
(2002) 12 AP CK 0042

In the Andhra Pradesh High Court

Case No : Criminal R.C. No"s. 1173 and 1178 of 2002

Radio Corner (Bally) and Others

APPELLANT

Vs

Allwyn-A Unit of Voltas Ltd. and Another

RESPONDENT

Date of Decision : 16-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 309(1), 397, 401
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2003) 1 ALD(Cri) 271 : (2003) 2 ALT(Cri) 289 : (2003) 1 APLJ 245 :
(2003) 2 BC 315 : (2003) CriLJ 3319 : (2003) 4 RCR(Criminal) 595

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.V. Srinivasa Rao, for the Appellant; M.S. Ramachandra Rao and
Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—These criminal revision cases were listed for admission on 28.8.2002. This Court ordered notice before admission. On service of notice the respondents entered appearance. Thereafter they were listed for admission. On 11.12.2002 there was no representation for the petitioners. Hence the cases were directed to be listed for orders on 13.12.2002. On that day also there was no representation and with a view to give further chance to the petitioners the matters were directed to be listed for dismissal today. Even today there is no response when the case is called. Hence this Court is constrained to decide the matter on merits.

2. The 1st respondent filed two complaints before the Court of VI Metropolitan Magistrate, Hyderabad u/s 138 of Negotiable Instruments Act against the petitioners herein. They came to be numbered as C.C. Nos. 375 and 387 of 1999. The same were pending trial. In the meanwhile, the petitioners filed T.S. No. 51 of 1999 on the file of the II Civil Judge, (Senior Division) Howrah against the 1 st respondent for recovery of certain amounts as well as for a permanent

mjunction restraining the 1st respondent from .using certain cheques. They also filed an application under Order 39 Rule 1, CPC seeking a direction to the 1st respondent not to take advantage &f the cheques given to it. Those are the cheques which are the subject matter of the Revision. On the ground that the Civil Court, which has the competent jurisdiction, has passed order of injunction the petitioners filed Crl. M.P. Nos. 3061 and 3062 of 2002 in the two C.Cs. u/s 309, Cr.P.C. with a request to adjourn the proceedings till the disposal of the title suit pending before the Civi! Court at Howrah. The Trial Court dismissed the application through a common order dated 20th August, 2002. Hence the Revision.

3. The relief claimed by the petitioners in the applications filed by them was to adjourn the proceedings in C.C. Nos. 375 and 389/99 till the disposal of the title suit pending before the Civil Court at Howrah. The applications were filed u/s 309, Cr. P.C. The nature of the relief claimed by the petitioners is similar to the one u/s 10, CPC.

4. Section 309 of Cr.P.C. indicates the pace at which the trial of the proceedings before the Criminal Courts has to take place. Under Sub-section (1), the examination of witnesses has to be undertaken on day-to-day basis once it commences. The Courts are required to record reason for granting any adjournment beyond the following day. Adjournments before the commencement of trial also are not a matter of course. Even where such adjournments are granted, the same are to be subject to such terms as the Trial Court may impose. The purport of Section 309 is that expeditious trials is the Rule and adjournments are an exception.

5. The concept of subjudice is prevalent only in civil proceedings. Section 10 of CPC puts a bar on a Civil Court to proceed with the trial of a suit in which the matter in issue is directly and substantially is in issue in a previously instituted suit between the same parties or some one claiming through them. The stay of trial of a subsequent suit is not a matter of course. Several conditions, such as, there being two suits, one filed previously and the other at a subsequent, stage, the subject matter in the suit subsequently filed being substantially in issue in the one which is previously filed, both the suits have the same parties or the representatives, the Court in which the previous suit is pending having jurisdiction to try the subsequent suit also, etc., need to be established. The underlying object is to avoid conflicting decisions on the same subject matter between the same parties.

6. The parameters of trial of criminal proceedings are altogether different. The main object of the proceedings is to bring the accused to justice. The Us is mainly between the State and the accused, except where the trial is on the basis of private complaint. The expeditious disposal of the criminal proceedings is provided for, for the reasons that if the accused is found guilty, he should be dealt with by law at the earliest, so that he may not continue to be a menace to the Society. On the other hand, if he is found not guilty, he is relieved of the

accusations against him and not put to inconvenience and embarrassment for unduly long period. There does not exist any provision in Cr.P.C., providing for stay of trial of the cases on the ground of pendency of civil matters in other Courts. The fact that the subject matter involved in the suit has some relation or bearing on the criminal matter is of no consequences.

7. Way back in 1954, Justice Vivian Bose, in his inimitable style, explained the philosophy, underlying the separation of civil and criminal proceedings, in *M.S. Sheriff Vs. The State of Madras and Others*,

To put it in his own words--

"As between the civil and the criminal proceedings the criminal matters should be given precedence. No hard and fast rule can be laid down but the possibility of conflicting decisions in the Civil and Criminal Courts is not 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 is the likelihood of embarrassment. Another factor which weighs with the Court 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 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."

8. Similar view was taken by the Bombay High Court in *Babulal Mishrimal Vardhan v. Sudershan Wadia* 1991 CriL LJ. 298.

9. If the request of the petitioners is to be acceded to, the easiest thing for an accused in any criminal case will be to file a suit relating to the subject matter involved in the criminal proceedings and seek stay of all further proceedings in the criminal proceedings. Such a course of action would prove fatal to the entire criminal justice system.

10. The Trial Court had considered the application in their proper perspective and applied correct principle of law. I do not see any reason to interfere with the same and the Revisions are accordingly dismissed.