

(2014) 10 KL CK 0351
In the High Court Of Kerala
Case No : O.P.(C) No. 2421 of 2014 (O)

Abdul Raheem

APPELLANT

Vs

Thaha

RESPONDENT

Date of Decision : 24-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Penal Code, 1860 (IPC) — Section 325

Citation : (2014) 10 KL CK 0351

Hon'ble Judges : P. Bhavadasan, J

Bench : Single Bench

Advocate : J.R. Prem Navaz, Rahul Venugopal and P.T. Sheejish, Advocate for the Appellant

Judgement

P. Bhavadasan, J.

In this Original Petition the reliefs sought for are as follows:

"1. Allow this Original Petition (Civil), by setting aside Ext.P4 order dated 13.10.2014 in I.A. No. 1803/14 in O.S.162/11, passed by the Honourable Sub Court, Tirur by allowing the prayer made therein.

2. issue such other order this Honourable Court deems fit and proper in the facts and circumstances of the case."

2. In respect of an incident which occurred on 30.1.2009 both criminal and civil proceedings were initiated. Petitioner stands accused of having committed offence punishable under Section 325 of Indian Penal Code and the police after investigation laid final report which was taken cognizance by the Judicial Magistrate of the First Class, Parappanangadi as C.C. 438 of 2009. In the meanwhile, the injured filed O.S. 162 of 2011 before Sub Court, Tirur for compensation. When both the cases came up for trial, the petitioner moved the civil court for stay of the proceedings in O.S. 162 of 2011 on the ground that criminal proceedings are going on and till it is terminated, the civil suit may not

be proceeded with. That application filed under Section 151 of the Code of Civil Procedure was dismissed by Ext.P4 order. It is under challenge.

3. Learned counsel appearing for the petitioner relied on the decisions reported in M.S. Sheriff Vs. The State of Madras and Others, , Ved Prakash v. Guru Granth Saheb Sthan, Meerghat Town (2009 KHC 6834) and Syed Askari Hadi Ali Augustine Imam and Another Vs. State (Delhi Admn.) and Another, and contended that it has been held by the Apex Court that it is desirable that in case where civil case and criminal cases arises out of the same cause of action, the civil case may be kept pending till the criminal proceedings are over. It is highlighted that in all those cases it is observed that criminal proceedings should be given precedence. It is further pointed out by the learned counsel for the petitioner that if simultaneous trial causes embarrassment, that is one of the grounds to be urged before the courts to stay the civil proceedings.

4. It is well settled that neither disciplinary proceedings nor civil suit need be stayed till the criminal proceedings are terminated. The two are independent and distinct proceedings and the matters to be considered in each of the cases is totally different. In a civil suit, the case is decided on preponderance of probabilities while in criminal case, the prosecution has to establish the case against the accused beyond reasonable doubt. Except the fact that the civil and criminal proceedings arise out of the same cause of action, the finding in one case has no binding effect on the other. The principle of estoppel do not arise for consideration at all. Even assuming that the criminal case is dismissed, it does not follow that the suit has to be dismissed nor does it follow that if the accused is convicted, the civil suit has to be decreed. In all the decisions relied on by the learned counsel for the petitioner, it is stated that each case depends upon the facts of the said case and in case the court below feels that there is severe embarrassment caused to the person concerned, it may consider the staying of the civil proceedings. There is no hard and fast rule regarding the stay of the proceedings. As already stated, the civil proceedings and criminal proceedings have nothing in common and the two are independent and distinct proceedings.

5. The other point urged by the learned counsel for the petitioner is that the same counsel appears for the petitioner in both the civil and criminal cases and that causes considerable difficulties to the counsel. Here, it may be remembered that summons must have been issued in the criminal case long ago. So also the preliminary list in civil suit must have been published in the Sub Court at least one month before. If the petitioner had any grievance regarding the inclusion of the suit in the list he could have taken objection. It was at a time when the trial had started, the petitioner came forward with a petition for stay of the proceedings. There is no bonafides in the claim made at all. The court below is therefore perfectly justified in passing Ext.P4 order.

Learned counsel for the petitioner points out that some arrangement may be made so as to avoid conflict of posting of the cases in two courts. It will certainly be open to the petitioner and his counsel to apply to the civil court for indulgence

pointing out the trial of the criminal case. If any such application is filed, the court below shall consider it in accordance with law.

The Original Petition is disposed of as above.