K.G. Premshanker vs Inspector Of Police And Anr on 12 September, 2002

Equivalent citations: AIR 2002 SUPREME COURT 3372, 2002 (8) SCC 87, 2002 AIR SCW 3930, 2002 (6) SCALE 371, 2002 CALCRILR 1041, 2002 (9) SRJ 272, 2003 (1) ALL CJ 135, 2002 (5) SLT 318, (2002) 2 CGLJ 290, 2002 CRILR(SC&MP) 844, 2002 (2) UJ (SC) 1334, 2002 UJ(SC) 2 1334, (2002) 7 JT 30 (SC), 2003 ALL MR(CRI) 351, 2003 SCC(CRI) 223, 2003 ALL CJ 1 135, (2003) ILR (KANT) (4) 4101, (2002) 4 CURCRIR 29, (2002) 6 SUPREME 313, (2002) 4 RECCIVR 330, (2002) 4 ALLCRILR 940, 2002 CHANDLR(CIV&CRI) 425, (2002) 23 OCR 686, (2002) 4 CRIMES 261, (2002) 3 GUJ LH 514, (2002) 3 KER LT 389, (2003) 2 MADLW(CRI) 673, (2003) 1 MAD LJ(CRI) 58, (2003) 1 MAH LJ 1, (2003) 1 MPLJ 1, (2003) 1 RAJ LW 61, (2002) 4 RECCRIR 596, (2002) 4 SCJ 286, (2003) 1 ALLCRIR 81, (2002) 6 SCALE 371, (2003) 1 UC 211, (2002) 45 ALLCRIC 920, (2003) 4 MAD LW 359, 2003 (1) ANDHLT(CRI) 77 SC, (2003) 1 ANDHLT(CRI) 77, 2002 (2) ALD(CRL) 887

Bench: M.B. Shah, Bisheshwar Prasad Singh, H.K. Sema

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           CASE NO.:
Appeal (crl.) 935 of 2002
PETITIONER:
K.G. Premshanker
        Vs.

RESPONDENT:
Inspector of Police and Anr.
DATE OF JUDGMENT:       12/09/2002BENCH:
M.B. SHAH, BISHESHWAR PRASAD SINGH & H.K. SEMA.
JUDGMENT:
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J U D G M E N T Shah, J.

Leave granted.

The appellant and others who are accused in CC No.513/95 filed Criminal Miscellaneous Case Nos.2209/95, 2361/95 and 784/96 before the High Court of Kerala for quashing the prosecution against them. Those petitions were rejected by the High Court by judgment and order dated 11th June, 1998. Hence, this appeal.

The prosecution was launched against the present appellant which arose out of an incident which occurred because of a news item in the evening Daily "Sudinam" on 2nd February, 1988. The news

item was printed and published by one Madhavan at Kannur as per which one tribal girl Manja, aged about 16 years was raped by one Rajan. Manja and her parents lodged a complaint before the Superintendent of Police, who transferred the complaint to the appellant herein, who was a Superintendent of Police Kannur for investigation. On that complaint, a case was registered in Crime No.50/88 under Section 228A IPC and Section 7(1)(d) of the Protection of Civil Rights Act. The case was entrusted to the Circle Inspector of Police who arrested Madhavan and the printing press was also searched on 12th February, 1988. It is contended that after the arrest at about 8.00 p.m., Madhavan was taken in police jeep to the police station and on the way he was assaulted by the policemen in the jeep. At about 8.30 p.m., he was put in lock up and on 13th February, 1988, he was produced before the Magistrate at Kannur. He complained that he was assaulted by the police and thereby he sustained injuries. After recording the aforesaid statement, the Magistrate enlarged him on bail. For taking treatment for the injuries sustained by him, he went to hospital and got himself admitted there. From there, he lodged an FIR which was registered as Crime No.52 of 1988 under Sections 143, 323, 324 etc. of IPC against the Sub- Inspector of Police, Kannur and also six or seven unidentified policemen. The case registered against Madhavan was quashed by the High Court. As there was no progress in the FIR registered by Madhavan, he moved the High Court for entrusting investigation to the CBI. The High Court directed the Deputy Inspector General of Police, Northern Range to investigate the case. Not being satisfied by the said order, Madhavan preferred a Special Leave Petition before this Court and by order dated 22nd December, 1989, this court directed the Deputy Inspector General of Police, Central Range, to investigate and file the report within two months. As there was no progress in the matter within the prescribed time, Madhavan again moved this Court and by order dated 24th September, 1992, this Court entrusted the investigation to CBI and also awarded compensation of Rs.10,000/- to Madhavan. After investigation, CBI moved the State Government for sanction under Section 197 Cr.P.C. and thereafter filed report before the Chief Judicial Magistrate, Ernakulam against 12 accused including the present appellant on 27th April, 1995, for the offences punishable under Sections 324, 341, 342, 357, 219 and 166 IPC. The Chief Judicial Magistrate took cognizance of the said report.

