
(1974) 11 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2969-M of 1974

Phaggu Ram and others

APPELLANT

Vs

The Sate of Punjab

RESPONDENT

Date of Decision : 04-11-1974

Acts Referred:

Penal Code, 1860 (IPC) — Section 431, 432

Citation : (1974) 11 P&H CK 0025

Hon'ble Judges : S.C. Mittal, J

Bench : Single Bench

Advocate : Amar Dutt, for the Appellant; Sheila Didi for Advocate-General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mittal, J.—The salient facts of this case are that Phaggu Ram is resident of Chowk Mohalla Zaildaran in Kharar town. With regard to vacant land in front of his house, dispute arose between him and the Municipal Committee of Kharar Claiming to be the owner thereof, Phaggu Ram filed suit No. 71 of 1973 in the Court of Sub-Judge, 1st Class, Kharar, for permanent injunction against the Municipal Committee. A temporary injunction against the Municipal Committee from interfering with his possession was obtained by him and the case was fixed for arguments on 1st May, 1973, which was declared to be holiday. When the suit came up for proper orders the next day, it was dismissed in default. The same day, the Municipal Committee paved the land in question and constructed a drain as well. On 3rd May, 1973, Phaggu Ram succeeded in getting his suit restored and also the temporary injunction. Thereafter, on 14th June, 1973, First Information Report No. 123 was got registered against Phaggu Ram. Som Nath and Paresm Lal under sections 431, 432 and 506 Indian Penal Code, upon the allegations that on 4th of the said month they committed mischief by damaging the payment and crushed obstruction to the public drainage and that they criminally intimidated the Sanitary Inspector. The challan having been presented

against the said three persons, they were charge-sheeted under sections 431/54, 432/34 and 505/34, Indian Penal Code. They have now moved this Court u/s 482 of the Code of Criminal Procedure of 1973 for staying these proceedings pending the decision of the suit mentioned above

2. In *M.S. Sheriff Vs. The State of Madras and Others*, their Lordships laid down :--

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 decisions 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.

3. The other ruling on the point is *Rajendra Kumar Ruia v. State of West Bengal* 1969Cr LJ 243, in which the accused was being prosecuted under sections 405 and 411 Indian Penal Code. In respect of the same item of property decision regarding civil liability was pending in the competent Court. In these circumstances, the learned Judge expressed the view, with which I am in respectful agreement that continuance of the criminal complaint would amount to abuse of the process of the Court. Hence the same was stayed in exercise of the inherent powers of the High Court u/s 561-A of the old Criminal Procedure Code. Earlier, in *Hrishikesh Ghose v. R.P. Michael* AIR 1939 (sic), a Division Bench of the Calcutta High Court expressed the view that "the Court will not permit the use of the process of the criminal court in order to enforce a purely civil right". Learned Counsel for the petitioners also cited *Nandu Babu Vs. Rajendra Kumar Singh*, 382, in which, for similar reasons, the criminal proceedings under sections 406, 409 and 410, Indian Penal Code, Were stayed pending the decision of the suit between the parties by competent Court with respect to the same matter.

4. Learned Counsel for the three petitioners then contended that the the subject-matter of the suit and the criminal case being the same at would be expedient to stay the criminal proceedings because the civil court will finally decide the title of Phaggu Ram petitioner thereto. In case the criminal proceedings are not stayed and the petitioner are convicted and sentenced and thereafter the civil Court finds Phaggu Ram petitioner to be the owner of the disputed property, the result will be miscarriage of justice, Further more contended the Learned Counsel that the nature of the offences with which the petitioners nave been charged is not so serious as to warrant the (sic) of the criminal proceedings. The contention being tenable, allow the petition and direct that the criminal proceedings pending against the petitioners be stayed till the disposal of suit No. 71 of 1973 by Sub Judge, 1st Class, Kharar.