
(1985) 09 BOM CK 0021

In the Bombay High Court

Case No : Criminal Writ Petition No's. 530 and 531 of 1984

Bombay Municipal Corporation

APPELLANT

Vs

Suresh U. Gupta and another

RESPONDENT

Date of Decision : 05-09-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 309, 397(2)

Citation : (1986) MhLj 40

Hon'ble Judges : V.V. Vaze, J; Dharmadhikari, J

Bench : Division Bench

Judgement

Dharmadhikari, J.—As both these Criminal Writ Petitions involve common questions of law and facts, they were heard together and are being disposed of by this common judgment.

2. The Bombay Municipal Corporation filed complaints against the Respondents Suresh U. Gupta, a sweameat shop owner, under S. 394 read with S. 471 of the Bombay Municipal Corporation Act. On 21-1-1983 the Opponent Gupta filed an application before the Metropolitan Magistrate, 39th Court, Vile Parle, Bombay praying for stay of the criminal proceedings till the disposal of the Bombay City Civil court suit No. 6927 of 1982. The learned Metropolitan Magistrate by his one line order, that is, "Heard, Cases be stayed as prayed for", stayed the Criminal proceedings. Being aggrieved by this order the Municipal Corporation filed revision petitions before the Sessions Court bearing Criminal Revision Application Nos. 278 and 275 of 1983. The Additional Sessions Judge, Bombay took a view that the said revision applications are not maintainable in view of the provisions of S. 397(2) of the Code of Criminal Procedure. It is these orders of the learned Sessions Judge, Bombay dated 11th July 1984 which are challenged in these two criminal writ petitions. When the matter came up for hearing before the Single Judge of this Court, Masodkar J. directed that the matter should be put up before the Division Bench in view of the two divergent opinions expressed by Shimpi J. in Criminal Revn. Appln. No. 452 of 1975 decided on 9-12-1977 and Khatri J. in

M/s Bush India Limited v. Lekharaj, 1984 Cri LJ 346. Therefore these criminal writ petitions are placed before us.

3. It is not necessary to make a detailed reference to the allegations made in the complaints, or defence of the accused, since in these petitions we are only called upon to decide as to whether the bar u/s 397(2) of the Criminal Procedure Code will apply to such order. After making a detailed reference to the provisions of section 309(1) of the Code and the decision of the Supreme Court in M. S. Sherif v. State of Madras AIR 1984 SC 397 : 1954 Cri LJ 1019 and the decision of this Court in Dhanrajmal & Co. Pvt. Ltd. v. State of Maharashtra Shimpi J. in Criminal Revision Application No. 452 of 1975 held that the order staying criminal proceedings till the decision of civil suit is not merely an order of adjournment and therefore, is an order of moment. This decision was not brought to the notice of Khatri J., when M/s. Bush India Ltd.'s case was heard. Therefore without noticing the said judgment, Khatri J. in M/s. Bush India Limited v. Lekharaj 1984 Cri LJ 346, held :

"9. There is substance in Shri Vashi's second contention also based on the bar to revision u/s 397(2) of the Code. The preliminary objection was thrown out by the learned Judge, observing that order affected the rights of the complainant and as such was not interlocutory. Apparently the learned Judge has relied upon Amar Nath and Others Vs. State of Haryana and Another, To attract this ruling the impugned order has to be "a matter of moment and must affect or adjudicate the rights of the accused or a particular aspect of the trial". It is difficult to see how an order of stay fulfills this requirement.

"10. Now what is the test that will apply here ? An order which terminates a proceeding will be obviously not an interlocutory order, inasmuch as it is a final one. However, the reverse of this proposition is not always true. In other words, in a situation an order which is not final, can also be a non-interlocutory order within the meaning of section 397(2). For example an order may reject the plea of the accused on a point which when accepted, will conclude the particular proceeding. In such a case, if the order goes in favour of the accused, it terminates the proceedings and as such it will not be an interlocutory order. However, where the order goes against the accused, it will not terminate the proceedings, yet it will remain non-interlocutory and not attract the bar u/s 397(2) please see Madhu Limaye Vs. The State of Maharashtra, In my opinion, the test adumbrated in Madhu Limaye's case applies more aptly to the facts of the present case. The order of stay passed by the learned Magistrate would have remained and does remain interlocutory, whatever way he had passed it either granting or rejecting the request for stay. The order was thus not open to revision by the Sessions Court."

