Seth Ramdayal Jat vs Laxmi Prasad on 15 April, 2009

Equivalent citations: AIR 2009 SUPREME COURT 2463, 2009 AIR SCW 4587, (2009) 77 ALLINDCAS 17 (SC), 2009 (5) SCALE 527, (2009) 1 CLR 1072 (SC), (2009) 4 RAJ LW 3579, 2009 (11) SCC 545, (2010) 1 CIVILCOURTC 305, (2009) 5 MAD LJ 992, (2009) 108 REVDEC 145, (2009) 1 WLC(SC)CVL 733, (2009) 2 ALL RENTCAS 509, (2009) 5 SCALE 527, (2009) 75 ALL LR 658, (2009) 4 ALL WC 3673

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Bench: Mukundakam Sharma, S.B. Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2543 OF 2009
[Arising out of SLP (Civil) No. 23441 of 2007]

Seth Ramdayal Jat ...Appellant

Versus

Laxmi Prasad ...Respondent

JUDGMENT

S.B. SINHA, J :

1. Leave granted.

2. What would be the period of limitation for institution of a suit for recovery of `pledged ornaments' is the question involved herein.

3. It arises in the following factual matrix:

On or about 26.06.1998, the respondent filed a civil suit against the appellant for recovery of certain items of jewellery allegedly pledged with him on 2.12.1987 for the purpose of obtaining loan of a sum of Rs. 7000/-.

On the premise that the appellant had violated the provisions of the Madhya Pradesh Money Lenders Act, 1934 in relation to the aforementioned grant of loan, a criminal proceeding was initiated against him, which was marked as Case No. 511 of 1997. In the said criminal case, he admitted his guilt. A fine of Rs. 150/- was imposed on him. The charge was read over to him, which reads as under:

"The charge on you is that before date 29.3.97 complainant Laxmi Prasad was paid borrowed money to you but even after that you were demanding interest at 5%. Your this act is criminal offence under section 3, 4 of Money Lenders Act. Therefore, show cause as to why you should not be held guilty of the said offence."

4. Respondent thereafter, as noticed hereinbefore, filed the aforementioned Civil Suit before the XIVth Civil Judge, Class II, Jabalpur being civil suit No. 4-A/1998 for recovery of the pledged jewellery. The said suit was decreed directing the appellant to return the said jewellery or in the alternative a decree for a sum of Rs. 20,000/-.

5. Aggrieved by and dissatisfied therewith the appellant preferred an appeal thereagainst. The said appeal was allowed by the learned XVIth Additional District Judge, Jabalpur, holding:

(i) The judgment of the criminal court rendered on the basis of the purported admission of guilt made by the appellant was not admissible in evidence.

(ii) An admission of the guilt on the basis of a wrong legal advice is not binding on the appellant.

(iii) The suit was barred in terms of Article 70 of the Limitation Act.

6. The second appeal preferred by the respondent herein has been allowed by the High Court by reason of the impugned judgment.

The High Court formulated the following substantial questions of law:

"1. Whether the suit filed by the appellant was barred by limitation while the suit was filed within 3 years from the date of demand and refusal by the respondent?

2. Whether the admission of guilt in criminal case in respect of some transaction made by respondent is admissible in the present case to the extent of fact that there was transaction between the parties?"

By reason of the impugned judgment, the High Court opined that the suit had been filed within the prescribed period of limitation having been brought within a period of three years from the date of refusal of the demand to return the pledged ornaments. The question No. 2 was also determined in favour of the respondent holding that admission of guilt in a criminal case would be admissible in

evidence being relevant to the fact in issue.

7. Mr. Anurag Sharma, learned counsel appearing on behalf of the appellant would urge:

> (i) The alleged pledge of jewellery having admittedly been made in the year 1987 and the suit filed on 26.06.1998, the same must be held to be barred by limitation.
>
> (ii) No document of pledge having been produced, service of notice by itself cannot give rise to a cause of action for filing a suit for recovery of the pledged ornaments.

