
(2011) 05 P&H CK 0269

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-13102 of 2011

Lakhbir Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 03-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 239, 240, 292, 293

Evidence Act, 1872 — Section 40, 41, 44

Penal Code, 1860 (IPC) — Section 148, 149, 380, 427, 448

Citation : (2011) 3 RCR(Criminal) 155

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.—Present petition has been filed u/s 482 Code of Criminal Procedure. seeking quashing of FIR. No. 217 dated 26.4.2008, registered at Police Station Sadar, Amritsar, under Sections 448, 506, 427, 511, 380, 148, 149 Indian Penal Code, Annexure P-27. Along with quashing of the FIR, it is prayed that order framing charge, Annexure P-29, dated 6.10.2009 and charge sheet Annexure P-30, dated 6.10.2009, whereby the Petitioner was charged for offence under Sections 380, 448, 427 and 506 Indian Penal Code be quashed. Counsel for the Petitioner has made the following submissions:

a) that the matter is pending before the civil court and, therefore, till the civil court gives its finding regarding ownership, title and possession, criminal court cannot proceed with the present FIR;

b) that from the various documents annexed with this petition, i.e., jamabandi, site plan, sale deed, electricity bill, sewerage charges, water supply bill, this Court should infer possession of the Petitioner and quash the FIR and the charges framed against the Petitioner;

c) that even though charges were framed in October 2009 and Petitioner has not

availed the remedy of revision, therefore, even after the expiry of period of limitation for filing revision, this Court u/s 482 Code of Criminal Procedure. can quash the proceedings;

d) that Aksh-Shizra, electricity bills, water bills and sewerage bills are per se admissible and they should be taken into consideration;

e) that the jamabandi from which ownership of the complainant can be inferred, bears different khasra numbers.

2. So far as the first argument is concerned, i.e., till the civil court decides the question of title and possession, criminal court should not proceed with the matter, this controversy has been settled by a Five-Judges Bench of the Supreme Court in *M.S. Sheriff Vs. The State of Madras and Others*, wherein it was held that as between civil and criminal proceedings, criminal matter should be given precedence. The following observations of the Hon'ble Supreme are required to be noticed:.

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 decision 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 the Court binding on the other, or even relevant, except for certain limited purposes, such as sentence of damages. The only relevant consideration here is the likelihood of embarrassment.

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 interest 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 proceedings 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.

3. From the above stated observations, it is evident that in the civil court, cases drag for years together and memory of the witnesses fades away. Another akin argument has been raised that the findings of the civil court are binding upon the criminal court. This argument is also fallacious. Section 40 to 44 of the Indian Evidence Act, 1972 state as to which judgments are relevant for a court of law.

Section 41 specifically states that a final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to a specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant. This controversy is not new. A Full Bench of the Lahore High Court in AIR 1945 23 (Lahore) held that a criminal court is neither subordinate nor subservient to the civil court. Criminal court can always examine and appreciate evidence which is led before that court.

4. This matter was again considered by 5-Judges Bench of the Hon"ble Apex Courts in Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, where it was held that standard of proof required in civil court and criminal court are entirely different. Civil cases are decided on basis of preponderance of evidence, while in a criminal case, entire burden of proof lies on the prosecution and case has to be proved beyond reasonable doubt. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. Therefore, the first contention advanced by Counsel for the Petitioner has to be rejected at the outset.

5. So far as the documents annexed with this petition are concerned, they were not part of the challan/report u/s 173 Code of Criminal Procedure. In State of Orissa Vs. Debendra Nath Padhi, , a Larger Bench of the Hon"ble Apex Court over-ruled Satish Mehra Vs. Delhi Administration and Another, and held that documents of the accused cannot be seen by the criminal court at time of framing of the charges. So far as documents relied by the Petitioner are concerned, they are required to be proved by leading evidence. Until these documents are proved and opportunity is granted to the other side to cross examine, they cannot be taken into consideration u/s 482 Code of Criminal Procedure.

6. Ratio of law laid down in Dabendra Nath Padhi's case (supra) was further considered in Rukmini Narvekar v. Vijaya Satardekar and Ors. 2008(4) RCR (Cr.) 924 and it was held therein that for taking documents into consideration u/s 482 Code of Criminal Procedure., the Court has to first arrive at a conclusion that documents relied by the accused have unimpeachable evidence of sterling quality. This Court at this stage cannot comment upon truthful and veracity of the documents relied by the Petitioner. Therefore, second argument advanced by Counsel for the Petitioner is also liable to be rejected.

7. It is not disputed that the Petitioner had earlier filed CrI. Misc. No. M- 30757 of 2009 for quashing of the FIR. The same was dismissed as withdrawn on November 06, 2009. In the present case, charges were framed against the Petitioner on 6.10.2009. A revision against charge sheet can be filed within 90

days. In *Minakshi Bala v. Sudhir Kumar* 1994(3) RCR (Crl.) 123, it was held as under:-

7. If charges are framed in accordance with Section 240 Code of Criminal Procedure on a finding that a prima facie case has been made out as has been done in the instant case the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted u/s 173 Code of Criminal Procedure and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed u/s 240 Code of Criminal Procedure the High Court in its re-visional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 Code of Criminal Procedure; nor would it be justified in invoking its inherent jurisdiction u/s 482 Code of Criminal Procedure to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

8. In view of the ratio of law laid down in *Minakshi Bala's* case (supra), this Court is not inclined to cause interference and hence third submission made by Counsel for the Petitioner is also to be discarded.

9. So far as submissions d) and e), that Aksh-Shizra, electricity bills, water bills, sewerage bills and jamabandi are per se admissible, should be taken into consideration, Counsel has failed to point out any provision of the Indian Evidence Act which makes these documents admissible. Sections 292 and 293 Code of Criminal Procedure. only specify the authorities whose reports are per se admissible in evidence. Section 294 Code of Criminal Procedure. only states that certain documents which have been admitted require no formal proof. The documents relied upon by the Petitioner are not such that without evidence they can be taken into consideration.

10. Thus, taking totality of the circumstances into consideration, there is no merit in the petition and the same is dismissed.