
(2005) 12 OHC CK 0007

In the Orissa High Court

Case No : Writ Petition (C) No. 14443 of 2005

The Servants of Peoples' Society and Others

APPELLANT

Vs

Pyarimohan Mohapatra

RESPONDENT

Date of Decision : 15-12-2005

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 302, 34, 420, 465, 469

Citation : (2006) 1 OLR 546

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Advocate : B.N. Ratho and J. Ratho, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

N. Prusty, J.—The petitioners, who were defendants in the Court below, have filed this writ petition with the prayer for stay of further proceedings in C.S. (III) No. 173 of 2005 pending before the learned Civil Judge (Senior Division), Bhubaneswar, till disposal of I.C.C. No. 2855 of 2005 in the file of the learned S.D.J.M., Bhubaneswar and for permitting them not to file their written statement in the above suit till disposal of the ICC Case.

2. The facts giving rise to the filing of the present writ petition are that, the opposite party, who is a member of Rajya Sabha, filed a suit in the Court of the learned Civil Judge, (Senior Division), Bhubaneswar, making a claim of Rupees one crore as damage and other reliefs as against publication of some News items in "The Samaja" making certain false, fictitious and fabricated allegations against him and simultaneously, he also filed a complaint petition in the Court of the learned S.D.J.M., Bhubaneswar under Sections 465, 469, 479, 500, 501, 502 read with Section 34 I.P.C. for the self-same cause of action. The facts and narrations in both the civil suit and the criminal case are same except seeking separate reliefs in both the matters. The defence in both the cases is hundred per cent same and the present petitioners are to advance common defence in

both the proceedings. Both the suit as well as the complain petition are fully parallel and based on common documents and if the defendants (petitioners herein) will submit their written statement, then they shall have to disclose their defence in the criminal proceeding which will ultimately be prejudicial to the defendants in making their stand in that case.

3. As it appears from the averments made in the writ petition and the documents enclosed thereto, the petitioners have approached this Court directly without moving the learned Civil Judge, (Sr. Division) for the appropriate relief as has been claimed for by them in this writ petition.

4. In support of his contention learned Counsel has relied upon the decision in the case of Chalgala Kumar Panigrahi and Ors. v. Smt. Ujjal Senapati and Ors. reported in 1998 (I) OLR 273 as well as an interim order dated 16.9.2005 passed in WP(C) No. 10592 of 2005 and Misc. Case No. 10609 of 2005, wherein the petitioner prayed for stay of a proceeding pending before the Press Council and a Division Bench of this Court had directed that as an interim measure, if the proceeding has not been concluded in the meantime, the same shall remain stayed. During the course of hearing of the matter on admission, Mr. Ratho, learned Counsel for the petitioners submits that even though the case is being taken of for admission, a reasoned order be passed and in case an adverse view is taken in the matter, the case may be referred to a larger Bench keeping in view the decision of this Court in the case of Chalgala Kumar Panigrahi and Ors. (supra).

5. In the case of Chalgala Kumar Panigrahi and Ors. v. Smt. Ujjal Senapati and Ors. (supra), a Money Suit was filed claiming Rs. 8, 46,000/- as compensation on the ground that the defendants had killed the son of opposite party No. 1. The petitioners therein were the accused persons in G.R. Case No. 66 of 1995 and facing trial u/s 302/34 IPC. After their appearance in the said suit they filed an application before the learned Civil Judge, Senior Division, for stay of the further proceedings in the suit till disposal of the criminal case. The stay application having been dismissed by the learned trial Court, the petitioners moved this Court for appropriate relief. Since the subject matter of that case was one of exceptional nature and the petitioners were facing a serious charge u/s 302/34 IPC, it had been observed that if the petitioners therein were forced to disclose their defence at this stage in the Civil Court, they may be highly prejudiced and finally it was observed that an exception can be made in the facts and circumstances of the present case to direct that the further proceeding in the suit should be stayed till trial of the criminal case is over and accordingly the judgment was delivered in the said case. For better appreciation, paragraph-4 of the above said decision is quoted hereunder :-

4. There is no doubt that the finding of a Criminal Court may not be relevant in a civil suit of the present nature and, similarly, the finding of a Civil Court in a suit for damages may not be relevant for a decision in the criminal case. The question, however, is whether in the interest of justice a suit or a criminal case,

as the case may be, should be stayed. No hard and fast rule can be laid down in such cases and the question will always depend upon the facts and circumstances of each case. Though ordinarily the civil suit may not be stayed merely due to the pendency of a criminal case for the very same incident, depending upon the facts and circumstances of a given case, in exceptional circumstances the Court is not powerless to grant stay of further proceeding Of a suit in the interest of justice. The present case appears to be one of such exceptional nature to which the normal principle as reflected in the decision reported in 1996 (I) OLR 411 may not be applied. Presently, the petitioners are facing a serious charge u/s 302/34, IPC. Having regard to the nature of allegations and the nature of the case, there is no iota of doubt that the present petitioners will be highly prejudiced in the criminal case, if they are forced to disclose their defence at this stage in the Civil Court. There is no doubt that the plaintiffs in the Civil Court may be harassed to some extent if the suit filed by them is stayed but considering the relative prejudice likely to be caused, in my view, an exception can be made in the peculiar facts and circumstances of the present case to direct that the further proceedings in M.S. No. 59 of 1996 pending in the Court of the Civil Judge (Sr. Division), Dhenkanal should be stayed till the trial in the criminal case is over and judgment is delivered in the said case. Needless to point out that filing of an appeal in the criminal case either by the accused persons or by the State Government, as the case may be, would not be a ground for further stay of the civil suit and the civil suit has to be decided on its own merit in accordance with law without being influenced by any of the observations made in the criminal case.