Appellant and others filed separate applications for dropping the proceedings on the ground that a final report was filed by the CBI beyond the period of limitation prescribed under Section 468 Cr.P.C. and that no application for condoning delay was filed. Those applications were dismissed by the Chief Judicial Magistrate on 27.9.1995 and the delay in filling final report by the CBI was condoned. The said order was challenged before the Additional Sessions Judge, Ernakulam who directed the Magistrate to dispose of the said applications afresh. That order was challenged by filing the impugned miscellaneous applications before the High Court.

The High court after considering the various decisions cited, held that learned Sessions Judge has only remitted the matter to the Chief Judicial Magistrate to consider the petition to be filed by the CBI under Section 473 Cr.P.C. for condoning delay. The Court also held that it was not a fit case for exercise of the jurisdiction under Section 482 Cr.P.C.

The appellant raised additional contention, before the High Court, that the de facto complainant Madhavan had filed a suit for the damages for the alleged acts, before the Sub Court, Tellicherry against the appellant and other accused and the trial court has dismissed the suit against which he

had preferred the appeal before the High Court. It was, therefore, contended that as the suit was dismissed, the decision rendered by the Civil Court will prevail and therefore the criminal prosecution pending against the appellant and others is required to be dropped. The court rejected the said contention. Hence, this appeal.

This Court on 9th November 1998, passed the following order :

> "Since we are of the view that the Judgment of this Court in V. M. Shah v. State of Maharashtra and anr. [(1995) 5 SCC 767] which has been relied upon by Mr. Gopal Subramanium, learned senior counsel appearing for the petitioner, requires reconsideration, we refer this petition to a larger Bench for disposal. Let the record be placed before Hon. the Chief Justice for necessary orders."

Thereafter, on 12th October, 1999, it was pointed out to this Court that the appeals filed against the dismissal of the suit are pending in the High Court of Kerala and therefore the court directed that it would be appropriate to await the judgment in those appeals before proceeding further with the case. The court adjourned the hearing of the matter and requested the High court to dispose of the said appeals expeditiously.

At the time of hearing of these appeals, it is pointed out that the appeals are allowed and the judgment and decree in OS Nos. 42/89 and 235/90 passed by the Subordinate Judge were set aside and the matters were remitted to the trial court to try the suit from the stage of framing of issues.

The net result of the aforesaid decree passed by the High court is that at present both criminal prosecution for the offences as stated above and civil suits for damages are pending at trial stage.

In the background of the aforesaid facts, we would refer to the observations made in V.M. Shah's case (Supra) which are as under:

> "As seen that the civil court after full-dressed trial recorded the finding that the appellant had not come into possession through the Company but had independent tenancy rights from the principal landlord and, therefore, the decree for eviction was negatived. Until that finding is duly considered by the appellate court after weighing the evidence afresh and if it so warranted reversed, the findings bind the parties. The findings, recorded by the criminal court, stand superseded by the findings recorded by the civil court. Thereby, the findings of the civil court get precedence over the findings recorded by the trial court, in particular, in summary trial for offences like Section 630. The mere pendency of the appeal does not have the effect of suspending the operation of the decree of the trial court and neither the finding of the civil court gets nor the decree becomes inoperative."

