Narayanan And Anr. vs Mathan Mathai on 13 August, 1981

Equivalent citations: AIR1982KER238, AIR 1982 KERALA 238, (1982) KER LT 49

JUDGMENT

G. Balagangadharan Nair, J.

1. Respondents instituted a suit against the appellants (defendants 3 and 4) and two others for damages and injunction. The suit property belongs to the plaintiff by a village pathway. At the request of the defendants and other local people the plaintiff surrendered necessary land to expand the pathway into a 12 feet wide road. The road was constructed. The plaintiff thereupon erected a fence on the north side of the new road for the protection of his property. The plaintiff states that with the idea of widening the road still further the defendants with certain others demolished the fence and cut down 4 coconut trees, 3 are coconut palms and 1 plantain from his property causing him a loss of Rs. 1,500/-. This was on Dec. 3, 1972. The plaintiff thereupon brought the suit for a decree for damages in Rs. 1,500/- and for a permanent injunction to restrain the defendants from trespassing or cutting any road or committing any waste upon the property or altering its boundaries.

2. The defendants disclaimed all responsibility for the acts alleged in the plaint but stated that it was some other local people who widened the pathway into a 14 feet road and that too with the consent of the plaintiff and that in this process some trees that stood on the road margin had to be cut. The plaintiff constructed a fence but later on attempted to move its position with the idea of narrowing the road, an attempt which was resisted by the local people. He has followed it up, it was stated, by the suit claiming untenable reliefs and swollen damages against the defendants.

3. The trial court accepted the plaintiff's case and evidence, rejecting the fence and the evidence which was called in its support. It however found that the damages would not exceed Rs. 750/-. The plaintiff was accordingly given a decree for injunction as claimed by him and for Rs. 750/- as found by the court.

4. On appeal the Subordinate Judge bounds that the evidence was not clear enough to prove the complicity of defendants 1 and 2. We also look into account for circumstances that defendants 1 and 2 who were prosecuted along with certain others for the same incident had been acquitted. In the result he reversed the judgment and decree as against defendants l and 2 and confirmed ihe cost.

5. Although counsel for the appellants sought to dislodge the concurrent findings of fact by attempting a reappraisal of the evidence I find no good ground to upset these findings. The incident is largely admitted, Ihe only defence being a disclaimer of liability on the part of the defendants who

attributes it to certain other local people. The courts below have fully discussed the evidence and reached their findings. Parts of the relevant evidence which were read out fully support the appreciation of the evidence and findings of the courts below.

6. Counsel however conlended that even so the decision against defendant 4 must be reversed as he has been acquitted in Cr. R. P. No. 286 of 1974 which arose from the criminal prosecution. The order in the criminal revision petition which was placed before me shows that 12 persons including the appellants were prosecuted by the local Sub Inspector for the offences under Sections 143, 147, 149, 447 and 427, I. P. C. in respect of this incident pursuant to the first information statement given by the plaintiff. The Sub-Magistrate, ' Thiruvalla, who tried the case acquitted accused \ and 4 (defendants 1 and 2 as the Subordinate Judge says) convicted and sentenced the other ten accused under Sections 447 and 427, I.P.C. This conviction and sentence having been confirmed by the Sub-Divisional Magistrate the criminal revision petition was brought to this court. The learned Judge who decided the criminal revision petition considered that the evidence was not strong enough to sustain the conviction and sentence of four of the petitioners. The four accused including one of the appellants was therefore acquitted.

7. I find it impossible to accept the contention that the acquittal in the prosecution entitles the defendants to ex-

oneration from civil liability. The plaintiff was no party to the prosecution and it is not known what evidence was called by the prosecutor. That apart, the question is whether the judgment in the prosecution is relevant and binding on the Civil Court even if the subject of consideration is the same. Apart from Sections like Section 13 under which judgments in other proceedings might be relevant, Ihe subject of relevancy of judgments is dealt with under a fasciculus of Sections 40 to 43 Evidence Act. Section 44 which is the last of the Sections in the rubric 'judgments of courts of justice when relevant' merely indicating the circumstances under which a party might impeach the iudgment, order or decree which is relevant under Section 40, 41 or 42 and which has been proved by the adverse parly. Of the remaining Sections, Section 43 makes a previous judgment relevant if it bars a second suit or trial, Section 41 provides for the relevance of what is generally called judgments "in rem" though the term itself is not used in ihe Section, and Section 42 provides for the relevancy of judgments on matters of public nature. Section 43 declares that "judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless Ihe existence of such judgment, order or decree is a fact in issue or ia relevant under some other provision of this Act".

8. Now it is not claimed that the judgment in the criminal prosecution is of the character mentioned in Section 40, 41 or 42 or that its existence is a fact in issue or that it is relevant under some other provision of the Act; which means that it is in terms of Section 43 irrelevant. Nevertheless counsel argued that the acquittal of the accused but established his innocence of the offence which is the very matter in issue in the suit and that in view of the acquittal he could no longer be made liable for damages for the same incident. Counsel could quote no statutory provision or judicial precedent in support of this bar; nor could he effectively answer the query whether he would let the plaintiff have a decree in damages against the defendants on the basis of their conviction by the criminal court.

Now the statute does not support the appellants' contention neither does the case law, as I shall show.

9. In Anil Behari Ghosh v. Latika Bala Desai, AIR 1955 SC 566, in a proceeding for revocation of the grant of a probate the question arose whether the testator was murdered by his adoptive son Charu who was legatee under the will, for if it were so, there would be intestacy in respect of the interest created in his favour. The Court below had assumed on the basis of the judgment of conviction and sentence passed by the High Court in the sessions trial that the adoptive son was the murderer. The Supreme Court however observed (at p. 571):--

> "Though that judgment is relevant only to show that there was such a trial resulting in the conviction and sentence of Charu to transportation for life, it is not evidence of the fact that Charu was the murderer. That question has to be decided on evidence".

