
(1989) 09 MP CK 0060

In the Madhya Pradesh High Court

Case No : Civil Revision No. 6 of 1989 (G)

Matadeen Garg and others

APPELLANT

Vs

Bank of Rajasthan

RESPONDENT

Date of Decision : 13-09-1989

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 467, 468

Citation : (1989) MPJR 888

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : Ramji Sharma, for the Appellant; O.P. Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Lahoti, J.

The Defendant/Petitioners are aggrieved by an order of the Trial Court whereby proceedings in civil suit have been refused to be stayed until the criminal proceedings charging the Petitioners for offence u/s 420, 467 and 468 I.P.C. have been terminated.

The Plaintiff/non-Petitioner is a scheduled bank. The Defendant/ Petitioners are businessmen enjoying cash credit facility from the bank. On 19-11-1984, a loan of Rs. 3,00,000/- was sanctioned by the bank to the Petitioners subject to execution of several documents. On the same date, the Petitioners pledged 600 tins of Ghee and drew several amounts on different dates from the bank on pledge of the tins. On 13-4-1985, the limit was increased to Rs. 6,00,000/- subject to execution of several documents. On the same day a deed of acknowledgment was executed acknowledging an amount of Rs. 2,94,511.33p. to be due and payable to the bank. On 5-4-1985, another 1400 tins of Ghee were pledged with the Bank. Some of the pledged tins were taken off by the Petitioners with consent of the bank. On 5 12-1985 in an inspection conducted by

the bank it was found that the tins contained sand and water instead of Ghee. By that time, an amount of Rs. 3,66,985.20p. was due and payable to the bank. The non Petitioner bank, having learnt that it was cheated by offering a false security, lodged a report of the incident with the police whereupon a crime u/s 420, 467 and 468 I.P.C. was registered against the Petitioner No. 1. The bank served a legal notice and filed the present suit on 5-2-1986.

The Defendant/Petitioners have not filed any written statement. Instead, they filed an application u/s 151 C. P. C. seeking stay of the civil proceedings. The application has been rejected by the Trial Court.

The learned Counsel for the Petitioners has forcefully argued that in view of the pronouncement of the Apex Court in *M.S. Sheriff Vs. The State of Madras and Others*, relied on by this Court in *Mohanlal v. Sheoram* 1981 J.L.J. SN 24 the Trial Court committed error in refusing the prayer made by the Petitioners. However, having heard the learned Counsel for parties, I am of the opinion that the revision is without any merit and deserves to be dismissed.

M. S. Sheriff (supra) was a case where two persons were illegally detained by two Sub-Inspectors of Police. The police officials faced two sets of proceedings arising out of the same facts firstly, two civil suits for damages for wrongful confinement; secondly, two criminal prosecutions u/s 344

I. P.C. for wrongful confinement against each of the Sub-Inspectors. Their Lordships were posed with the problem that the simultaneous prosecution of these matters will embarrass the accused. Their Lordship observed-

As between the civil and the criminal proceeding 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 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.

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 the 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.

(Emphasis supplied.)

However, their Lordships sounded a note of caution saying that what was stated hereinabove was not a hard and fast rule. Their Lordships observed:

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.

(Emphasis supplied.)

Thus, it is apparent that the rule laid down in *M. S. Sheriff (Supra)* is not a hard and fast rule but only a rule of expediency to avoid embarrassment to an accused faced with simultaneous proceedings before the Civil and Criminal Courts. Considerations of expediency and justice leave open any other course to be followed dependent on special considerations obtaining in any particular case. It was of course in the facts of that case that their Lordships of the Supreme Court were of the view that the civil suit deserved to be stayed. Yet another thing worth noticing is that the set of facts giving rise to the two proceedings was the same.

Mohanlal (upra) as short noted does not give a picture of the facts. Nevertheless, it is clear that the civil suit arose out of the same incident in respect of which the criminal complaint was pending. Further, this Court was of the opinion that if the civil proceedings were allowed to be continued, the Defendant accused would be obliged to disclose their defence in the civil suit which was likely to prejudice them in the criminal case.

The facts of the present case are clearly distinguishable and do not attract the applicability of any of the above said two decisions. The Plaintiff herein is basing its claim on several documents consisting of the promissory notes, indemnity bonds and the deeds of acknowledgment. In so far as the security is concerned, the bank has lost it because what was offered as tins containing Ghee has been found to be not so. The Plaintiff bank, if it succeeds in the suit, is likely to be awarded a money decree only which shall have to be satisfied from other property of the Defendants. In the criminal case, the enquiry would be directed mainly towards the finding as to whether the Defendant/Petitioners have been responsible for offering a security which in fact did not exist and if so what were their intentions behind. It cannot, therefore, be said that the two proceedings arose out of the same facts and simultaneous prosecution of the two proceedings would embarrass the Defendant/accused in any manner whatsoever. Assuming for a moment that the Defendants may take a defence that the tins offered by them as security did contain Ghee and someone else has been responsible for substituting waste material for the Ghee then liability for loss of goods would be fastened on such other persons and presumably the Plaintiff and the Defendants would both be interested in catching hold of the culprit. There also, no question of prejudice or embarrassment to the Defendants arises.

In taking the abovesaid view, I find support from a Single Bench decision of this

Court in Central Bank of India v. Marine and Industrial Products 1987 (II) MPWN 211 wherein also the case of M/s. Sheriff was cited but distinguished.

Even otherwise, on the ground of expediency and justice, I do not think that the stay of the civil suit can be canvassed. On 5-2-86 when the suit was filed, the Defendants were defaulters to the Plaintiff/bank in an amount of Rs. 3,46,985.20p. By this time, the amount must have multiplied further. A stay would mean that huge funds of the bank would remain locked up in the stayed civil suit which would otherwise be available to the commerce and industries of the nation. If at all there were bona fides on the part of the Defendant/Petitioners, they could have cleared the arrears of the bank reserving their right to reimbursement if ultimately the bank was found not entitled to recover the suit amount from the Defendants. In that event, there would have been no harm in staying the civil suit awaiting disposal of the criminal proceedings.

For all the foregoing reasons, the revision is rejected. No order as to costs.