8. Mr. Rohit Arya, learned senior counsel appearing on behalf of the respondent, on the other hand, would contend:

> (i) in view of Article 70 of the Limitation Act, 1963, the suit has rightly been found to have been instituted within the period of limitation.
>
> (ii) Having regard to the provisions contained in Section 43 of the Indian Evidence Act, the judgment of the criminal court was admissible in evidence.
>
> (iii) In terms of Section 58 of the Indian Evidence Act, things admitted need not be proved. The suit filed by the respondent has rightly been decreed.

9. Before adverting to the rival contentions of the parties raised before us, we may notice that the purported pledge of jewellery was made by the respondent herein for taking a loan of Rs. 7,000/- on 2.12.1987. Appellant indisputably is a money lender. A criminal case for charging excess interest was instituted against him on 29.03.1997. On or about 29.11.1997, he pleaded guilty by reason whereof a fine of Rs. 150/- was imposed on him.

Respondent thereafter served a notice upon the appellant asking him to return the pledged jewellery. As neither the said noticed was replied to nor the jewellery was returned, he filed the suit on 26.06.1998.

10. The cause of action for filing the suit was stated in para 3 of the plaint, which reads as under:

> "3. The plaintiff through counsel sent registered notice dated 12.5.98 and demanded the pledged jewels. Still the defendant has not returned the jewels of the plaintiff. Therefore, this suit is being preferred. The aforesaid notice sent by the counsel of the plaintiff was received by the defendant on 14.5.98."

11. Respondent examined himself as a witness in the suit. He stated that the appellant being his cousin brother, no document was executed. He also testified that in the criminal case, appellant having admitted his crime and pledge of jewellery with him, a fine of Rs. 150/- was imposed and on in default thereof, imprisonment of five days was ordered.

12. Indisputably, the judgment in the criminal case was marked as an exhibit. Appellant also in his deposition stated as under:

> "...This is correct that plaintiff filed a complaint against me before police and case was registered. This is also correct that I confessed upon advise from my advocate. This is correct that fine of Rs. 150/- was imposed on me in that case. This is correct that I do the money lending."

He admitted that even one Chandra Kumar had borrowed money from him.

It was furthermore admitted by him that he received the notice (Exhibit P1) from the plaintiff but he had not replied thereto.

13. Indisputably, the law relating to the admissibility of a judgment in a criminal proceedings vis-`-vis the civil proceedings and vice-versa is governed by the provisions of the Indian Evidence Act.

14. Section 43 of the Indian Evidence Act reads, thus:

> "43. Judgments, etc., other than those mentioned in Sections 40, 41 and 42, when relevant - Judgments, orders or decrees other then those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant, under some other provision of this Act."

In terms of the aforementioned provision, the judgment in a criminal case shall be admissible provided it is a relevant fact in issue.

Its admissibility otherwise is limited.

It was so held in Anil Behari Ghosh v. Smt. Latika Bala Dassi and others [AIR 1955 SC 566] in the following terms:

> "The learned counsel for the contesting respondent suggested that it had not been found by the lower appellate court as a fact upon the evidence adduced in this case, that Girish was the nearest agnate of the testator or that Charu had murdered his adoptive father, though these matters had been assumed as facts. The courts below have referred to good and reliable evidence in support of the finding that Girish was the nearest reversioner to the estate of the testator. If the will is a valid and genuine will, there is intestacy in respect of the interest created in favour of Charu if he was the murderer of the testator. On this question the courts below have assumed on the basis of the judgment of conviction and sentence passed by the High Court in the sessions trial that Charu was the murderer. 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."

