

(2014) 09 TP CK 0011
In the Tripura High Court
Case No : RSA No. 63 of 2007
Haradhan Das VsShila Malakar

Date of Decision : 12-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 96
Criminal Procedure Code, 1973 (CrPC) — Section 164
Limitation Act, 1963 — Section 14, 23
Penal Code, 1860 (IPC) — Section 376, 417, 420

Citation : (2014) 09 TP CK 0011

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : Somik Deb, Advocate for the Appellant; N. Guha, Advocate for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J.—This appeal filed u/s 100 of the C.P.C. is directed against the judgment of affirmation dated 31.05.2007 delivered in Money Appeal No. 05 of 2006 by the Additional District Judge (First Track), Kailashahar, North Tripura.

2. At the time of admission, since no substantial question of law was formulated, the following questions of law were framed by the order dated 25.02.2014:

(i) Whether Section 14 of the Limitation Act has any application in instituting the money suit in the context of pendency of the criminal case touching the same subject matter and

(ii) Whether there is evidence as regards the "contract" which is alleged to have been breached by the appellant?

3. For having the factual prospective for considering the said substantial questions of law it may be briefly stated that the respondent filed the suit for compensation being M.S. No. 05 of 2001 in the Court of the Civil Judge, Sr. Division, Kailashahar, North Tripura. The appellant who was the sole defendant in the suit, according to the respondent herein, the plaintiff in the suit, developed a

love affair with her. One day in the month of August, 1995 the appellant committed sexual intercourse with the respondent against her will. Her sister informed the incident to the appellant's sister. "The elder sister of the defendant at this offered the plaintiff and her sister the prospect that the defendant would marry the plaintiff" (sic). Thereafter, on many occasions the appellant committed sexual intercourse with her. The respondent got conceived. When the appellant was informed about the conception, he advised for termination of the pregnancy as he was not in a position to marry her. Accordingly, the pregnancy was aborted by taking medicines. Subsequently, the appellant told her that his marriage was settled with another girl then the respondent insisted him for marriage but not acceded to. According to the respondent, the appellant has spoiled her chastity. When the appellant had denied to marry her, the respondent lodged a complaint to the Officer-in-Charge Dharmanagar Police Station stating inter alia that "for the last two years he has been engaged in sexual relationship with me a luring to marry me in various ways and he has taken me to his house at Hawaibari, Teliamura. He also had cohabited with me in his own residence at Hawaibari. Before two years he had raped me in many times against my will in the house of my father at Durgapur alluring me to marry. As a result, I became pregnant. After this on the night of last Dashami Puja and Kali Puja (he) raped me forcefully against my will. On 23rd day on the month of last November he brought medicine and gave for taking this medicine in order to making abortion of mine. I took it on common faith. As a result of which my abortion was held. At present he (Shri Haradhan Das) has settled his marriage with another and informed me that he will not marry me".

The said complaint dated 02.01.1998 (Exbt. 1) was registered as Dharmanagar P.S. case No. 115/199. After investigation the final police report was filed chargesheeting the appellant and the charge was duly framed for trial against him under Sections 420/376 of the I.P.C. On denial of the charge, the trial commenced and the prosecution succeeded in proving the charge u/s 417 of the I.P.C. Thus, the petitioner was convicted u/s 417 of the I.P.C. by the judgment dated 30.08.2000 and sentenced to pay a fine of Rs. 10,000/-, in default of payment within one month from the date of the said judgment, the appellant had been made liable to suffer imprisonment for a period of one year. It has been observed that on realisation of the fine amount that would be paid to the respondent herein "for the injuries suffered by her on account of the offence committed by the offender". On acceding to the sentence the appellant paid Rs. 10,000/- as compensation. In para-12 of the plaint, it has been stated by the respondent as under:

"That the bundle of facts as noted above constitute the cause of action for this suit and it is describedly arose within the jurisdiction of this Court with effect from his different breaches of contract and assurance from January (early part) 1999 when the substantial breach (by defendant occurred and June (first part 1999) when the plaintiff learnt about this substantial breach from November, 2000 when the defendant deposited the fine money in the court accepting the

conviction and the sentence & when actually and finally his continuing breeches ceased because thereafter there could be no more any prospect nor scope for the plaintiff to join him."

4. Prior to that, on 03.12.1996 according to the plaint the respondent made her statement u/s 164 Cr.P.C. stating what she had stated in the complaint. Further it has been asserted that when the appellant did not prefer any appeal against the conviction as returned by the Assistant Sessions Judge, North Tripura, Dharmanagar and deposited the said amount, the respondent realised that no room was left for marriage.

5. By filing the written statement, the appellant has categorically stated that the respondent is an ill reputed woman and he never assured her to marry and to lead with her conjugal life. Thus there was no continuous breach of assurance and contract, express or implied.

6. The trial court, the Court of the Civil Judge, Sr. Division, Kailashahar, North Tripura framed 6(six) issues including whether the suit is barred by limitation. The trial Court by the judgment dated 30.05.2006 has held, in response to the issue No. III being whether the suit is barred by limitation, as under:

In many occasions we find that during the pendency of the criminal case the parties settle the dispute amicably and they come close together and marry each other. But in this case, such happening was not materialised. For the purpose of limitation the period taken by the criminal trial may be taken into consideration as it is a peculiar case. I find that the criminal judgment was passed on 30.08.2000 and the suit is filed on 15.10.2001. So, it is in time and within the period of limitation. Accordingly, this issue is also decided in favour of the plaintiff.

