

Kishan Singh (D) Thru Lrs vs Gurpal Singh & Ors on 12 August, 2010

Equivalent citations: AIR 2010 SUPREME COURT 3624, 2010 (8) SCC 775, 2010 AIR SCW 5527, AIR 2011 SC (CRIMINAL) 952, 2010 (3) CALCRILR201, 2010 CRILR(SC&MP) 747, (2010) 4 KER LT 3, (2010) 3 UC 1478, (2010) 94 ALLINDCAS 35 (SC), (2010) 3 ALLCRIR 3055, (2010) 3 DLT(CRL) 763, 2010 (3) SCC (CRI) 1091, (2010) 4 KCCR 209, (2010) 47 OCR 396, 2010 ALLMR(CRI) 3948, (2010) 2 CRILR(RAJ) 747, (2010) 4 ALLCRILR 220, 2010 CALCRILR 3 201, (2010) 71 ALLCRIC 153, (2010) 3 CURCRIR 442, (2010) 4 RECCRIR 74, (2011) 1 ORISSA LR 84, (2011) 1 GUJ LR 894, (2011) 1 MAD LJ(CRI) 566, (2010) 3 RECCRIR 74, 2010 CRILR(SC MAH GUJ) 747

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1500 OF 2010
(Arising out of SLP (Crl.) No. 5440 of 2009)

Kishan Singh (D) through L.Rs.

...Appellants

Versus

Gurpal Singh & Ors.

...Respondents

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. Leave granted.

2. This appeal has been preferred against the Judgment and Order dated 13.02.2009 of the Punjab & Haryana High Court at Chandigarh in Criminal Misc. No. 4136 of 2003, wherein the First Information Report (for short, "FIR") dated 23.07.2002 lodged by the appellant under Sections

420/423/467/468/471/120-B of the Indian Penal Code, 1860 (hereinafter called as, "IPC") has been quashed placing reliance on the decree of Civil Court between the same parties in respect of the same subject matter.

3. The only question for our consideration involved in this appeal is as to whether criminal proceedings can be quashed by the High Court relying upon a finding of Civil Court on an issue involved in criminal proceedings in respect of the same subject matter.

4. Facts and circumstances giving rise to this case are that one Kishori Lal executed an Agreement to Sell dated 4.1.1988 in favour of Respondent Nos. 1 to 4 for land measuring 114 Kanals, 2 Marlas situate in the revenue estate of Mauza Jadali, Tehsil Khanna, Punjab, at the rate of Rs. 11000/- per bigha. Kishori Lal had received a sum of Rs. 1 Lakh as Earnest Money from the said respondents. The said land had already been mortgaged with the said respondents for Rs. 52000/-. As per the terms of the said Agreement dated 4.1.1988, the sale deed was to be executed and registered by 10th June, 1989.

Kishori Lal entered an Agreement to Sell dated 22.10.1988 with Kishan Singh, predecessor-in-interest of the appellants, in respect of the same land at the rate of Rs. 15300/- per bigha and received a sum of Rs. 54000/- as earnest money. As per the said agreement, the sale was to be executed and registered by 15.06.1989.

5. Respondent Nos. 1 to 4 filed suit No. 60 of 1989 against Kishori Lal in Civil Court, Ludhiana for specific performance and got an interim relief restraining Kishori Lal to alienate the suit land in favour of anyone else by any manner. Sh. Kishan Singh, father of the appellants, filed Civil Suit No. 81 of 1996 against Kishori Lal for specific performance on 6.2.1996, however, the suit filed by the respondent Nos. 1 to 4 against Kishori Lal was decreed in their favour vide Judgment and decree dated 8.5.1996 and in pursuance thereof, the sale has been executed by Kishori Lal in favour of the respondent Nos. 1 to 4 on 17.05.1996.

6. Being aggrieved, Kishan Singh, predecessor-in-interest of the appellants, filed suit No. 1075 of 1996 seeking cancellation/setting aside of the decree dated 8.5.1996 passed in favour of respondent Nos. 1 to 4. The said Civil Suit stood dismissed by the Civil Court vide Judgment and decree dated 10.06.2002 against which, the appellants have preferred Regular First Appeal (for short, "RFA") No. 2488 of 2002 before the High Court, which is still pending.

7. Kishan Singh, predecessor-in-interest of the appellants, filed FIR No.144 dated 23.07.2002 under Sections 420/423/467/468/120-B IPC at Police Station Division No. 8, Ludhiana alleging forging of the signatures of Kishori Lal on the agreement to sell dated 4.1.1988.

