
(1973) 10 KL CK 0019
In the High Court Of Kerala

Vasu Vyudier

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-10-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Penal Code, 1860 (IPC) — Section 109, 120B, 420, 511

Citation : (1975) CriLJ 494

Hon'ble Judges : K. Bhaskaran, J

Bench : Single Bench

Judgement

K. Bhaskaran J.

1. The question posed in this revision petition is whether the proceedings pending before a criminal court should be stayed or adjourned in view of the fact that substantially the identical issues based on the same facts as in the criminal case are involved in suits that were awaiting trial in civil courts.

2. The facts leading to this criminal revision petition are as follows: C.C. No. 15 of 1972 on the file of the court of the Special Judge, Trichur, is a case in which the first accused is charged for offences punishable under Sections 120B, 420 and 420 read with Section 511, I.P.C. and Section 5(2) of the [Prevention of Corruption Act, 1947, read with Section 109, I. P. C; and the second accused, a retired Circle Inspector of Police, under Sections 120B, 420 read with Sections 109 and 119, I, P. C. and Sections 5(2) and 5(3)(a) of the Prevention of Corruption Act, 1947. The first accused had entered into a contract with the Superintendent of Police, Malappuram, to effect certain special repairs to the quarters of police officials at Tirur. On 21-5-1971 a bill for Rs. 5747/- was delivered to the first accused and he had cashed it from the Sub-Treasury, Tirur on 22-5-1971; the second accused had certified that the works of the sanctioned estimate of Rs. 5747/- were executed by the first accused. According to the prosecution, the first accused had effected repairs costing only Rs. 356.82 and had cheated the Government to the tune of Rupees 5390.18. Another claim of

Rs. 7756.50 was made by the first accused in respect of repairs to certain police station buildings and quarters and this amount was sanctioned by the second accused with the necessary certificates. The second bill, however, was not cashed. In the case of the second bill, the version of the prosecution is that A-1 had actually executed works worth only Rs. 697.70 and that his attempt was to cheat the Government in collusion with the second accused to the extent of Rs. 7058.80. The F. I. R. in this case is dated 16-9-1971 and the charge "sheet was filed on 13-9-1972. In the meanwhile, the 1st accused filed O. S. No. 2 of 1972 on the file of the Sub Court, Tirur, on 4-2-1972. (Ext. P-2 is the certified copy Of the plaint therein wherein it is alleged that he had executed works of the value of Rs. 13,503.50 and claimed recovery of Rs. 7756.50. after adjusting Rs. 5747/- being the amount already drawn by him on 22-5-1971. The suit in effect is for a declaration that the first accused had actually executed in the first instance works of the value of Rupees 5747/- and subsequently works of the value of Rs. 7-756.50. On 27-11-1972, the Government also filed a suit, O. S. No. 109 of 19-72 on the file of the Munsiff s Court, Tirur, for recovery of a sum of Rs. 3282/-, alleging that in the case of fractioned repairs, that amount has been drawn by the first accused in excess of the actual amount due to him. It was while matters stood like this that Cri. M. P. No. 6 of 1973 in C.C. No. 15 of 1972 was filed by the first accused in the court of the Special Judge, Trichur, praying that till the disposal of the suits, O. S. Nos. 2 and 109" of 1972, referred to above, the trial of the case C.C. 15 of 1972 may either be adjourned or stayed. The learned Special Judge, after having considered the contentions of the petitioner before him, held that no case was made out to adjourn or stay the trial of the case before him till the disposal of the civil suits, and therefore dismissed the petition. It is against this order of dismissal that this revision has been filed by the first accused.

3. Sri. K. Kunhiraman Menon, the learned counsel for the revision petitioner, contends that the Special Judge has not considered the issues involved in the case in their true perspective. In particular it is pointed out that the court below was wrong in taking the view that no prejudice would be caused to the revision petitioner if the civil cases and the criminal case were proceeded apace.