In Perumal v. Devarajan and others [AIR 1974 Madras 14], it was held:

"2. Even at the outset, I want to state that the view of the lower appellate court that the plaintiff has not established satisfactorily that the first defendant or the second defendant or both were responsible for the theft is perverse and clearly against the evidence and the legal position. The lower appellate Court refused to rely on Exhibit A- 3 which is a certified copy of the judgment in C.C. No. 1949 of 1965. It is true that the evidence discussed in that judgment and the fact that the first defendant had confessed his guilt in his statement is not admissible in evidence in the suit. But it is not correct to state that even the factum that the first and the second defendants were charged under Sections 454, and 380, I.P.C. and they were convicted on those charges could not be admitted. The order of the Criminal Court is, in my opinion, clearly admissible to prove the conviction of the first defendant and the second defendant and that is the only point which the plaintiff had to establish in this case..."

A similar issue is dealt in some details in Lalmuni Devi and Ors. v. Jagdish Tiwary and Ors. [AIR 2005 Patna 51] wherein it was held:

"14. Relying on the judgment of the Supreme Court in Anil Behari Ghosh v. Smt. Latika Bala Dassi and Ors., (supra), a Division Bench of this Court in its judgment reported in 1968 BLJR 197, Mundrika Kuer v. President, Bihar State Board of Religious Trusts, and 8 others, has laid down to the same effect. Paragraph 7 of the judgment is set out hereinbelow for the facility of quick reference :-

"7. It is true that, if the Board acted capriciously and arbitrarily without any material whatsoever and attempts to administer private property, saying that it is a public religious trust, this Court may have to interfere in appropriate cases; but it cannot be said here that there were no prima facie materials to show that the trust is a public religious trust. The acquittal of the petitioner in the criminal case (Annexure-A) was very much relied upon; but it is well settled that acquittal or conviction in a criminal case has no evidentiary value in a subsequent civil litigation except for the limited purpose of showing that there was a trial resulting . in acquittal or conviction, as the case may be. The findings of the criminal Court are inadmissible."

15. A judgment in a criminal case, thus, is admissible for a limited purpose. Relying only on or on the basis thereof, a civil proceeding cannot be determined, but that would not mean that it is not admissible for any purpose whatsoever.

16. Mr. Sharma also relies upon a decision of this Court in Shanti Kumar Panda v. Shakuntala Devi [(2004) 1 SCC 438] to contend that a judgment of a civil court shall be binding on the criminal court but the converse is not true. Therein it was held:

> "(3) A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 of the Code is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and wait before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence."

With respect, the ratio laid down therein may not be entirely correct being in conflict with a Three-Judge Bench decision of this Court in K.G. Premshanker vs. Inspector of Police and anr. [(2002) 8 SCC 87].

17. A civil proceeding as also a criminal proceeding may go on simultaneously. No statute puts an embargo in relation thereto. A decision in a criminal case is not binding on a civil court.

In M.S. Sheriff & Anr. v. State of Madras & Ors. [AIR 1954 SC 397], a Constitution Bench of this Court was seized with a question as to whether a civil suit or a criminal case should be stayed in the event both are pending. It was opined that the criminal matter should be given precedence.

In regard to the possibility of conflict in decisions, it was held that 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. It was held that the only relevant consideration was the likelihood of embarrassment.

If a primacy is given to a criminal proceeding, indisputably, the civil suit must be determined on its own keeping in view the evidence which has been brought on record before it and not in terms of the evidence brought in the criminal proceeding.

The question came up for consideration in K.G. Premshanker (supra), wherein this Court inter alia held:

> "30. 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 CrPC 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 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.
>
> 31. 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, the 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 the 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, the 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 the facts of each case.

It is, however, significant to notice a decision of this Court in M/s Karam Chand Ganga Prasad & Anr. etc. v. Union of India & Ors. [(1970) 3 SCC 694], wherein it was categorically held that the decisions of the civil court will be binding on the criminal courts but the converse is not true, was overruled, stating:

> "33. Hence, the observation made by this Court in V.M. Shah case 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 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 case as well as Sections 40 to 43 of the Evidence Act."

