

(1978) 01 CAL CK 0036

Calcutta High Court

Case No: None

Ashru Bindu Ray

APPELLANT

Vs

Chittaranjan Banerjee and
Others

RESPONDENT

Date of Decision: Jan. 19, 1978

Acts Referred:

- Penal Code, 1860 (IPC) - Section 408

Citation: (1978) CriLJ 557 : 82 CWN 358

Hon'ble Judges: Sudhamay Basu, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Sudhamay Basu, J.

This rule was obtained in respect of an order dated the 7th of July, 1976 passed by the Metropolitan Magistrate, 16th Court, Calcutta in case No. C/602 of 1975 tinder Section 408 IPC rejecting the prayer of the petitioner for staying the proceedings till the disposal of suit No. 458 of 1975 pending the original side of this High Court.

2. It appears that on 30-10-1975 the opposite party No .1 on behalf of Sahu Jain Sewices Limited filed a complaint against the petitioner for having committed an offence punishable u/s 408 IPC before the Additional Chief Metropolitan Magistrate. After summons was issued the petitioner entered appearance. The case was transferred to the Metropolitan Magistrate, 16th Court, for disposal. It further appears that M/s. Sahu Jain Services Limited had filed a. civil suit against the petitioner on 12-8-75 in the original side of the High Court praying for a decree for Rs. 64380.63 with interest, inter alia, on the grounds that the petitioner as an employee of the company failed to account for and/or adjust a sum of Rs. 49085.18 belonging to the company. The petitioner filed an application before the Metropolitan Magistrate for stay of criminal case till disposal of the civil suit as the

subject-matter of the both was the same. By an order dated the 7-7-1976 the learned Magistrate rejected the prayer and the same is challenged in this proceeding.

3. Both Mr. Roy who appeared in support of rule and Mr. Sengupta who opposed the same, referred to some legal principles as laid down by the courts from time to time. The leading case on this point seems to be *M. S. Sheriff v. State of Madras* reported in A. I. Rule 1954 SC 397 : 1954 Cri L J 1019. The learned Metropolitan Magistrate relied on an observation of Vivian Bose J. in that case at para 15 where it was said that "As between a civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence". The Supreme Court recognised however that there was some difference of opinion in the High Courts on this point and no hard and fast rule could be laid down.

It was held that possibility of conflicting decisions in the civil and criminal court was not a relevant consideration. The law envisages such eventuality when it expressly refrains from making a decision of one court binding on the other or even relevant except for certain limited purposes such as sentence or damage. Only relevant consideration is likelihood of embarrassment. The other consideration which weighed with the Supreme Court was that a Civil suit often dragged on for years and it was undesirable that the criminal prosecution should wait as long in the interest of public justice. It was emphasised that special consideration obtaining in any particular case might make some other course more expedient and just.

4. Another case of importance is a Division Bench judgment of our High Court in the case of *J. N. Mishra v. State* reported in 1966 Cri. L. J. 207 CAL (Cal). In that case twelve criminal proceedings were started against several persons under several charges of criminal breach of trust, forgery, conspiracy and such other cognate offences. Before the prosecution a civil suit for realisation of the sum in respect of which these proceedings were started, was filed on allegations, the pith and substance of which was the same. The criminal proceedings were stayed till the decision of the civil suit. The Supreme Court decision was considered in that case and the court took note of the fact that the Supreme Court was of the view that no hard and fast rule could be laid down. Reliance was placed on the case of *Thames Launches Limited v. Corporation of Trinit House* reported in (1961) 1 All ER 26. It was held, inter alia, in that case "where matters which involved substantially the same issues, were raised both in civil proceedings and at a later stage in criminal proceedings in an inferior court between parties who looking at the substance of the matter, were in reality the same" the court could restrain the prosecutor in the criminal proceedings from continuing them until civil proceedings had been decided". In an earlier Division Bench case *J. M. Lucas v. Official Assignee of Bengal* reported in (1920) 24 CWN 418 : 21 Cri LJ 481 the trial of the special court case was stayed pending decision of civil suit. Jenkins, C. J. inter alia, held in that case:

Though no universal rule can be laid down, it is ordinarily undesirable to institute Criminal Proceedings until . determination 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;

...It is, therefore, proper in the facts of the present case that the Civil suits instituted earlier should be given precedence over the trial of the Criminal cases in respect of the same subject-matter. We are of the view that the trials of the Criminal Cases before the Special Judge should be stayed pending decision of the Civil Suits" Another case cited at the bar was [Yelchuri Ranganayakalu Chetty and Another Vs. K. Gopala Chetty](#), That case reviewed fortyfive decisions of various courts. It was held that staying criminal proceedings pending the issue of a civil suit is entirely one of discretion. One of the earlier cases; [Gnanasigamani Nadar Vs. Vedamuthu Nadar](#), was considered in that case and an observation of Jackson, J. which was quoted and on which Mr. Sengupta, learned Counsel, laid emphasis was:

For instance, to take the argument most usually advanced in these cases, can it be said that where there is a common issue, it must first be finally decided in the Civil Court before it is examined in the Criminal Court? A Criminal Court is in every way as competent as a Civil Court to examine questions of possession or questions involving the genuineness of documents and there is no particular reason for giving priority to the Civil Court.