Further, the learned senior counsel- Shri Dholakia appearing for the appellant submitted that apart from the aforesaid judgment, this Court (three Judge Bench) in M/s. Karam Chand Ganga Prasad and another. v. Union of India and ors. [(1970) 3 SCC 694] held thus:

> "If the appellants are able to establish their case that the ban on export of maize from the State of Haryana had been validly lifted all the proceedings taken against those who exported the Maize automatically fall to the ground. Their maintainability depends on the assumption that the exports were made without the authority of law. It is a well-established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true.."

The aforesaid observations are to be read in context of the facts that Delhi High Court after elaborately hearing the arguments rejected the writ petitions on the sole ground that in view of the pendency of the criminal proceedings before some Courts in the State of West Bengal, it was inappropriate for the High Court to pronounce on the questions arising for decision in the writ petitions. The Court observed that the High Court after entertaining the writ petitions and hearing arguments on merits of the case should not have dismissed the petitions merely because certain consequential proceedings had been taken on the basis that the exports in question were illegal. If appellants were able to establish their case that the ban on export of maize from the State of Haryana had been validly lifted all the proceedings taken against those who exported the maize automatically fall to the ground. Their maintainability depends on the assumption that the exports were made without the authority of law. In context of those facts, the Court observed that the decisions of the civil courts are binding on criminal courts but the converse is not true.

It is the submission of learned senior counsel Mr. Dholakia that in view of the well-settled principle, the High court ought to have dropped the prosecution against the appellant as civil court has dismissed the suit for damages filed against appellant.

Learned Additional Solicitor General Shri Altaf Ahmed appearing for the respondents submitted that the observation made by this Court in V.M. Shah's case that "the finding recorded by the criminal Court, stands superseded by the finding recorded by the civil Court and thereby the finding of the civil Court gets precedence over the finding recorded by the criminal Court" is against the law laid down by this Court in various decisions. For this, he rightly referred to the provisions of Sections 41, 42 and 43 of the Evidence Act and submitted that under the Evidence Act to what extent judgments given in the previous proceedings are relevant is provided and therefore it would be against the law if it is held that as soon as the judgment and decree is passed in a civil suit the criminal proceedings are required to be dropped if the suit is decided against the plaintiff who is the complainant in the criminal proceedings.

In our view, the submission of learned Addl. Solicitor General requires to be accepted. Sections 40 to 43 of the Evidence Act provide which judgments of Courts of justice are relevant and to what extent. Section 40 provides for previous judgment, order or a decree which by law prevents in a court while taking cognizance of a suit or holding a trial, to be relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial. Section 40 is as under:

> "40. Previous judgments relevant to bar a second suit or trial. The existence of any judgment, order or decree which by law prevents any Courts from taking cognizance

of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial."

Section 41 provides for relevancy of certain judgments in probate, matrimonial, admiralty or insolvency jurisdiction and makes it relevant or conclusive as provided therein.

Section 41 reads thus:

"41. Relevancy of certain judgments in probate, etc., jurisdiction.A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued, to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should case;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

Section 42 with illustration reads thus :

"42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41 Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry, but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration:

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Thereafter, Section 43 in terms provides that judgments, orders or decrees, other than those mentioned in Sections 40, 41, 42 are irrelevant unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some provisions of the Act.

The final judgment, order or decree of a competent Court, in exercise of probate, matrimonial, admiralty or insolvency jurisdiction would be relevant if it confers upon or takes away from any person any legal character or it declares any person to be entitled to any such character or to be entitled to any specific thing, not as against any specified person but absolutely. It further specifically provides that such judgment or decree is conclusive proof of what is provided therein such as legal character etc. As against this under Section 42, the relevancy of the judgments, orders and the decrees in previous proceedings is limited if they relate to matters of public nature relevant to the enquiry and such judgments, orders or decrees are not conclusive proof of that which they state. Illustration to Section 42 makes the position clear.