8. The respondents preferred a Criminal Misc. No. 4136-4 of 2003 before the High Court for quashing of the FIR No. 144 dated 23.07.2002 and proceeding subsequent thereto, on the ground that appellants had lodged it after losing the civil case and with inordinate delay. Findings on factual issues recorded in civil proceedings are binding on criminal proceedings. The High Court, vide its Judgment and order dated 13.02.2009, allowed the said application and quashed the FIR on the

ground that the appellants could not succeed before the Civil Court and findings have been recorded by the Civil Court to the effect that the document i.e. agreement to sell was not forged or fabricated. Hence, this appeal.

9. Sh. K.T.S. Tulsi, learned senior counsel appearing for the appellants, has submitted that there is no prohibition in law for simultaneously pursuing the civil as well as criminal remedies available in law. Both the proceedings have to take course and to be decided according to the evidence adduced therein. Findings of fact recorded by the Civil Court are not binding on the criminal courts or vice-versa. The High Court committed a grave error in quashing the FIR only on the basis of findings of fact recorded by the Civil Court.

10. Per contra, Sh. Abhinav Ramkrishna, learned counsel appearing for the respondents, has vehemently opposed the appeal contending that Kishan Singh filed the FIR at a much belated stage, i.e. after dismissal of the civil suit by the Trial Court on 10.06.2002. In case, the agreement in their favour provided that sale deed was to be executed by 15th June, 1989, there could be no justification for them to wait and file suit No. 81/1996 for specific performance on 6.2.1996. Thus, FIR has been filed with inordinate delay of about 14 years and even if, it is presumed that they were not aware of pendency of suit No. 60/1989. Kishan Singh had become fully aware of all the relevant facts at the time of filing the suit no. 1075 of 1996. There is no explanation of delay even after 1996. Thus, the Judgment and Order of the High Court does not warrant any interference. The appeal lacks merit and is liable to be dismissed.

11. We have considered the rival submissions made by the learned counsel for the parties and perused the record. The issue as to whether the findings recorded by Civil Court are binding in criminal proceedings between the same parties in respect of the same subject matter, is no more Res Integra.

12. In M/s Karamchand Ganga Pershad & Anr. Vs. Union of India & Ors., AIR 1971 SC 1244, this Court, while dealing with the same issue, held as under :-

"It is well established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true."

13. The said Judgment was delivered by a three-Judge Bench of this Court without taking note of the Constitution Bench Judgment in M.S. Sherrif Vs. The State of Madras & Ors., AIR 1954 SC 397 on the same issue, wherein this Court has held as under :-

"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. Special considerations obtaining in any particular case might make some other course more expedient and just."

14. In V.M. Shah Vs. State of Maharashtra & Anr., (1995) 5 SCC 767, this Court has held 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 negated. 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 disturbed nor the decree becomes inoperative."

15. The correctness of the aforesaid judgment in V.M. Shah (supra) was doubted by this Court and the case was referred to a larger Bench in K.G. Premshankar Vs. Inspector of Police & Anr., AIR 2002 SC 3372. In the said case, the Judgment in V.M. Shah (supra) was not approved. While deciding the case, this Court placed reliance upon the Judgment of the Privy Council in Emperor Vs. Khwaja Nazair Ahmad, AIR 1945 PC 18 wherein it has been held as under :-

"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."

(Emphasis added) 16 In Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr., (2005) 4 SCC 370, this Court held as under :-

"Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the

standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."

17. In *P. Swaroopa Rani Vs. M. Hari Narayana alias Hari Babu*, AIR 2008 SC 1884, this Court has held as under :-

"It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case..... Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute.....It goes without saying that the respondent shall be at liberty to take recourse to such a remedy which is available to him in law. We have interfered with the impugned order only because in law simultaneous proceedings of a civil and a criminal case is permissible."

18. In *Syed Aksari Hadi Ali Augustine Imam & Anr. Vs. State (Delhi Admn) & Anr.*, (2009) 5 SCC 528, this Court considered all the earlier Judgments on the issue and held that while deciding the case in *Karam Chand (supra)*, this Court failed to take note of the Constitution Bench Judgment in *M.S. Sherrif (supra)* and, therefore, it remains per incuriam and does not lay down the correct law.