While deciding the issue No. 5 being whether the plaintiff is entitled to get compensation as prayed for, the trial court has held that:

"As I have already decided in the foregoing issues that the defendant committed sexual intercourse with the plaintiff giving assurance to marry her but the defendant has broken his promise. In our Hindu culture of society chastity of Hindu woman is their property. Once chastity becomes spoiled they loose may thing to live intha society with dignity and status. Moreover, I find that the criminal court also found the defendant guilty of committing offence u/s 417 of the I.P.C. The defendant cannot escape from his liability for committing civil wrong on the person of the plaintiff. I have taken all the facts and circumstances of the case for considering the proper compensation."

Thereafter, a further sum of Rs. 90,000/- has been directed to be paid by the appellant.

7. Being aggrieved by the judgment of the trial court dated 30.05.2006 delivered in Money Suit No. 07 of 2001, the appellant herein filed an appeal u/s 96 of the C.P.C. being Money Appeal No. 05 of 2006 in the court of the District Judge,

North Tripura, Kailashahar. The appeal in course of time was transferred to the court of the Additional District Judge, North Tripura, Kailashahar (First Track) for hearing. While affirming the judgment of the trial court it has been held by the first appellate court that the chastity of the respondent has been injured and on reflecting further on the judgment of conviction, the appeal was dismissed.

8. From a scrutiny of the records it appears that there are materials to presume an implied contract from the promise made by the appellant on which the respondent acted and indulged. But whether the finding on the question of limitation is tenable or not, requires serious consideration in view of Exbt. 1 and the content therein. Whether there can be further breach when the appellant categorically stated that he would not marry her, as reflected in the Exbt. 1 for purpose having a further cause or whether the period of the criminal trial can be added with the period of limitation? Section 23 of the Limitation Act provides that in the case of a suit for compensation for act which does not give rise to cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the time injury results. If the chastity has been injured by the appellant that was so injured much before 02.12.1996 when the respondent in categorical terms informed the Officer-in-Charge Dharmanagar Police Station that the appellant had settled his marriage with another and informed her that he would not marry her. Even there is a series of injuries the respondent has suffered allegedly that all took place before 02.12.1996. It is absurd to read further breach in the future conduct of the appellant, having no relation to the respondent.

9 The explanation given by the trial court as well as by the appellate court is absolutely atrocious to law. Ms. N. Guha, learned counsel appearing for the respondent has strenuously argued on such premises contending that the suit being covered by Article 55 of the Limitation Act, subsequent breach creates further cause of action. She has insisted that when the respondent received the notice from the criminal court for accepting the compensation money that would be the time from which time the period of limitation would begin to run. For purpose of reference, Article 55 is reproduced hereunder:

10. Mr. Somik Deb, learned counsel has submitted that there is no proof of any contract either express or implied. What is apparent from the records, is elements in the realm of allegations. Such submission cannot be accepted by this Court as from the records it has clearly transpired that by the fact finding courts it has been concurrently held that there was promise and acting on such promise the respondent allowed the appellant to have the sexual intercourse. Even on such premises, the appellant was convicted u/s 417 of the I.P.C. and that finding of conviction had not been appealed against by the appellant. Even though the finding of the trial court cannot be the wholesome basis of the finding in a civil suit but such judgment is a sound documentary evidence of higher probative value.

11. As such, this Court is not inclined to interfere with such finding. The subject

matter of the suit will not come under Part-VII of the Limitation Act which deals with suit relating to tort. As such, Ms. N. Guha, learned counsel has rightly contended that the suit is covered by Article 55 of the Limitation Act for purpose of determining the limitation. In terms of Article 55 of the Limitation Act, the period of limitation for the suits, description of which has been given under Article 55 of the Limitation Act, is three years. It has been provided in no uncertain terms that when the contract is broken or where there are successive breaches when the breach in respect of which the suit is instituted occurs or where the breach is continuing when it ceases.

12. From the scrutiny of the evidence as well as the judgments of the courts below it could not be had that after the Exbt. 1 was filed in the police station there was any "breach" from the respondent. The incidence of marriage or the notice from the criminal court or preferring no appeal cannot be treated as "breaches" within the ambit of Article 55 of the Limitation Act. Hence, in the considered opinion of this Court last alleged breach has been brought on record by the respondent herself by filing the complaint (Exbt. 1) on 02.12.2006. It is in the Exbt. 1, the respondent has admitted that the appellant had in clear terms stated that he would not marry her. As such, the suit is barred by limitation inasmuch as it ought to have been filed on or before 01.12.1999 but the suit has been filed on 15.10.2001. The way the trial court has adjusted the time, consumed in the criminal trial, is unheard of and unsustainable, as if the trial court as well as the appellate court had applied the provisions of Section 14 of the Limitation Act for exclusion of the time. Section 14 of the Limitation Act is for discounting a period lost in pursuing a proceeding bonafide in a court without having jurisdiction. The proceeding in the case in hand was not persuaded by the respondent and the proceeding was not a civil proceeding in the same subject matter. As such, there cannot be any application of section 14 of the Limitation Act. The suit having been barred by limitation is not maintainable and hence, is dismissed. In consequence thereof, the appeal stands allowed.

Prepare the decree.

Send down the LCRs thereafter.