

(1995) 03 GAU CK 0018
In the Gauhati High Court
Case No : Civil Revision No. 169 of 1994

Atul Chandra Bora

APPELLANT

Vs

Assam Tea Brokers Pvt. Ltd., Gawahati

RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 151
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : AIR 1995 Guw 73

Hon'ble Judges : M. Sharma, J

Bench : Single Bench

Advocate : K. Agarwal and R.K. Agarwal, for the Appellant; D.N. Choudhury, H.N. Sarma and P. Kataki, for the Respondent

Final Decision : Dismissed

Judgement

M. Sharma, J.—This civil revision has been preferred by the petitioner who is the defendant No. 2 in Money Suit No. 178/91 and also the accused No. 2 in case No. 351 c/91 filed by the opposite party against the three accused persons including the present revision petitioner; for stay of the proceeding in the above mentioned Money suit till disposal of the above mentioned criminal case.

2. Before considering this petition a back drop of both the cases has to be given which led to filing of both the Money suit as well as the criminal case.

3. A complaint case being case No. 351 c/91 had been instituted against the petitioner alongwith the others namely accused No. 1 Sri Satyajit Kr Barua and accused No. 3 Girish Ch Thakuria under Sections 403/406/408/417/418/420/424/477A/511 read with Section 120B, I.P.C. by the opposite party. The allegation in the complaint case was that the offence was committed during the period from 16-7-1984 to 30-4-1988 and during this period the accused persons, in pursuance of a conspiracy committed misappropriation of the complainant's fund to the tune of Rs. 13,04,014.46/-. One of the accused, namely, accused No. 1 Satyajit Kr Barua approached this

court for quashing the proceeding of the said complaint case and also for setting the orders dated 10-3-1993 and 23-3-1993 by which an application u/s 306, Cr.P.C., praying for pardon by accused No. 3 Sri Girish Thakuria has been allowed by the trial court. Notice of motion was issued by this court on 26-8-1993 with an interim stay order of the proceedings in the said complaint case which is pending for admission.

4. The complainant opposite party as plaintiff also filed Money suit No. 178/91 against the petitioner and two other accused persons as defendant for a decree of realisation/recovery of an amount Rupees 27,86,593.61/- and out of this amount the respondent plaintiff, claimed an amount of Rs. 13,04,014.46/- as principal amount and Rs. 14,82,576.15/- as interest at the rate of 19% per month on the principal amount.

5. The above mentioned criminal case is pending for trial. But proceedings has been stayed in interim by this court in view of the notice of motion issued to the opposite party by order dated 28-6-1993 in Crl. Rvn. No. 275/93 which has been preferred by the accused No. 1 Sri Satyajit Kr Barua. Though the respondent made appearance through counsel, matter has not come for admission and consequently criminal proceeding has been kept in abeyance. The Money suit was filed at about same, complaint case was filed on 8-3-1991 (5-3-1991). Again the 2nd accused as defendant No. 2 in the Money suit has filed this revision petition to stay the Money suit pending in the court of Assistant District Judge No. 1 by an application u/s 151, C.P.C. in view of the pendency of the criminal case, till disposal of the Money suit.

6. The main point of submission of Mr. Agarwal, learned counsel for the petitioner was that the Money suit No. 178/91 and the complaint case No. 351 c/91 are between the same parties and the issues involved in the Money suit are directly and substantially in issue in the complaint case; that the petitioner defendant would be completely prejudiced and embarrassed if the petitioner has to file the written statements before conclusion of the trial of the criminal case pending against him as the petitioner has to disclose his defence in the written statement which he is going to take in the criminal proceeding. This plea was taken before the trial court in the said Money suit while the above mentioned petition was agitated and the trial court by its impugned order rejected the petition on the ground that in view of the stay order in case No. 351 c/91 stay of the proceeding in Money suit is not sustainable. As the complaint case was pending for admission 1 decided to hear the same along-with this civil revision and to dispose of both the criminal revision No. 275/93 and the Civil Revision No. 169/94 together. Accordingly the judgment of the Criminal Revision has been delivered separately.

7. The application for stay of the Money suit was filed before the Assistant District Judge, No. 1 u/s 10/151, C.P.C. Section 151, C.P.C. provides that if the ordinary rules of procedure result in injustice in any case and there is no other remedy they can be broken for the end of justice. On the other hand Section 10,

C.P.C. provides that no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit (underline supplied), between the same parties Apparently Section 10, C.P.C. does not provide for stay of a civil suit on the plea of pendency of a criminal case on the same subject matter . There is no such provisions also in the Code of Criminal Procedure to stay a civil proceeding by the High Court which can, in appropriate cases and very sparingly quash the proceeding on the ground of pendency of civil suit. In that case it is the discretionary power of the High Court to use its inherent jurisdiction to examine whether the abuse of process of court is apparent in the facts as well as in law and whether to secure end of justice invocation of court's inherent jurisdiction is required. Both Sections 151, C.P.C. and 482 Cr.P.C. save by expressly preserving to the court inherent power to act according to justice, equity and good conscience and make such orders as may be necessary for the end of justice or to prevent the abuse of process of the court. Essential condition for application of this section is that the court in which the first suit is instituted is "competent" to grant the relief claimed in the subsequent suit and this aspect leads to the requirements that matter in the second suit is also directly and substantially is in the first suit; that parties in the second suit are same; that the previously instituted suit is pending in the same court in which the subsequeunt suit was brought or in any court of India; or in any court beound the limits of India established; or continued by the Central Govt.; or before the Supreme Court. In such a case trial, nor the institution of the suit is barred, whereas in a criminal case, if the High Court, under its inherent jurisdiction found the proceeding liable to be quashed, it is quashed keeping no chance for reopening the same. In view of the above discussion I hold that only relief available to the petitioner is u/s 151, C.P.C. which has been decided in a series of decisions that where Section 10, C.P.C. does not strictly apply, for ends of justice, suit may be stayed u/s 151, C.P.C. and that where requisite conditions for stay u/s 10, C.P.C. is not justified or fully satisfied, court cannot exercise its inherent power.