[See also Syed Askari Hadi Ali Augustine Imam and Anr. v. State (Delhi Admn.) and Anr. 2009 (3) SCALE 604] Another Constitution Bench of this Court had the occasion to consider the question in Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr. [(2005) 4 SCC 370]. Relying on M.S. Sheriff (supra) as also various other decisions, it was categorically held:

> "32. 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."

The question yet again came up for consideration in P. Swaroopa Rani v. M. Hari Narayana @ Hari Babu [AIR 2008 SC 1884], wherein the law was stated, thus :

> "13. 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."

18. It is now almost well-settled that, save and except for Section 43 of the Indian Evidence Act which refers to Sections 40, 41, and 42 thereof, a judgment of a criminal court shall not be admissible in a civil suit.

19. What, however, would be admissible is the admission made by a party in a previous proceeding. The admission of the appellant was recorded in writing. While he was deposing in the suit, he was confronted with the question as to whether he had admitted his guilt and pleaded guilty of the charges framed. He did so. Having, thus, accepted that he had made an admission in the criminal case, the same was admissible in evidence. He could have resiled therefrom or explained away his admission. He offered an explanation that he was wrongly advised by the counsel to do so. The said explanation was not accepted by the trial court. It was considered to be an afterthought. His admission in the civil proceeding was admissible in evidence.

20. Section 58 of the Indian Evidence Act reads as under:

> "58 - Facts admitted need not be proved No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:
>
> Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admission."

In view of the aforementioned provision, there cannot be any doubt or dispute that a thing admitted need not be proved. [See Vice-Chairman, Kendriya Vidyalaya Sangathan and Another v. Girdharilal Yadav (2004) 6 SCC 325, L.K. Verma v. HMT Ltd. and Another (2006) 2 SCC 269, Avtar Singh and Others v. Gurdial Singh and Others (2006) 12 SCC 552, Gannmani Anasuya and Others v. Parvatini Amarendra Chowdhary and Others (2007) 10 SCC 296]

21. We, therefore, are of the opinion that although the judgment in a criminal case was not relevant in evidence for the purpose of proving his civil liability, his admission in the civil suit was admissible. The question as to whether the explanation offered by him should be accepted or not is a matter which would fall within the realm of appreciation of evidence. The Trial Court had accepted the same. The first appellate court refused to consider the effect thereof in its proper perspective. The appellate court proceeded on the basis that as the judgment of the criminal court was not admissible in evidence, the suit could not have been decreed on the said basis. For the said purpose, the admission made by the appellant in his deposition as also the effect of charge had not been taken into consideration.

We, therefore, are of the opinion that the High Court cannot be said to have committed any error in interfering with the judgment of the first appellate court.

22. So far as the question of the applicability of the period of limitation is concerned, Article 70 of the Limitation Act would be applicable. It reads as under:

> "Description of suit Period of Time from which period limitation begins to run
>
> 70. To recover movable Three years The date of refusal after property deposited or demand."

pawned from a depository or pawnee.

In terms of the aforementioned provision, the period of limitation, thus, begins to run from the date of refusal after demand.

23. Appellant did not respond to the notice issued by the respondent asking him to return the pledged jewellery. The date of receipt of such a notice is 14.05.1998. The suit having been filed on 26.06.1998, thus, must be held to have been filed within the prescribed period of limitation.

24. Having regard to the fact that the averments contained in the paragraph 3 of the plaint were not traversed, the same would be deemed to have been admitted by him in terms of Order VIII, Rule 5 of the Code of Civil Procedure.

In Gautam Sarup v. Leela Jetly [(2008) 7 SCC 85], this Court held:

> "14. An admission made in a pleading is not to be treated in the same manner as an admission in a document. An admission made by a party to the lis is admissible against him proprio vigore."

[See also Ranganayakamma and Another v. K.S. Prakash (D) By LRs and Others 2008 (9) SCALE 144]

25. For the reasons aforementioned, there is no merit in this appeal, which is dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.

.....J. [S.B. Sinha] .....J. [Dr. Mukundakam Sharma] New Delhi;

April 15, 2009