

Delhi High Court

Raminder Kaur Bedi vs Jatinder Singh Bedi on 22 November, 1988

Equivalent citations: 1989 (16) DRJ 154

Author: P Bahri

Bench: P Bahri

JUDGMENT P.K. Bahri, J.

(1) This Criminal Revision is brought under Section 397/401 of Criminal Procedure Code and is directed against order dated January 23, 1988 of Shri K.S. Pal, Metropolitan Magistrate, New Delhi by which he had directed stay of proceedings in a criminal complaint filed by the petitioner under Section 500 Indian Penal Code against the respondent till disposal of the petition brought under Section 25 and 27 of the Special Marriage Act by the respondent against the petitioner.

(2) The criminal complaint was filed by the petitioner who is wife of the respondent under Section 500 Indian Penal Code on the allegation that respondent has made grossly defamatory false allegations against the petitioner in the petition filed by respondent seeking divorce from the petitioner on the ground of adultery and such allegations have effected the reputation of the petitioner in the eyes of the people and has lowered the petitioner in the esteems of the members of the society in which the petitioner is accustomed to move.

(3) It appears that after recording preliminary evidence the Magistrate had issued summons to the respondent and the said order of the Magistrate was challenged by the respondent by filing the criminal revision petition in this court in which a statement was made by the counsel for the respondent (petitioner in that case) that an application would be moved before the Magistrate seeking stay of the criminal case till the disposal of the civil matter. After the necessary order of stay was made by the Magistrate the said petition seeking quashment of the proceedings in the Criminal Complaint was withdrawn and dismissed.

(4) In the impugned order the Magistrate had opined that the interest of justice require that the criminal proceedings should be stayed in as much as respondent is liable to be prejudiced in the trial of his divorce petition if criminal proceedings are continued simultaneously Along with divorce case He has opined that the findings to be given in the divorce case would have a lot of bearing on the criminal proceedings. It is indeed not disputed before me that if the respondent in the divorce petition is able to show on merits that allegations made by him as ground for seeking divorce are correct then obviously the respondent would not be liable to be convicted for offence of defamation. As a matter of fact, the result of the civil proceedings would be determinative of the criminal complaint pending before the Magistrate.

(5) The counsel for the petitioner, however, has vehemently contended that it is settled law that the criminal proceedings particularly should take place expeditiously and it should not be stayed till the disposal of the civil matters. He places reliance on M.S. Sherieff & Anr. v-State of Madras & Ors., , Kishore Kumar & Ors. v. The State 1983(23) D.L.T. 121, and unreported decision of this Court in Criminal Revision No. 334/73 decided on June 7, 1984 by Prithvi Raj, J.