Therefore there is an apparent conflict between these decisions. As to what could be termed as interlocutory order is no more in dispute, in view of the decisions of the Supreme Court in Amar Nath and Others Vs. State of Haryana and Another, and Madhu Limaye Vs. The State of Maharashtra, While holding that the

impugned order is not an interlocutory order Shimpi J. relied upon the decision of the Supreme Court in Amar Nath's case, whereas Khatri J. placed reliance upon the decision of Supreme Court in Amar Nath's case as well as in Madhu Limaye's case. For properly appreciating the true import of such an order, it will be necessary to understand the difference between the nature of these two proceedings, namely Civil and Criminal. The Supreme Court has an occasion to consider such a question in M.S. Sheriff Vs. The State of Madras and Others, This is what the Supreme Court has observed in this context :

"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 Courts 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 sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weights 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 under S. 476. But in this case are of the view that the civil suits should be stayed till the criminal proceedings have finished."

Similar view is taken by this court in Dhanrajmal Gobindram and Company Private Ltd. Vs. The State of Maharashtra, by Vimadalal J. In Ramkrishna Sawalaram Redkar Vs. State of Maharashtra, the Division Bench of this Court had an occasion to consider the principles underlying the provisions like section 309 of the Code. It appears that in that case criminal prosecution was stayed since the record was called by the High Court in another case. Commenting upon such a practice, this is what the Division Bench has observed :

"6. Cardinal principle that we can emphasise is that once cognizance is taken, the trial should proceed by the stages indicated by the Code of Criminal Procedure governing such trial and the Court presiding over the trial should be loath to depart from the same. Procedural law plays an important role in the holding of Criminal trials and deflections from it can hardly be sanctioned. The

staying of matters, is a clear deflection to be deprecated by all concerned.

7. Simple rule or principle, underlying the provisions, like section 309 of the new Cr.P.C. equivalent to S. 344 of the old Cr.P.C. is that once the cognizance of the accusations of a criminal nature is taken by the competent court, the trial has to be held with all expedition so as to bring to book the guilty and to absolve the innocent. This has to be achieved with speed and without loss of time in the interest of public justice. By keeping the matters pending sine die in this manner there is a grave danger of jeopardising not only the ends of justice but also the liberty of the persons accused of offences, for the pendency of the trial means keeping persons bounded to the process of court. When it is a matter of sessions trial, it is most inexpedient to adjourn the same as the statutory dictates of the Code are clear in that such a trial should proceed and be heard continuously from the inception to its finish subject to exceptional circumstances necessitating short adjournments. This had been the law always and administered accordingly. See *Badri Prasad v. Emperor*, (1912) Cri LJ 861; *Agha Nazarali v. Emperor*, AIR 1941 Sind 186 : 43 Cri LJ 68, and *Emperor v. Rahamatali*, (1941) 45 Cal WN 819. Significance of speedy trial, it is high time, should be understood and followed as the underlying principle of effectively administering the criminal justice."

These cardinal principles will have to be taken into consideration while deciding the controversy raised before us, as well as the nature of the order. It cannot be forgotten that in a given case, such a stay of criminal case can be granted even at the instance of complainant. When criminal prosecution is stayed for an indefinite period, i.e. pending the decision of a Civil Suit, it affects substantive rights of the parties i.e. complainant as well as accused. It is common knowledge that the civil suits often drag on for years together. Thus stay of criminal prosecution till the decision of the civil suit practically amounts to suspension of the proceedings for an indefinite period. It is not merely an order of adjournment. Such an order clearly disturbs normal procedure of trial and affects substantive rights of the parties. The order of the Judicial Magistrate staying the criminal prosecution for an indefinite period was undoubtedly a matter of moment, and affects the valuable right of the complainant to proceed with the criminal case. Therefore we have no hesitation in holding that it cannot be treated as an interlocutory order and hence the bar u/s 397(2) of the Code will not apply to such an order. Therefore we agree with the view taken by Shimpi J. in *Criminal Revn. Appln. No. 452 of 1975*, D/- 9th December, 1977 and overrule the view taken by Khatri J. in *M/s. Bush India Ltd. case 1984 Cri LJ 346*.

4. Since the Revision Application were disposed by the learned Additional Sessions Judge on the question of jurisdiction only and he has not considered the merits of the matter, it will not be fair to go into the merits of the case at this stage.

Hence Rule is made absolute. The orders passed by the learned Additional Sessions Judge, Greater Bombay in Criminal Revision Applications Nos. 275 of 1983 and 278 of 1983 dated 11th July 1984 are set aside. The revisions are

restored to file and the learned Additional Sessions Judge is directed to hear and decide the revisions as early as possible.

5. Order accordingly.