8. The purpose of this revision petition is to stay the Money suit till disposal of the Criminal case. On the other hand the criminal revision was preferred to quash the proceeding on the ground that the contents of the allegations made in the complaint petition d-oes not disclose offence u/s 420, I.P.C. and that the allegations only make out a case for civil dispute and also for against the order by which pardon was granted to the accused No. 3 in the complaint case.

9. The counsel for the petitioner has advanced his submission entirely relying on the decisions oi the Apex Court in the case of M.S. Sheriff Vs. The State of Madras and Others, In that case the matter for decision before the Apex Court was whether an appeal on the subject before it would lie before the Apex Court u/ s 476B, Cr.P.C. (Old) from an order of the Division Bench of a High Court which directed the opposite party in appeal to file a complaint case for perjury against the appellants. The facts in that case was that two persons, Gobindan and Damodaran filed petition u/s 491, Cr.P.C. (Old) for release claiming that they had

been illegally detained by two Sub Inspectors of Police who were appellants before the Apex Court. The claim of arrest by those two persons were denied by the appellants, Sub Inspectors, who claimed that those two persons were not in their custody and accordingly sworn affidavits. The High Court, in view of the claims and counter claims of both the parties directed the District Judge to make an enquiry and accordingly, after enquiry, the District Judge submitted a report that in his opinion, the statements made by the two Sub Inspectors were correct. The High Court disagreed with the report. However, those two persons were arrested and their petition became infructuous and were dismissed. But afterwards, again on a petition by those two persons (Gobindan and Damodaran) before the High Court u/s 476, Cr.P.C. (Old) sought direction for prosecution for perjury u/s 193, I.P.C. The applications were entertained and the Deputy Registrar of the High Court was directed to make the necessary complaints. The appellants approached the Apex Court and leave was granted under Article 132 as an interpretation of Article 132(1) and 372 of the Constitution was involved. The question posed before the Apex Court for consideration -- (a) whether there was a right of appeal and (b) whether "it is expedient in the interest of justice" that an enquiry should be made and a complaint filed. As for the purpose of arriving a decision in the case in hand I am concerned only with the second aspect of the matter. The Apex Court held -- as the High Court after ample scrutiny on which a judicial mind could reasonably reach, the conclusion that there was matter which requires investigation in a criminal court and that it is expedient in the interest of justice to have it enquired upon and accordingly the Apex Court did not find any material to interfere with the decision of the High Court.

In this case (supra) further two sets of proceedings arising out of the same facts were pending against the appellants -- one is two civil suits against the two appellants, Sub Inspectors, for damages for wrongful confinement and another criminal case u/s 344, I.P.C. for wrongful confinement. It was the view of the Apex Court in the backdrop of that case, that the simultaneous prosecution of these matters would embarrass the accused. The Apex Court held that -

"Para 15 -- As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Court of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment." (underlines added)

"Para 16 -- Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests

demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered u/s 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished." (underline added)

11. In view of the above discussion I am consulted to hold the reference of the case (supra) is not applicable in the instant case. The only relevancy as the Apex Court held, is the likelihood of embarrassment. In the criminal case against the petitioner the allegations are clear and specific and prima facie constitute an offence under Sections 406/420/477, I.P.C. Criminal proceedings and civil suit can run side by side. The object of the criminal law is to punish an offender who commits an offence against a person, property or State for which the accused, on proof of the offence, is deprived of his life and liberty, it cannot effect the civil remedies at all for suing the wrongdoer. The plea, that being the issues in question are similar in both the cases, some facts to be disclosed in the written statements would put the petitioner in embarrassment, is not sustainable. In this case, as from the facts and circumstances, I respectfully hold that the meaning of embarrassment on the back drops of the case before their Lordships is distinguishable. The findings of the criminal case, under the law, is not applicable to a finding in a civil suit, the arena of both the jurisdictions are distinct and independent. Though the Apex Court is of opinion that between civil and criminal proceedings criminal matters should be given precedence, their Lordships also equally maintained the view that no hard and fast rule can be laid down and that probability of conflicting decisions in the civil and criminal courts is a relevant consideration. In my considered view the plea of "embarrassment" relying on the decision of the Apex Court is inconsistent in this case and is unsustainable. Pendency of the criminal case and any disclosure in the written statement has no nexus while two proceedings are independent and separate, and possibility of conflicting decisions of criminal and civil courts cannot arise at this stage of the proceeding.

12. From the impugned order, it appears that the trial court entertained the petition u/s 151 rightly and his decision, as challenged by the petitioner as illegal and without jurisdiction is not sustainable. Petitioner's reliance on the decisions in M.S. Sheriff Vs. The State of Madras and Others, before the court below though was not discussed at length, this court in revisional jurisdiction, in view of the above discussion, is constrained to hold that plea of embarrassment taken in this case is not applicable from the facts and circumstances of the case. Each

case has its own merit and has to be decided accordingly, particularly while the case is examined u/s 151, C.P.C. The trial court's decision u/s 151, C.P.C. is not illegal nor there is any infirmity and interference on the same is uncalled for.

13. The criminal proceeding was stayed by this court by an interim stay order and since 26-6-1993 the proceeding has been stalled and again by this application u/s 151, C.P.C. attempt has been made to stay the proceeding in the civil court and apparently the petitioners in both ways are trying to delay and stall the proceeding in both the courts.

14. In the result, in view of my above discussion, the petition is dismissed.