(6) The Supreme Court in the aforesaid case has laid down that as between civil and criminal proceedings criminal matters should be given precedence but no hard and fast rule can be laid down and the possibility of conflicting decision of the Civil and Criminal Courts is not a relative consideration. The Supreme Court further observed that the public interest demands that the criminal justice should be as swift and sure and 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 and another reason is that it is undesirable to let things slide till memories have grown too dim to trust. However, the Supreme Court itself held that this, however, is not a hard and fast rule and special consideration obtaining in any particular case might necessitate some other course more expedient and just. It was also laid down that if simultaneous prosecution of the criminal proceedings, then civil suit will embarrass the accused and that civil suit should be stayed till criminal proceedings have finished. In the two cases decided by this court mentioned above on the same facts civil suits were filed which were about the subject matter of criminal offences to be tried by the Criminal Courts and it was held in one case that the criminal proceedings need be quashed as the controversy was of civil nature. However, I am afraid that these three judgments cited by learned counsel for the petitioner are not to the point. No case has been brought to my notice by the learned counsel for the petitioner where a crucial question which was to be decided by the civil court and was to be subject matter of criminal proceedings then the stay of criminal proceedings was not granted. The criminal trial in the present circumstances is bound to prejudice the case filed by the respondent seeking divorce from the petitioner on the ground of adultery. Respondent is yet to appear as a witness in that case of divorce and yet to examine his witnesses. It has also not to be forgotten that in case the respondent is to succeed in proving his allegations made by him in his divorce case then the same would furnish him good defense against the charge of defamation in view of the provisions contained in Section 499 Indian Penal Code. It is a matter of fact that the result of the divorce petition would have ample bearing on the criminal case. In such a situation the interest of Justice, in my opinion, requires that the criminal case should be stayed till disposal of the divorce case. In *Major Singh & Ors., v. State of Punjab*, 1986 (1) Chandigarh Law Reporter 445 charges were brought against the accused under sections 419/465/468/471 Indian Penal Code alleging that he had forged sale deed by impersonating the Vendor. Identical questions arose in the civil suit which was finally decided in favor of the accused. It was held that the findings given in the civil suit on merits were binding on the Criminal Court and the charges are liable to be quashed. In *Rajender Kumar Ruia v. State of West Bengal*, 1969 Criminal Law Journal 243 the facts were that the accused were charged with criminal breach of trust with regard to certain items, The question had been determined by a competent Civil Court. It was held that the judgment of the Civil Court would be the best evidence of the civil rights of the parties and the complaint ought not to be proceeded with during the pendency of the civil proceedings. It was held that if a civil proceeding has terminated determining the civil rights in favor of the accused, the criminal proceedings must be dropped since its continuation would be an abase of the process of the court. In *Yelchuri Ranganayakalu Chetty & Anr. v. Gopala Chetty*, almost all the cases on the subject were noticed and the Learned Judge deduced certain broad features from all these cases which have to be kept in view while deciding whether stay of criminal proceedings should be granted or not till the disposal of a civil suit. One of the factors to be taken into consideration as laid down in this judgment is "Has the civil suit been filed before the institution of the criminal proceedings and it does appear that the decision in the former will be of value in arriving at the truth in the criminal

case?" It was observed that where disputes in criminal proceedings and civil suit were intimately connected and the civil suit was prior in time and common issues were capable of being decided more properly in civil suit, criminal case should be stayed. I need not notice all the other cases referred to in this judgment because to my mind the issue admits of , two opinions in as much as it is quite evident that the divorce petition filed earlier in time contains the impugned allegations which are subject matter of complaint filed subsequently for prosecution of the respondent. The decision in divorce will have an important bearing on the result of the criminal case. The matrimonial forum is best suited to decide the matrimonial offences. Till the final decision is given by the Matrimonial Courts which decision will be a judgment in rem, it is not in interest of justice that a criminal complaint filed by the petitioner seeking conviction of the respondent for defamation on the same facts should be proceeded with. In *Jehangir Pestonji Wadia v. Framji Rustomji Wadia*, 1928 (28) Criminal Law Journal page 1053 the Bombay High Court had held that if the object of the criminal proceedings in a private prosecution is to prejudice the trial of the civil suit or use the same as a lever to coerce the accused into a compromise of the civil suit, criminal proceedings can be stayed till decision of the civil suit. So, in my opinion, the order of the Magistrate is well based and is a just order to be passed in such like cases and does not call for any interference by this Court by exercising its revisional power under Section 397 of Cr. Procedure Code or even in inherent power under Section 482 Criminal Procedure Code.

(7) The counsel for the respondent has prayed that in exercise of suo moto powers of revision, this Court should quash the criminal proceedings. I do not understand as to why the criminal proceedings should be quashed because if ultimately the respondent fails to prove his serious defamatory allegations against the petitioner which are basis of the grant of divorce, the respondent can not escape the criminal liability which shall be determined in the criminal case. The judgment cited by learned counsel for the respondent himself, in *Mr. McGill v. Mr. Byrne*, 1912 (13) Criminal Law Journal 25 goes against the aforesaid contention of the learned counsel for the respondent. It was held in this judgment that in considering the provisions of Indian Penal Code, the Code is not be frittered away by reference to English cases laying down a different principle. It was held that the English rule that the parties have absolute privilege in cases of defamation does not apply proprio vigore in India. It was laid down that where a certain statement made in a petition for divorce filed in a Court is alleged to amount to defamation, the case must be decided not with reference to rules of English Law but with reference to Section 499 of the Indian Penal Code. Another judgment cited by learned counsel for the respondent, *Hrishikesh Sanyal v. A. P. Bagchi*, 1941(42) Criminal Law Journal 211 also goes against the respondent. In the cited case an uncle of a minor had applied for appointment as Guardian. Objector filed an affidavit making imputations against character of the applicant. The applicant had filed a complaint under section 500 Indian Penal Code against the objector and took a plea that filing of the complaint amounted to Contempt of Court, as the same has been filed during the pendency of the guardianship proceedings. It was clearly held that it did not amount to Contempt of Court. Counsel for the respondent has also made reference to *Satish Chandra Chakrabarti v. Ram Dayal De*, 1921 (22) Criminal Law Journal p. 31 which is a judgment on a totally different aspect. The question arose for decision that the case was as to whether an accused is entitled only to the qualified privilege mentioned in Section 499 of the Act on being prosecuted for defamation ? It was observed that where a party to a judicial proceeding is sued in a court for defamation in respect of his statement made therein on oath or otherwise his liability in the absence