In the facts of the present case, Section 42 would have some bearing and the judgment and decree passed in civil Court would be relevant if it relates to matter of public nature relevant to the enquiry but such judgment and decree is not a conclusive proof of that which it states.

In this regard, we would first refer to the decision rendered by the Privy Council in Emperor v. Khwaja Nazir Ahmad [AIR (32) 1945 Privy Council 18]. The Privy Council considered whether the High Court had power under Section 561 Cr.P.C. to quash all proceedings taken in pursuance of FIR for the offence punishable under Section 420 and prohibit the investigation on the ground that similar charges were levelled against the respondent four years earlier. Some of the charges were actively disproved and the rest held to be unfounded in an enquiry held as a consequence of application to remove the respondent from his post of Receiver of the property. After considering the evidence which was recorded in the enquiry, the High Court quashed the proceedings and in that context the Privy Council observed that all this may be good ground for rejection of acquisition and dismissal of any prosecution launched upon if such a prosecution ultimately takes place and if the courts are then satisfied that no crime has been established and thereafter court observed thus:

" It is conceded that the findings in a civil proceeding are not binding in a subsequent prosecution founded upon the same or similar allegations. Moreover, the police investigation was stopped and it cannot be said with certainty that no more information could be obtained. But even if it were not it is the duty of a criminal

> Court when a prosecution for a crime takes place before it to form its own view and not to reach its conclusion by reference to any previous decision which is not binding upon it."

Further, in M.S. Sheriff and anr. v. State of Madras and ors. [AIR 1954 SC 397] the Constitution Bench of this Court dealt with exactly similar situation, where two sets of proceedings arising out of the same facts were pending, namely, two civil suits for damages for wrongful confinement and another two criminal prosecutions under Section 344 IPC for wrongful confinement. In that context, it was contended that simultaneous prosecution of these matters will embarrass the accused and the Court considered the question whether criminal prosecution should be stayed. In that context, it was held thus:

> "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."

Shri Altaf Ahmed, learned Additional Solicitor General, further referred to the full bench decision of Lahore High Court in B.N. Kashyap v. Emperor [AIR 1945 Lahore 23] wherein the Full Bench considered the following question:

> " When there are concurrent proceedings covering the same ground before a criminal Court and a civil Court, the parties being substantially the same, would the judgment of the civil Court, if obtained first, be admissible in evidence before the criminal Court in proof or disproof of the fact on which the prosecution is based?"

In that context while deciding the said question the court observed thus:

> "In other words, the short point to decide is whether the finding on certain facts by a civil Court is relevant before the criminal Court when it is called upon to give a finding on the same facts or vice versa? The Evidence Act being exhaustive, the answer to this question depends upon the correct interpretation of the relevant provisions contained in that Act regardless of the fact whether the conclusion at which one ultimately arrives is in accordance with what was characterized before us during the arguments at the Bar to a commonsense view of things or not. In construing a statute like the Evidence Act, where any fact intended to be established has to be in accordance with the scheme of the Act, found to be relevant under a provision contained in the Act before it can be allowed to be proved, any argument based on plausibility can have no effect. I must therefore ignore any other consideration and confine myself strictly to the provisions of the Act."

