

(1950) 08 PAT CK 0003

In the Patna High Court

Case No : Criminal Revision No. 629 of 1950

Parmeshwar Ram Bhadani

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 28-08-1950

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 344, 439, 561A

Citation : AIR 1951 Patna 230

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : Tarkeshwar Nath, for the Appellant; Shambhu Prasad Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This rule is directed against the order of the Sub-Divisional Magistrate of Gaya refusing to stay proceedings in a criminal case.

2. In consequence of an industrial dispute between the management of the Gaya Cotton and Jute Mills Limited and the workers represented by the Gaya Cotton and Jute Mills Labour Union, an industrial tribunal was constituted by the Government for adjudication of the said dispute. The tribunal constituted made an award on 4-9-1948, which was duly published in the Bihar Gazette. By a subsequent Government notification the award was made binding for the period up to 18-6-1949. It was alleged that in spite of the publication in the Gazette the management failed to implement the award. The Assistant Commissioner of Labour, therefore, made a criminal complaint before the District Magistrate of Gaya for prosecuting the applicant, who is the Managing Director of the Company, u/s 29, Industrial Disputes Act. The Government of Bihar had previously authorised the Assistant Commissioner of Labour to file the complaint.

3. The criminal complaint is dated 27-4-1949, but the District Magistrate of Gaya took cognizance of it on 18-5-1949. On 17th of May the applicant instituted a

suit in the Court of the Subordinate Judge, Gaya, alleging that the constitution of the tribunal and the making of the award were illegal and ultra vires and that the tribunal had no jurisdiction to make the award. It was also averred in the complaint that the Governor of Bihar had no jurisdiction to appoint the tribunal.

4. In support of this rule, Mr. Tarkeshwar Nath argued that the principal issue in both the proceedings was whether the award of the industrial tribunal was valid and intra vires. Learned counsel pointed out that notice u/s 80 was sent on 8-3-1949, which date is prior to the institution of the criminal complaint by the Assistant Commissioner of Labour at the instance of the Government of the State. Learned counsel referred to *Mt. Phuleshra Kuer v. Emperor* 1 P.L.T. 697: A.I.R.1920 Pat. 816 : 22 Cr. L. J. 489) and *Banambar Chhotra Vs. Nata Behra*, in support of his argument that the criminal proceedings should be stayed pending the decision of the civil suit. On behalf of the State Government, Mr. Shambhu Prasad Singh referred to *Hirday Narain Singh and Another Vs. Emperor*, , *Bhagirath Bhagat v. Bam Narain* A. I. R.1930 Pat. 191 : 30 Cr. L. J. 1144) and *Bhagwat Prasad and Another Vs. Ramkisun Ram Sonar*, for the proposition that it is undesirable for the High Court to interfere with the pending criminal proceedings unless in an exceptional circumstance. In my opinion, the discretion to be exercised by the High Court in ordering stay of criminal proceedings cannot be crystallized into a hard and fast rule, and must, to a large extent, depend on circumstances of each case. One point of importance is whether the criminal complaint has been filed before or after the civil suit. If it is filed afterwards, the intention to prejudice the civil litigation which is only a matter of inference, can be suspected. But it is very difficult to draw any such inference in the case of public prosecution. In *Jehangir Pastonji v. Framji Rustomji Wadia* 30 Bom. L. R. 962 : 29 Cr. L. J. 1033), *Mirza J.* points out the distinction between public and private prosecution. At p. 965 the learned Judge states that the

"test seems to be whether the prosecution is public or private. Where it is public, the Court, as a rule, in the exercise of its inherent jurisdiction, would not stay criminal proceedings. Where it is private, as in the present case, there would not be the same reluctance on the part of the Court to interfere with criminal proceedings."

In the present case, it is apparent that the prosecution was instituted at the instance of the Government, and it is impossible to accept the argument that there is any intention on the part of the Government to prejudice the trial of the civil suit. There is another circumstance also to be considered. In the present case the trial Court has refused to exercise discretion in favour of the applicant who has moved for stay of the criminal proceedings. In criminal revision the High Court cannot interfere with the order, since, on the material, it is not possible to hold that the learned Sessions Judge has, in exercise of his jurisdiction, acted in a manner which is unjudicial. As *Jackson J.* observed in *C. Ramiah v. N. Ramiah* 50 Mad. 839 : A. I. R. 1927 Mad. 778 : 28 Cr. L. J. 812), there is no invariable rule as against staying of criminal proceedings pending issue of the civil suit:

"Each case must be considered on its own merits and the only general rule that can be adumbrated is that every Court should be left as far as possible to dispose of the cases on its file with the utmost expedition. This rule is in the interest of not only of public administration but also of private persons involved in criminal proceedings; for no one wishes to have a criminal charge kept hanging indefinitely over his head. If authority were required for the above proposition, there is the Patna ruling : It is the policy of the law to go on immediately with the enquiry, Ram Saran Singh and Others Vs. Nikhad Narain Singh and Others, , which is founded on Sheikh Bahatar Vs. Nobadali, . Another Patna ruling on which the petitioner relies Mt. Phuleshra Kuer v. Emperor 62 I. C. 183 : A. I. R. 1920 Pat. 816 : 22 Cr. L. J. 489), proceeds on the assumption that there may be manifest and irreparable injuries done in the criminal Court, but, with all respect, I do not think that such an assumption can properly be made when the integrity of the Court is not impugned. It must be assumed that in either Court justice will be done and which Court precedes the other is merely a question of convenience."

5. Upon the facts of the present case, I am unable to hold that exceptional ground has been made for the stay of the criminal proceeding. For these reasons this rule must be discharged. The application is accordingly dismissed.