
(1941) 06 PAT CK 0001
In the Patna High Court

Chhanoo Prasad Singh and Others

APPELLANT

Vs

Sakhichand Sahu

RESPONDENT

Date of Decision : 06-06-1941

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Criminal Procedure Code, 1898 (CrPC) — Section 203

Citation : AIR 1942 Patna 45

Hon'ble Judges : Varma, J

Bench : Division Bench

Judgement

Varma, J.—This is a petition directed against the order of the Court below refusing to stay criminal proceedings pending a civil suit which has been numbered as Title Suit No. 70 of 1940 before the Subordinate Judge of Darbhanga. The petitioner had filed a complaint against certain mallahs for having caught fish on 23rd June 1940, in the portion of a river falling within his zamindari in village Bharpura That petition was filed on 24th June 1940, but it was dismissed u/s 203, Criminal P.C. A petition was filed for further inquiry but that also was dismissed on 6th August 1940, with an observation that the petitioner, Chhanoo Prasad Singh, should have his title adjudicated by the civil Court. On the same day on which the petitioner filed the complaint, that is, on 24th June 1940, a criminal case was filed by a member of the opposite party against the present petitioners alleging that they had a right to fish in the river by virtue of the settlement from Government and the petitioners were ordered to take their trial which is now proceeding. The learned Magistrate before whom a prayer was made that he should stay the criminal case pending the duration of the civil suit asked the petitioners by an order dated 13th December 1940, to file a copy of the plaint on 3rd January 1941. But the petitioners, for reasons which are not apparent, did not file the plaint till 29th January 1941. The learned Magistrate did not think it proper to stay the criminal proceedings. Against that a petition was moved before the Sessions Judge of Darbhanga. The learned Sessions Judge. said that at first he was of opinion that the petition should be

allowed but on account of laches on the part of the petitioners and taking into consideration the long time that would elapse before the civil case would be disposed of he did not think it necessary to interfere with the order passed by the Magistrate. He lays special emphasis on the fact that although the Magistrate dismissed the petition for further inquiry on 6th August 1940, with an observation that the petitioners should go and file a civil suit, the suit was not filed till 7th November 1940. The time that elapsed between the two dates seems to be a long one but one has to remember that, if the Secretary of State is a party u/s 80, Civil P.C., two months clear notice is necessary. Moreover, as the question of the right of fishery is involved both in the criminal as well as in the civil suit, it is preeminently a matter which should be dealt with by a civil Court.

2. As to whether criminal proceedings should be stayed when a civil suit is pending is a question which depends upon the facts in each case. The earliest case in this Court was a decision reported in *Khobhari Rai v. Bhagwat Rai* ('17) 4 AIR 1917 Pat. 621, where criminal proceedings with certain conditions were stayed during the pendency of a civil suit although the civil suit was filed on 26th January 1917, while the criminal case was filed on 10th November 1916. On the other hand, we have got the decision reported in *Hirday Narain Singh and Another Vs. Emperor*, in a case of forgery where criminal proceedings were not stayed. Many unreported cases have been brought to my notice, for example, Criminal Revision No. 5 of 1929, decided on 11th February 1930, by Jwala Prasad, J., Criminal Revision No. 111 of 1930, by Macpherson J. decided on 2nd April 1930 and Criminal Revision No. 362 of 1931 decided by Noor J. on 29th September 1931 and there are also certain observations by Dhavle J. in his judgment in *Jagannath Acharya Goswami Vs. A. Rajagopalachari and Another*, . This is a case in which I am of opinion, that the criminal proceedings should be stayed as the learned Sessions Judge originally intended pending the disposal of the civil suit. But as it is important that the evidence connected with the case should not be lost the examination of the prosecution witnesses should continue till the prosecution case is closed and after that the criminal proceedings should be stayed. At the same time the hearing of the civil suit should be expedited.