

(1956) 01 BOM CK 0021

**Bombay High Court****Case No:** Criminal Application No. 1383 of 1955

Dharamdas Hukumtraï

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** Jan. 11, 1956**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 344, 439
- Penal Code, 1860 (IPC) - Section 341, 451

**Citation:** AIR 1956 Bom 512 : (1956) CriLJ 882**Hon'ble Judges:** Gokhale, J; Gajendragadkar, J**Bench:** Division Bench**Advocate:** B.K. Hirani, for R. Jethmalani and K.H. Nagrani, for the Appellant; Government Pleader, for the Respondent

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**Judgement**

Gajendragadkar, J.

This is an application for stay of criminal proceedings filed against the petitioner by opponent No. 2. The complaint against the petitioner pending trial in case No. 131/S of 1955 on the file of the learned Presidency Magistrate, 5th Court, Dadar, is that the petitioner has committed offences under Sections 341 and 451, I. P. C. This complaint was filed on 1-6-1954.

On 20-7-1934, the petitioner, filed a civil suit and in the suit the same subject-matter is included and the petitioner claims relief on allegations which are wholly inconsistent with the allegations made in the complaint against him. On 28-10-1955, the petitioner made the present application for stay of criminal proceedings, Meanwhile it appears that the original complaint was dismissed in March 1955 but on 6-4-1955 it has been re-filed and process has been issued on it.

2. Mr. Nagrani for the complainant contends that, in dealing with questions of this kind it would be necessary to bear in mind the principles which have been laid down by the Supreme Court and he argues that, if a criminal complaint has been filed in

the first instance, it cannot be stayed solely on the ground that some of the questions which arise for decision in a criminal complaint can be more appropriately tried by a Civil Court.

This principle no doubt will have to be applied by us in dealing with questions of this type. But, on the other hand, it would be difficult to lay down a broad and general rule to cover all cases where an accused person prays for stay of criminal proceedings. Facts and circumstances in each case would have to be considered and the question as to whether criminal proceedings will have to be stayed or not will have to be determined in the light of what appears to the Court to be just in any given case.

We are told by Mr. Hirani that on several occasions, when the criminal complaint was placed on the daily board by the learned Presidency Magistrate, the parties by consent obtained orders for adjournment, so that the fact that the criminal complaint has remained pending since the 1st of June until 28-10-1955 when the present application for stay was made cannot be put to the discredit of the petitioner exclusively.

The fact that the complaint was dismissed also cannot be put against the complainant, because the complainant was ill and in fact he filed the same complaint on 6-4-1955 and process has been issued on that complaint. Mr. Nagrani's apprehension that the disposal of the suit may take an unduly long time and his criminal complaint would thereby remain on the dormant file of the criminal Court indefinitely can be met we think. if the civil suit is ordered to be heard expeditiously and liberty is reserved to Mr. Nagrani to move this Court for setting aside the stay of criminal proceedings in case he finds that the hearing of the civil suit does not progress rapidly owing to the non-helpful attitude of the accused.

If the suit is disposed of at an early date, that appears to be a better way of resolving the dispute between the parties in the circumstances of this case. This is not very seriously challenged by Mr. Nagrani though he has opposed the prayer for stay made by the petitioner.

3. Under the circumstances of this case, therefore, we think it would be expedient in the interests of justice that the criminal proceedings should be stayed subject to this, that the civil suit should be, heard as expeditiously as possible. We would accordingly allow the application and make the rule absolute and direct that the Civil Suit No. 1828 of 1954 pending between the parties should be taken up for early hearing by the City Civil Court. Liberty to Mr. Nagrani in terms of this judgment.

4. Rule made absolute.