Thereafter, the Court referred to Sections 42 and 43 of the Evidence Act. After considering the said questions, the Court observed as under:

> "Under S.40 of the Act, previous judgments are admissible in support of a plea of res judicata in civil cases or of autre fois acquit or autre fois convict in criminal cases. Judgments such as those whose relevancy we have been called upon to determine do not fall under this category. Nor can they fall under S.41 of the Act which only makes a final judgment of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, conferring upon, taking away from or declaring any person to be entitled to any legal character or to be entitled to any specific thing absolutely, relevant when the existence of any such legal character or the title to any such thing is relevant. They do not also fall within the purview of S.42 of the Act as they do not relate to matters of a public nature. Section 43 of the Act positively declares judgments other than those mentioned in Ss. 40, 41 and 42 to be irrelevant unless their existence is a fact in issue or is relevant under some other provision of the Act. It is quite clear that the mere existence of a judgment in the present case is not relevant. Learned counsel for the petitioner saw this difficulty and wishes to rely on S.11 of the Act. But I cannot see how could that section have any application when the existence of that judgment as apart from any finding contained therein or even the finding itself could neither be inconsistent with any fact in issue or a relevant fact. Nor could such judgments either by themselves or in connection with other facts make the existence or non-existence of any fact in issue or relevant fact in any subsequent proceedings highly probable or improbable. This section only refers to certain facts which are either themselves inconsistent with, or make the existence or non-existence of, the fact in issue or a relevant fact highly probable or improbable and has no reference to opinions of certain persons in regard to those facts. It does not make such opinions to be relevant and judgments after all of whatever authority are nothing but opinions as to the existence or non- existence of certain facts. These opinions cannot be regarded to be such facts as would fall within the meaning of S.11 of the Act unless the existence of these opinions is a fact in issue or a relevant fact which is of course a different matter."

Finally, after considering the various decisions, the Court held thus:

> "There is no reason in my judgment as to why the decision of the civil Court particularly in an action in personam should be allowed to have that sanctity. There appears to be no sound reason for that view. To hold that when a party has been able to satisfy a civil Court as to the justice of his claim and has in the result succeeded in obtaining a decree which is final and binding upon the parties, it would not be open to criminal Courts to go behind the findings of the civil court is to place the latter without any valid reason in a much higher position than what it actually occupies in the system of administration in this country and to make it master not only of cases which it is called upon to adjudicate but also of cases which it is not called upon to determine and over which it has really no control. The fact is that the issues in the

> two cases although based on the same facts (and strictly speaking even parties in the two proceedings) are not identical and there appears to be no sufficient reason for delaying the proceedings in the criminal Court, which, unhampered by the civil Court, is fully competent to decide the questions that arise before it for its decision and where in the nature of things there must be a speedy disposal."

In Kharkan and others v. The State of U.P. [(1964) 4 SCR 673], the Court observed thus:

> "the earlier judgment can only be relevant if it fulfils the conditions laid down by the Indian Evidence Act in Sections 40 to 43. The earlier judgment is no doubt admissible to show the parties and the decision but it is not admissible for the purpose of relying upon the appreciation of evidence"

What emerges from the aforesaid discussion is (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res-judicata may apply; (3) in a criminal case, Section 300 Cr.P.C. makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil Court would be relevant if conditions of any of the Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, Court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by 'A' on 'B's property, 'B' filed a suit for declaration of its title and to recover possession from 'A' and suit is decreed. Thereafter, in a criminal prosecution by 'B' against 'A' for trespass, judgment passed between the parties in civil proceedings would be relevant and Court may hold that it conclusively establishes the title as well as possession of 'B' over the property. In such case, 'A' may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, first question which would require consideration is whether judgment, order or decree is relevant?, if relevant its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon facts of each case.

In the present case, the decision rendered by the Constitution Bench in M.S. Sheriff's case (supra) would be binding, wherein it has been specifically held that no hard and fast rule can be laid down and that possibility of conflicting decision in 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 limited purpose such as sentence or damages."

Hence, the observation made by this Court in V.M. Shah's case (Supra) that the finding recorded by the criminal Court stands superseded by the finding recorded by the civil Court is not correct enunciation of law. Further, the general observations made in Karam Chand's case are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff's case as well as Sections 40 to 43 of the Evidence Act.

In the present case, after remand by the High Court, civil proceedings as well as criminal proceedings are required to be decided on the evidence, which may be brought on record by the parties.

In the result, the appeal is dismissed.