
(1956) 01 BOM CK 0024

Bombay High Court

Case No: Criminal Application No. 1214 of 1955

Kishindas Tekchand

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Jan. 11, 1956

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 344
- Penal Code, 1860 (IPC) - Section 441

Citation: AIR 1956 Bom 423 : (1956) CriLJ 724

Hon'ble Judges: Gokhale, J; Gajendragadkar, J

Bench: Division Bench

Advocate: K.H. Nagrani, for the Appellant; A.A. Peerbhoy, instructed by Jani Merchant and Co. and Government Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This is an application for stay of criminal proceedings pending the final disposal of a suit between the parties. Applications of this kind are frequently made to this Court and in proper cases stay of criminal proceedings is ordered. In the present case also, at an earlier stage we granted stay of criminal proceedings on 5-7-1954.

The present application for stay by the same petitioner has become necessary because of certain developments which have a material bearing on the merits of the claim for stay of criminal proceedings. The dispute centres round the rights of the petitioner in respect of a terrace as well as the premises in his occupation.

In the criminal complaint filed against the petitioner by opponent 2, it has been alleged that the petitioner has committed an offence under 6. 441, Penal Code and this charge is made against the petitioner on the ground that the petitioner has no concern whatever with the tenancy rights in respect of the premises and that the lease in respect of the premises does not include any right over the terrace.

This complaint was filed on 11-12-1953. Thereafter on 9-3-1954 opponent 2 himself filed a suit for ejectment against the petitioner and one Pur-shottam in the Court of Small Causes. As soon as the petitioner came to know that opponent 2 himself had invoked the civil process against the petitioner, he requested the learned Magistrate to stay the criminal proceedings pending the final disposal of the suit.

In the first instance, the learned trial Magistrate granted stay, but subsequently he revised his order and the stay was vacated. It was at that stage that the petitioner moved this Court for stay and on 5-7-1954 the rule issued in favour of the petitioner was made absolute by this Court. Meanwhile the action in the suit for ejectment which had been filed by opponent 2 was dropped. The petitioner then filed a suit in the Court, of Small Causes on 3-1-1954 -- Suit No. 3154 of 1954.

In this suit the petitioner claimed that he was entitled to the tenancy rights and to this suit he impleaded opponent 2. The written statement filed by the landlord pleaded absence of Jurisdiction in the Court of Small Causes and further alleged that the tenancy rights in respect of the flat vested in Purshottam and that the petitioner was not concerned with the said rights at all.

On 14-6-1955 the petitioner applied to the learned Judge for amendment of the plaint, and when the application for amendment was being considered he moved the learned Judge for withdrawal of the suit with liberty to file a fresh suit. The learned trial Judge allowed the suit to be withdrawn with liberty to file a fresh suit. Thereafter on 28-6-1955 the petitioner has filed a suit in the City Civil Court claiming the tenancy rights in question.

Mr. Nagrani for the petitioner contends that the position between the parties continues to be exactly the same as it was when we granted him stay on 5-7-1954 and he argues that it would be more appropriate that the dispute between the parties in respect of the tenancy rights in question should be tried by a Civil Court rather than by a Criminal Court.

In dealing with questions of this kind, it would be necessary to bear in mind the principles laid down by their Lordships of the Supreme Court in [M.S. Sheriff Vs. The State of Madras and Others](#), . "As between the civil and the criminal proceedings", observed Euse J. "we are of the opinion that the criminal matters should be given precedence."

No doubt, the learned Judge has hastened to add that no hard and fast rule could be laid down, but that it was not considered that the possibility Of conflicting decisions in civil and criminal Courts was a relevant consideration in disposing of the question as to whether criminal proceedings should be stayed or not.

Mr. Nagrani points out -- and rightly -- that this decision does not lay down a categorical general rule prohibiting the Courts from granting stay of criminal proceedings even in appropriate cases. But the approach in dealing with these

matters has been laid down in this Judgment and it would be necessary to consider the question of staying criminal proceedings from the point of view mentioned by Bose J. That is one consideration which is against Mr. Nagrani.

We do not think we would be justified in directing criminal proceedings to be stayed on the bare theoretical ground that question of tenancy can be more appropriately dealt with by the Civil Court. Besides, we have also been influenced by the conduct of the petitioner himself. As soon as a written statement, of the landlord was tiled in the petitioner's suit, it should have been clear to the petitioner that his suit, according to the landlord, was defective for non-joinder by Purshottam.

The order for stay was obtained by the Petitioner from this Court on 5-7-1954 and it was nearly a year thereafter that he thought of withdrawing his suit on 14-6-1955. When the application for withdrawal of the suit with liberty was made, presumably it was made on the assumption that the Court of Small Causes was competent to entertain the suit, so that it is clear that the petitioner allowed his suit to remain on the file of the Court of Small Causes for about a year without taking steps to amend his plaint properly and without considering whether it was necessary to withdraw the suit with liberty to file a fresh, suit.

After the suit was allowed to be withdrawn by the learned Judge of the Court of Small Causes, the petitioner has filed the present suit, not in the Court of Small Causes but in the City Civil Court. Mr. Peerbhoy lor the landlord contends that the suit filed in the City Civil Court is without Jurisdiction. We propose to express no opinion on this point.

But it seems to us clear that the petitioner was not serious about prosecuting his suit in the Court of Small Causes, and as soon as he obtained an unqualified order from this Court on 5-7-1954 he was obviously playing for time. In such circumstances, we do not think we would be justified in directing that the criminal proceedings pending against the petitioner should be stayed.

2. in the result, the application for stay must be rejected and the rule discharged.

3. Application rejected.