4. No decision of our High Court in which this question came up for consideration has been brought to my notice. Various decisions of other High Courts have been cited, and the learned counsel for the revision petitioner has argued the matter in extenso. I do not, however, think it necessary to refer to all the cases cited, particularly in view of the fact that the decisions by Ramaswami J, in *Yelchuri Ranganayakalu Chetty and Another Vs. K. Gopala Chetty*, , and by Anantanarayana Ayyar J. in *Jetti Venkatrayudu and Others Vs. Edara Venkata Subbiah*, have practically digested almost all the important decisions till the respective years. Apart from these two decisions. I think, it would be sufficient to refer to the decisions in *Dharamdas Hukumtraai Vs. The State*, and *M.S. Sheriff Vs. The State of Madras and Others*, .

5. In the Madras decision, referred to above, Ramaswami J., after having considered the decisions on the point brought to His Lordship's notice, has indicated certain considerations relevant for the purpose of deciding whether stay of the criminal case has to be ordered or not pending the disposal of the civil suit, in the form of ten questions, which are quoted below:

(i) Is the accused likely to be prejudiced if the criminal proceeding is not stayed pending disposal of the civil suit?

(ii) Is the matter in issue of such a complicated kind for the decision of which civil Courts are preferred as peculiarly qualified?

(iii) Is the criminal proceeding instituted with the motive of hampering the conduct of the civil proceeding?

(iv) Is the civil proceeding filed for the purpose of delaying or the conduct of which would result in a long delay of the trial of the criminal proceeding?

(v) Has the civil suit been filed before the institution of the criminal proceeding and does it appear that the decision in the former will be of value on arriving at the truth in the criminal case?

(vi) Has the civil suit been filed after the criminal case and is there a possibility of its being decided soon?

(vii) Does the criminal proceeding arise in any way out of the civil suit and would the decision of the civil Court necessarily affect the decision of the criminal Court?

(viii) Are the parties and questions to be decided in the civil and criminal cases identical?

(ix) Is it a claim of disputed title to land where it is difficult to draw a line between a bona fide claim and a criminal trespass?

(x) Wherein does the public interest lie and not merely the supposed interest of the particular complainant?

His Lordship also observed?

In considering the above there is the invariable rule that a criminal proceeding should be stayed pending the issue of a civil suit, but the matter is entirely one of discretion by the Court to be exercised having regard to the merits and all the circumstances of the case, the only general rule that can be adumbrated being that every Court should be left as far as possible to dispose of the case on its file with the utmost expedition and the only general assumption that can be made is that in either Court Justice will be done.

The observation of Anantanarayana Ayyar J. in *Jetti Venkatrayudu and Others Vs. Edara Venkata Subbiah*, is as follows-

Stay of trial of a criminal case can be granted pending disposal of the civil suit

between the same parties on the same subject matter in suitable cases where facts and circumstances show the stay to be necessary to avoid any embarrassment in the conduct of the criminal proceedings. But, there is no hard and fast rule that criminal proceedings should always be stayed pending disposal of a connected civil suit.

A Division Bench of the Bombay High Court consisting of Gajendragadkar and Gokhale JJ., in *Dharamdas Hukumtraï Vs. The State*, (Gajendragadkar J. delivering the judgment), in paragraph 2, after referring to the argument of the complainant that if a criminal complaint has been filed in the first instance, it cannot be stayed solely on the ground that some of the questions which arise for decision in a criminal complaint can be more appropriately tried by a Civil Court, observed?.

This principle no doubt will have to be applied by us in dealing with questions of this type. But, on the other hand, it would be difficult to lay down a broad and general rule to cover all cases where an accused person prays for stay of criminal proceedings. Facts and circumstances in each case would have to be considered and the question as to whether criminal proceedings will have to be stayed or not will have to be determined in the light of what appears to the Court to be just in any given case.

The further observation, extracted below, would also be relevant for the purpose of this cases

... Mr. Nagrani's apprehension that the disposal of the suit may take an unduly long time and his criminal complaint would thereby remain on the dormant file of the criminal Court indefinitely can be met, we think, if the civil suit is ordered to be heard expeditiously and liberty is reserved to Mr. Nagrani to move this Court for setting aside the stay of criminal proceedings in case he finds that the hearing of the civil suit does not progress rapidly owing to the non-helpful attitude of the accused.