of statutory rules applicable to the subject must be determined with reference to the principles of Justice, Equity and Good Conscience. However, it was made clear that dismissal of an application for sanction under section 195 of the Criminal Procedure Code is no bar to the institution of a prosecution for defamation. I do not understand how this judgment is of any help in support of the contention of the learned counsel for the respondent that the criminal case should be quashed. Lastly I may refer to *Mishri Lal v. Tola Ram*, 1984Rajdhani Law Reporter, 125. In the said case a complaint had been filed making allegation of fraud and forgery and using of forged documents as genuine and the charges were framed and petition was filed under Section 482 of the Criminal Procedure Code seeking that the said charges be quashed. It was found that civil proceedings had been instituted wherein the question of fraud and forgery of the documents was to be decided. The High Court held that a possible solution to the subject matter is to keep the complaint pending till decision of the civil suit. So keeping in view the above discussion I conclude that the Magistrate was right in staying the criminal case till the disposal of the divorce petition.

(8) The counsel for the respondent has also raised preliminary objection to the maintainability of the Criminal Revision as he pointed out that the impugned order staying the criminal complaint is an interlocutory order and it does not decide any matter between the parties. Counsel for the petitioner on the other hand has vehemently argued that by the impugned order the trial of the criminal case has been brought to standstill and it affects the interest of the petitioner and the same cannot be treated as an interlocutory order. The expression interlocutory order denotes order of purely interim or of temporary nature which did not decide or affect the more important rights or liabilities of the parties, but an order which substantially effects the rights of the accused or of the party or decides certain rights of the parties the same cannot be said to be an interlocutory order so as to bar the revision to High Court against that order. An interlocutory order though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals it may thus be conclusive with reference to the stage at which it is made. In *Madhu Limaye v. State of Maharashtra*, these principles have been enunciated in order to see whether a particular order is interlocutory in nature or not. It was clearly held by this judgment that the intention of the Legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". The counsel for the respondent made reference to *V.C. Shakla v. State through C.B.I.*, . I have gone through this judgment and find that no other different criteria has been laid down in it for seeing whether a particular order is interlocutory in nature or not. In this judgment it was held that an interlocutory order merely decide some point or matter essential to the progress of the suit or collateral to the issues sought to be decided but not a final decision or judgment on the matter in issue while the intermediate order is one which is made between commencement of an action and the entry of the judgment. No hard and fast rule can be laid down in order to determine whether a particular order is an interlocutory order or not. However, the order which is impugned by filing revision petition has to be seen and as in what context it has been made and whether it affects the rights of the parties or not in order to determine whether the same is an order which can be challenged by filing a Revision and does not fall in the category of interlocutory order. An order of the moment which has lot of implications affecting the rights of the parties definitely would not be covered by the term interlocutory order. In *Janeshwar Devi Dutt v. Ved Singh & Ors.* 1980 Allahabad Law Journal 119 an order refusing to stay proceedings under Section 137 Criminal Procedure Code was held to be open to challenge by filing a Revision under Section

397.

(9) The impugned order, in my view, cannot be covered by the term interlocutory order because it puts the criminal trial in a cold storage. So, I repel the preliminary objection raised by the learned counsel for the respondent. However, on merits I uphold the impugned order. I dismiss the criminal revision.