to say that the plaintiffs have the conduct of the civil suit and that it rests in their

own hands to bring it to an early conclusion, while the case is fixed for the 1st June. At the very best it would take a considerable time before the

trial could be completed and judgment could be given and then the matter would not in the (ordinary course be disposed of up to the highest

tribunal of appeal for another four years at a moderate estimate. I do not consider that it disposes of the matter to say that the criminal proceedings

should be stayed because in the criminal case the accused''s mouths are shut, whereas in the civil case they will be able and ready to give their own

evidence. If that argument were to prevail it would apply in every case of this nature and there would be no need to go further. Assuming the facts

disclosed by the prosecution to be true it was essential for Sailasuta with all speed, after what she discovered in the interlocutory proceedings in the

other suit to file her civil suit to protect the title to and prevent dealings with the property. If her information to the Police is at a somewhat later date

it was not unreasonably so. It is now a fact that it is a Crown porsecution with the Crown a party whose interest and rights are not those of a

private prosecutor but of public justice. I agree that indirect motive or coercion by way of pressure on the defendants in the civil suit might lead a

Court to stay criminal proceedings but in the present base there is no room for that It is a public prosecution and none the less so, because the

Police have in the first instance no choice but to enquire into the offences charged. Lastly as pointed out by the learned Advocate General, an

offence u/s 120-B is non-compoundable.

11. In the facts and circumstances of this case as presented to us I am of opinion that the decision arrived at by the learned Magistrate was right

and should not be interfered with by this Court. The Rule is accordingly discharged.

12. Mallik, J.--I agree.