6. The learned Special Judge has placed reliance on the decision of the Supreme Court in *M.S. Sheriff Vs. The State of Madras and Others*, , wherein Bose J. has observed as follows:

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.

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 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. This, however, is not a hard and fast rule

7. From the facts of the case narrated, it is fairly clear that though the approach of the criminal court and the civil court may differ from one another, the facts to be proved in both the cases are almost the same, as in either case it has relation to the extent of performance of the contract of repairs undertaken by the first accused and for which either he had received the payment or had demanded payment on certificates granted by the second accused. The argument of the learned counsel for the revision petitioner is that in the civil court the revision petitioner could be in a better position to establish his case than in the criminal court. I wish to express no opinion on this aspect of the contention raised by the learned counsel. However, inasmuch as the proceedings before the criminal court has not yet been begun, and I am told that the suits in the civil courts are ripe for trial, there could be no harm in adjourning the criminal proceedings giving a reasonable time to see that the proceedings in the civil courts are over before the trial in the criminal court begins. The learned counsel has also assured me that there is no need for taking out a commission, as in his opinion no useful purpose would be served by doing so at this stage. The civil suit by the revision petitioner was filed as early as 4-2-1972, not long after the F. I. R. in the criminal case was filed, and much before the charge sheet was laid. It is stated that the delay in the matter of filing the civil suit by the revision petitioner was due to the requirement of issue of notice u/s 80, C. P. C. Taking the peculiar nature of the facts and contentions raised and the issues likely to come up before the civil court and the criminal court, and to avoid embarrassment in the conduct of the proceedings, I am inclined to take the view that the case pending before the Special Judge could be adjourned making at the same time sufficient safeguards to ensure that the trial of the criminal case is not protracted by dragging on the civil suit.

8. I, therefore, direct the learned Special Judge to adjourn C.C. No. 15 of 1972 on his file by nine months from this date. The learned Special Judge would proceed with the trial of the case irrespective of the fact whether the suits in the civil courts have been disposed of or not after the expiry of the, said period of nine months. This adjournment is to enable the revision petitioner to have the suits in the civil courts- tried as early as possible. If the State feels that a joint trial of the suit O. S. No. 109 of 1972 now pending on the file of the Munsiff's Court Tirur, with the suit O. S. No. 2 of 1972, pending on the file of the Subordinate Judge, Tirur, is necessary, it may move the District Court in "that behalf without any loss of time. If the revision petitioner does not show earnestness in the speedy disposal of the suits, I make it clear that that cannot

be used as a pretext for applying for extension of time. Needless to point out that it is not an invariable rule that there cannot be any parallel proceedings on the same facts in the criminal and civil courts. I am inclined to make this adjournment only because of the representation of the learned counsel for the revision petitioner that the revision petitioner is earnest about having, the decision of the civil court as early as possible. It is also made absolutely clear to the revision petitioner that right of appeal available to the parties will be no ground to move for further adjournment of the criminal proceedings. If the revision petitioner wants to have the decision of the civil court before the trial of the criminal case commences, he must make every endeavour to achieve that object. Otherwise, as has already been indicated, on the expiry of the period of nine months from this date, in the usual course the criminal case will be proceeded with without waiting for the result of the civil suits. To prove his earnestness in having an early disposal of his suit in the Sub Court, he may move that court in that behalf producing a copy of this order. The Sub Court, if moved by the revision petitioner for an early disposal of his suit, shall give top priority to its trial. In the event of any of the parties moving for the transfer of O. S. No. 1091 of 1972 on the file of the Munsiff's Court Tirur, to the file of the Sub Court, Tirur, for joint trial of that suit with O. S. No. 2 of 1972 on the file of the Sub Court, the urgency for obtaining an early order in that behalf should be brought to the notice of the District Court by making necessary averments, and if felt necessary, by producing a copy of this order. Lack of diligence in filing or prosecuting the petition for transfer, or the delay in obtaining the order of transfer, shall not be a ground for further adjournments of the criminal case. The revision is disposed of as above. Send down the records forthwith to the lower court.