Though the Supreme Court has nol referred to any provision in the Evidence Act or even to the Evidence Act, it is clear that the court has laid down that the question in issue has to be decided on the evidence in the proceeding and that the judgment of conviction is irrelevant except for showing that there was a trial, conviction and sentence. The position is no different on a judgment of acquittal.

10. In Onkarmal v. Banwarilal, AIR 1962 Rai 127, the lower appellate court had disallowed the plaintiff's claim for damages in respect of wrongful confinement on the main ground that the defendant had been acquitted in the criminal case, inter alia of the charge of wrongful confinement for which they had been prosecuted. Holding that in taking this view the lower appellate court had fallen into a grave error of law, the High Court observed (at p. 133):

> "There is, however, abundant authority for the proposition that a judgment of acquittal in a criminal court is irrelevant in a civil suit based on the same cause of action, just on a judgment of conviction cannot, in a subsequent civil suit, be treated as evidence of facts on which the conviction is based. The corrct position in law, therefore, is then the Civil Court must independently of the decision of the criminal court investigate facts and come to its own finding".

The Court relied upon AIR 1933 Mad 429, AIR 1956 Pat 49 and AIR 1955 SC 566.

11. Ramadhar v. Janki, AIR 1956 Pat 49, followed in this case also concerned the admissibility of a criminal judgment. In a suit for partition the defendant denied the plaintiff's claim of status as his son and he put in evidence the judgment of a criminal court in which the Magistrate had observed that one Parikha Choudhary took the lead in the incident and that the other three accused were his younger brothers and sons and as such junior members of his family. The defendant contended on the basis of this judgment that the plaintiff was Parikha's son and not his. The court discussed the question with reference to the provisions of the Evidence Act and judicial precedents and held that the judgment was inadmissible for proving the plaintiff's parentage.

12. In suits for damages for malicious prosecutions the law is well settled by a long line of decisions that the judgment of the Criminal Court is evidence merely to show that the prosecution has terminated in favour of the plaintiff and that its findings and reasonings are irrelevant being opinion evidence and that the Civil Court has to reach its conclusion on the evidence produced before itself. Chamu v. Valayanad Tharayil Chirutha, 1970 Ker LJ 1023, following AIR 1933 Mad 429 and 1969 Ker LJ 760.

13. In the last of these cases J. Spadi-gam v. State of Kerala, 1969 Ker LJ 760, Mathew J. held that the judgment of a criminal court acquitting the petitioner was no bar to disciplinary proceedings against him on the basis of the same facts and that it does not operate as conclusive evidence in the disciplinary proceedings. If this be the position in a disciplinary proceeding which is unfavoured by the Evidence Act, the result cannot be different in a civil suit. The learned Judge however felt no doubt:

> "A judgment of acquittal by a criminal court is inadmissible in a civil suit baaed on the same cause of action, except for the very limited purpose mentioned in Section 43, Evidence Act. Just as a civil court must independently of the decision of the criminal court investigate facts and come to its own findings, so also, I think, a tribunal conducting a disciplinary proceeding must investigate the facts and come to its own finding and thai without being hampered by the strict rules of evidence."

14. In Ramanamma v. Appala-narasayya, AIR 1932 Mad 254, a criminal complaint and a suit for damages for defamation were filed. The suit was dismissed. The judgment of the civil court was Bought -to be admitted in the crimin- nal case, the position being the converse of ihe present case. Holding against the admissibility of the judgment the court observed:

> "Can we not have the civil court trying over again a matter which has been decided by a Court of competent jurisdiction and coming to a different conclusion? The truth is that, although the civil suit and the prosecution may be based on exactly the same cause of action, the parties are, strictly speaking, not the same, the burden of proof is differently placed and different considerations mav come in. The result may therefore be a conflict in decision. For instance, A is tried for murdering B, but acquitted, because of confessional statement by him is, in a criminal trial, inadmissible in evidence. C, B's widow, sued him for damages for the murder and gets a decree, the confessional statement being admissible in a civil suit. In the matter of defamation, again, there is a good deal of difference between a suit tor damages and criminal prosecution. The prosecution is governed bv the provisions of the Indian Penaj Code, the suit by the English Law of slander and libel".

15. If was suggested that this view of the law would produce possible conflicting decisions by different courts but then in the words of Jackson J- in Gnana-sigamani Nadar v. Vedamuthu Nadar, AIR 1927 Mad 308:

> "Conflicting decisions are the inherent risk of the division of cause into civil and criminal".

A similar opinion was expressed by a Full Bench in Kashyap v. Emperor, AIR 1945 Lah 23 fal p. 27):

> "I must admit that ii would have been a good thing to avoid conflict of opinions between the two courts if it were legally possible so to do but in the absence of any provision to that effect in the Evidence Act, I cannot see now could this be avoided as long as it is possible for two independent Judges to come to two differenl findings on the same evidence".

16. In relation to the unavoidability one has also to bear in mind that the standard of proof for imposing liability is widely different between the civil and criminal courts and that while in a civil suit a defendant can be made liable on probabilities or the action decided on a mere consideration of the burden of proof in the absence of other evidence, no accused can be convicted on such uncertain grounds.

17. I need not discuss the question further nor lengthen the list of cases for both statutory provisions and judicial decisions agree that the civil court must decide for itself on the evidence before it and cannot let its decision be usurped by the judgment of the criminal court on the same matter.

I dismiss the appeal with costs.