A similar view has been reiterated by this Court in *Vishnu Dutt Sharma Vs. Daya Prasad*, (2009) 13 SCC 729, wherein it has been held by this Court that the decision in *Karamchand (supra)* stood overruled in *K.G. Premshankar (supra)*.

19. Thus, in view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872, dealing with the relevance of previous Judgments in subsequent cases may be taken into consideration.

20. In view of the above, the Judgment and order of the High Court dated 13.02.2009 is not sustainable in the eyes of law and is liable to be set aside. However, the facts and circumstances of the case do not warrant so. The agreement to sell in favour of the appellants' father is dated 22.10.1988 and sale deed was to be executed and registered by 15.06.1989. The respondent Nos. 1 to

4 filed Civil suit No. 60/1989 in 1989. It is difficult to believe that the appellants' father was not aware of the pendency of that suit. No explanation has been furnished as to why after expiry of the date of execution of the sale deed in favour of Kishan Singh, i.e. 15.06.1989, the appellants' father did not file the suit for specific performance which was subsequently filed on 6.2.1996 as Civil Suit No. 81/1996. Even if it is presumed that Kishan Singh was not aware of pendency of suit filed by the respondent Nos. 1 to 4, no explanation could be furnished that in case, the appellants' father filed another suit No. 1075/1996 for setting aside the decree dated 8.5.1996 in Civil Suit no.60/1989, why did he wait till the decision of that suit for lodging FIR, as the civil and criminal proceedings could have proceeded simultaneously. The FIR has been filed only on 23.07.2002 i.e. after filing the RFA No. 2488/2002 before the High Court on 15.07.2002. Therefore, there is an inordinate delay on the part of the appellants' father in filing the FIR and there is no explanation whatsoever for the same.

21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. [vide: Sahib Singh Vs. State of Haryana, AIR 1997 SC 3247].

22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (vide :

Chandrapal Singh & Ors. Vs. Maharaj Singh & Anr., AIR 1982 SC 1238; State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors., AIR 1992 SC 604; G. Sagar Suri & Anr. Vs. State of U.P. & Ors., AIR 2000 SC 754; and Gorige Pentaiah Vs. State of A.P. & Ors., (2008) 12 SCC 531).

23. The case before us relates to a question of the genuineness of the agreement to sell dated 4.1.1988. The said agreement was between Kishori Lal and respondents and according to the terms of the said agreement, the sale deed was to be executed by 10.6.1989. As the sale deed was not executed within the said time, suit for specific performance was filed by the other party in 1989 which was decreed in 1996. So far as the present appellants are concerned, agreement to sell dated 22.10.1988 was executed in favour of their father and the sale deed was to be executed by 15.6.1989.

No action was taken till 1996 for non-execution of the sale deed. The appellants' father approached the court after 7 years by filing Suit No.81/1996 for specific performance. However, by that time, the suit filed by the present respondents stood decreed. The appellants' father filed another Suit No.1075/96 for setting aside the judgment and decree passed in favour of the respondents 1 to 4. The said suit was dismissed by the Additional District Judge (Senior Division), Khanna on 10.6.2002. Subsequently, the appellants preferred RFA No. 2488/02 on 15.7.2002 against the aforesaid order, and the said appeal is still pending before the Punjab & Haryana High Court.

24. It is to be noted that the appellants' father Kishan Singh lodged FIR No.144/02 on 23.7.2002 through his attorney Jaswant Singh Mann under Sections 420/323/467/468/471/120-B IPC, against the respondents. The allegations made in the FIR were substantially similar to the allegations made by the appellants in Civil Suit No.1075/96, which had been decided against them. It is evident that the aforesaid FIR was filed with inordinate delay and there has been no plausible explanation for the same. The appellants lodged the aforesaid FIR only after meeting their Waterloo in the Civil Court. Thus, it is evident that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. We are of the view that such an action on the part of the appellants' father would not be bona fide, and the criminal proceedings initiated by him against the respondents amount to an abuse of the process of law.

25. In view of the above, and to do substantial justice, we are not inclined to interfere with the order passed by the High Court quashing the criminal proceedings against the respondents in spite of the fact that the impugned judgment dated 13.02.2009 passed in Criminal Misc. No. 4136 of 2003 is not sustainable in the eyes of law.

26. With these observations, the appeal stands disposed of.

.....J.
(P. SATHASIVAM)

New Delhi,
August 12, 2010

.....J.
(Dr. B.S. CHAUHAN)