It was further observed that there was nothing specially wrong with simultaneous proceedings in two courts, It was specifically stated that a criminal court cannot decline to examine the question of forgery against the forged document which has been admitted as genuine in a civil court. Moreover in the interest of everybody concerned, the criminal charge should be disposed of as quickly as possible.

5. Mr. Ray while not forgetting the observation of the Supreme Court laid emphasis on the two Division Bench decisions of this Court and emphasised that in this case there were as many as 92 items in the civil suit filed in the High Court in which amounts have been claimed on the basis of mis-appropriation. Of these 92 items four items have been later on chosen for the purpose of criminal prosecution. He also said that the entire prosecution was mala fide inasmuch as the prosecution was launched years after the company first came to correspond with the petitioner on this, subject. It was after providemft find and other dues of the petitioner were claimed that the proceedings were started. Again if they were serious the company would not have left out the several items Although the suit was filed again in 1974, for three years no step has been taken for its hearing. Again even, the fact that the suit had been filed was kept back from the learned Magistrate when the complaint was lodged. Apart from mala fide nature Mr Roy argued that the simultaneous proceedings would embarrass his client.

6. Mr. Sengupta submitted that the question of mala fide should not be gone into at this stage without scrutinising the submissions made by the petitioner. Although initially at one stage he conceded that both the proceedings involved the same matter in substance later on Mr. Sengupta submitted that the substance in the two proceedings could not be held to be the same. Moreover, according to him, the embarrassment has to be real. Since the written statement has already been filed the accused has already exposed his defence. There is no question of embarrassment after that. Moreover in criminal trial the guilt has to be established by dint of evidence beyond reasonable doubt but in a civil suit it is the principle of preponderance of evidence and probability which mattered.

7. There is no doubt that stay is a matter of discretion but in exercising this discretion the court has to keep in view the legal principles laid down by the different courts some of which have been stated briefly earlier. While simultaneous trials may cause difficulties there is nothing wrong in them essentially when the laws permit them. Moreover conflict of decisions inhere in the very permissiveness of law allowing a civil action and a criminal proceedings over the same matter. Both the Supreme Court and some of the Madras decisions such as [Yelchuri Ranganayakalu Chetty and Another Vs. K. Gopala Chetty](#), which have been noted above) seem to emphasise the necessity of expeditious disposal of criminal trials in public interest. At the same time some of the Division Bench decisions of our High Court have not hesitated to stay criminal trials in appropriate cases. The Supreme Court while emphasising the necessity of speedy termination of criminal proceedings also pointed out that there was no hard and fast rule governing the question and the matter was a discretion of the court. Our High Courts have attached some significance to a civil proceedings being instituted previously specially if the forum is a superior court. The English decisions were taken note of in this connection. As Buckley, J pointed out in the case of *T. Launches v. Transfix House* (1961-1 All ER 26) the court has to be satisfied that to allow a criminal proceedings to be proceeded with pending the decision of the civil proceedings would really be vexatious. Besides it will be putting too narrow a construction of the term "embarrassment" to confine or equate it to disclosing the nature of defence, as Mr. Sengupta's argument suggested. Our courts have noted that in this country unfortunately sometimes improper pressure is sought to be put through unscrupulous application of Criminal proceedings. All these discussions are however in the abstract. What is more difficult is the application of these principles to particular facts. In this case which is a border line one the considerable delay in filing complaint and the fact that only four out of ninetytwo items have been chosen to form the subject matter of the criminal proceedings have been argued to denote that the complaint was not serious about the criminal nature of the acts, Again,-the substance of both the proceedings is misappropriation. The civil suit is also earlier in point of time. The same has also been filed in this High Court while the criminal proceeding is pending in the Metropolitan Magistrates court. Another point to pote

is that in spite of a lapse of three years the company has not taken any step to proceed with the civil matter. This is liable to be interpreted, as Mr. Roy indeed contended, that the company is more intent on putting the petitioner in peril of punishment than to seek justice.

8. this Court is not in a position to come to a definite conclusion at this stage of all the contentions of Mr. Roy but the circumstances which have been noted earlier seem to constitute more than mere inconvenience to the petitioner by neglecting to proceed with the civil suit which would dispose of as many as 92 items of misappropriation and by threatening to proceed only with four out of ninetytwo items in a criminal court and that too after a great length of time seem to be unfair although permissible under the law, Since the court has a discretion in the matter for the ends of justice, it appears it should be exercised in view of the accused-The two Division Bench decisions of this Court mentioned earlier also support such a course specially in view of the earlier civil suit in a superior court. The advantages of a prompt criminal trial are already gone after a lapse of years from the point of time when the company first came to know about the incident.

9. In the circumstances the petition is allowed and the rule is made absolute.