6. The other order of this Court passed in WP(C) No. 10592 of 2005, copy of which was filed in support of the contention made by the learned Counsel for the petitioner, the subject matter of that case has not been disclosed by the learned Counsel for the petitioner, but the learned Counsel submits that in that case also since the subject matter of two proceedings were same, this Court had directed that "if the proceeding before the Press Council has not been concluded in the meantime, the same was directed to be stayed".

7. In the case of Rajasthan v. Kalyan Sundaram Cement Industries Ltd. and Ors. reported in 1996 (I) OLR 411 the Apex Court, while considering on the subject matter as to whether a civil suit can be stayed pending disposal of the criminal matter, has been pleased to observe that it is the settled law that pendency of a criminal case would not be an impediment to proceed with the civil suits. The subject matter in that case as relating to issuance of three post-dated cheques for which a suit was filed for recovery and simultaneously proceedings were initiated u/s 138 of the Negotiable Instrument Act and also u/s 420 IPC. The High Court stayed the civil suit till disposal of the criminal case. Considering all the facts and circumstances therein, the Apex Court held that the approach adopted by the High Court was not correct. Paragraphs 2 and 3 of the above said decision are quoted hereunder :-

2. This appeal by special leave arises from the order of the learned single Judge made in Civil Revision No. 209/94 on 16.11.1994 of the High Court of Rajasthan. Admittedly, the respondent-Company after inviting tenders had executed an agreement on 13.4.1969 for execution of the project. Thereafter three postdated cheques of dates between May and July, 1989 were given for a sum of Rs. 6,87,100/- each of which got bounced. After issuing said notice, the suits were filed for recovery. Simultaneously, proceedings were initiated u/s 138 of the Negotiable Instrument Act and also u/s 420, IPC in three complaints, ICC Nos. 219 220 and 254 of 1989. The High Court stayed the proceedings of the civil suits pending disposal of the criminal cases. This appeal came to be filed against the said order.

3. It is settled law that pendency of the criminal matters would not be an impediment to proceed with the civil suits. The Criminal Court would deal with offence punishable under the Act. On the other hand, the Courts rarely stay the criminal cases and only when the compelling circumstances require the exercise of power. We have never come across stay of any civil suits by the Courts so far. The High Court of Rajasthan is only an exception to pass such orders. The High Court proceeded on wrong premise that the accused would be expected to disclose their defence in the criminal case by asking them to proceed with the trial of the suit. It is not a correct principle of law. Even otherwise it no longer subsists, since many of them have filed their defences in the civil suit. On principle of law, we hold that the approach adopted by the High Court is not correct. But since the defence has already been filed nothing survives in this matter.

8. As it appears from the decision cited by the learned Counsel for the petitioner in the case of Chagala Kumar Panigrahi and Ors. (supra) as well as the decision of the Apex Court in the case of State of Rajasthan v. Kalyan Sundaram Cement Industries Ltd. and Ors. (supra), the facts and circumstances in the case of the State of Rajasthan v. Kalyan Sundarm Cement Industries Ltd. is more akin to the case at hand. The subject matter in the case of Chagala Kumar Panigrahi is completely different, since the petitioners therein were facing serious charge u/s 302/34 IPC. No hard and fast rule can be laid down with regard to stay of a case during pendency of a criminal proceeding which is filed as against the same persons and same cause of action, even though pleadings in both the cases may be the same. The decision on such matters shall depend upon the facts and circumstances of a particular case. As such ordinarily a civil suit shall not be stayed on the ground of pendency of a criminal case for the self-same cause of action and only on exceptional circumstances stay of the further proceeding of a suit can be granted in the interest of justice. The situation in the case of Chagala Kumar Panigrahi and this case is completely different. There, the charge of the criminal proceeding was of serious nature but here, in this case it is quite different. Here in the present case at hand, both the criminal proceeding and the civil proceeding are for publication of certain news items. Each individual case has to be decided on the basis of the facts and circumstances of that particular

case. Keeping in view the facts of the present case at hand, no prejudice shall be caused to the petitioners if they file their written statement in the suit and both the cases proceed simultaneously.

9. In view of the above, considering the facts and circumstances of the instant case and after going through the decision of this Court as well as of the Apex Court, I am not inclined to entertain this writ petition or refer the matter to a larger Bench as submitted by the learned Counsel for the petitioners.

10. The writ petition is accordingly dismissed as the same is devoid of any merit.