

Dharmeswar Kalita Vs. the State

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Court : Guwahati

Decided On : Mar-16-1951

Judge : Thadani, C.J. and Ram Labhaya, J.

Appellant : Dharmeswar Kalita

Respondent : The State

Prior history : Ram Labhaya, J. 1. The petitioner, Dharmeswar Kalita, was summoned on a complaint from Jubaraj Medhi, Inspector of Police, Special Police-Establishment, Government of India, Shillong. The complaint was under Section 420 read with Sections 511 and 471, Penal Code. A co-accused of the petitioner was Jogendranath Chakravarty. The petitioner applied to the Court for the stay of the proceedings on the complaint. He also objected to the competency of the proceedings on the ground that the complainan

Judgement :

Ram Labhaya, J.

1. The petitioner, Dharmeswar Kalita, was summoned on a complaint from Jubaraj Medhi, Inspector of Police, Special Police-Establishment, Government of India, Shillong. The complaint was under Section 420 read with Sections 511 and 471, Penal Code. A co-accused of the petitioner was Jogendranath Chakravarty. The petitioner applied to the Court for the stay of the proceedings on the complaint. He also objected to the competency of the proceedings on the ground that the

complainant had no authority to institute the complaint. His prayer for stay was refused and his objection was disallowed. He has invoked the revisional jurisdiction of this Court with a view to having the proceedings quashed. He has also prayed, as the alternative, for stay of the proceedings till the disposal of the civil suit instituted by him.

2. The case disclosed in the complaint was that the petitioner Dharmeswar Kalita was a Military Contractor during the war period. His co-accused Jogendranath Chakravarty was a Store, Munshi at Niamati M.E.S. Stores. In 1945, the Divisional Forest Officer, Sibesar, invited tenders for supply of Jati Bamboos. The petitioner submitted his tender. This was accepted and he was given an order to supply 5000 Jati Bamboos according to the terms of the contract dated 14th June 1946 at the rate of Rs. 22 per thousand besides transport charges. Bamboos were to be delivered at Niamati M.B.S. Store and the supply was to be completed before 15th July 1945. The petitioner submitted a bill to the Divisional Forest Officer, Sibesar, claiming payment for the supply of 4617 Jati Bamboos alleged to have been supplied on four different dates in August 1945. His bill was supported by receipts granted by accused 2 (Jogendranath Chakravarty). The Sub-divisional Officer, Panitola M.E.S. in the course of his verification of the alleged supply, found certain discrepancies in the accounts and on his report a Court of inquiry was held. They found that no supply at all had been made by the petitioner. The complainant also investigated the case and came to the same conclusion. He examined the ledger for the minor forest produce containing the entries showing the alleged supplies. His conclusion was that the entries in the ledger were interpolated. He has alleged further in the complaint that Jogendranath Chakravarty, the co-accused of the petitioner, had no authority to accept any supply or to grant any receipt during the relevant period.

3. The case for the prosecution in short is that the petitioner never supplied the bamboos he undertook the supply and that his claim which was entirely false was supported by false receipts and records which had been falsified.

4. The petitioner's contention is that he supplied 4617 Jati Bamboos and had obtained receipts from the officer who actually received them. He then submitted

his bill and as it was not paid, he served notices under Section 80, Civil P.C., on the Government of India and the Government of Assam. Even this brought him no redress. He then instituted suit claiming Rs. 4,367 against the Government of India and the Government of Assam on 17th June 1948 in the Court of the Ex-officio Sub-Judge, Sibsagar, where the case is still pending. He has also pointed out that the defendants took 14 adjournments covering a period of one year and five months to file their written statement. It was filed on 12th January 1950, about two years after the institution of the suit.

5. No valid reasons have been given for quashing the complaint or the proceedings that have been taken on it. The case set up in the complaint is that no delivery at all was made of the bamboos billed for and that evidence in support of the bill consisting of the receipts and the interpolated books was false and fabricated. If allegations made in the complaint could be proved, the petitioner would be found guilty of some offence or offences. This is not disputed. No other ground has been suggested on which we could justifiably order that the complaint itself be quashed.

6. It has next been urged that the petitioner can reasonably ask for the stay of the criminal proceedings in the circumstances of this case.

7. We think here the learned Counsel stands on a surer footing. The civil suit was instituted about 2 years before the complaint was lodged. The written statement in the civil suit was put in after a long time. The allegation of the petitioner that defendants (Government of India and the Government of Assam) were responsible for the inordinate delay has not been challenged. The crucial question in both the Courts, Civil and Criminal, is whether 4617 Jati Bamboos was supplied by the petitioner to the Government or not. This question is admittedly common in the proceedings in the two Courts. A decision in the Civil Court in favour of the petitioner would bind the Government. In coming to a decision on this point, the civil Court will have to consider whether documents relied on in support of the bill support the claim of the petitioner or not. It is alleged in the complaint that the receipts relied on are false and the books have been interpolated or forged. These questions are appropriate for a decision by a Civil Court. The balance of

convenience would, therefore, be in favour of the Criminal Court staying its hands, till the Civil Suit is finally disposed of. Besides, this course has the undoubted merit of avoiding any possible conflict between the decisions of the two Courts which if it came about would necessarily bring the administration of justice into ridicule. There is thus a good case for ordering stay of the criminal proceedings till the decision of the Civil Suit.

8. Section 344, Criminal P.C., authorises postponement or adjournment of a criminal case from time to time. Any stay of proceedings for an indefinite period is not contemplated by it. The High Court, however, has got inherent power which has been recognised in Section 561-A, Criminal P.C., to make orders for preventing the abuse of the process of any Court or otherwise to secure the ends of justice. In the exercise of this inherent power, the High Court can order stay of the proceedings till the final decision in the Civil Suit. It is not necessary to direct that the trial-Magistrate should order stay of the proceeding from time to time under Section 344. Even independently of Section 561-A, the High Court will have power to stay proceedings pending in an inferior criminal Court in the exercise of its power of superintendence under Article 227 of the Constitution of India. The High Courts had this power under Section 107, Government of India, Act, 1915. Section 224, Government of India Act, 1935, restricted the exercise of the power of superintendence which the High Courts enjoyed under the Government of India Act, 1915, but the Constitution of India has not only restored but enlarged this power so as to include within its ambit Courts and Tribunals which are not subject to the appellate jurisdiction of the High Court.

9. In *Molhu Rai v. Emperor* A.I.R. (24) 1937 Pat. 8, a criminal complaint by a defendant in a civil suit was stayed. The civil suit was based on a hand note. The defendant alleged that the hand-note had been procured by means of fraud. He instituted a complaint against the plaintiff. At his instance criminal proceedings were stayed till the decision of the civil suit. The balance of convenience formed the basis of this decision.

10. In *Sri Kisson Beriwallav v. Emperor* A.I.R. (22) 1935 Cal. 182, it was held that issues in the criminal case were likely to be included in the issues in the civil Suit

which was ripe for hearing. The criminal case was ordered to be stayed. Avoidance of the risk of a conflict of jurisdiction was one important reason given in the support of the order. In the case before us the civil suit has been ordered to be placed in the ready list.

11. In *Faiz Muhammad v. Abbas Jafferli* A.I.R. (22) 1935 Sind 187, it was held that where disputes in a criminal proceeding and civil suit were intimately connected and the civil suit had been instituted before the complaint, the criminal case should be stayed if common issues were capable of being decided more appropriately in the civil suit.

12. The civil suit was instituted long before the institution of the complaint. It cannot be said that it was instituted for the purpose of delaying the conduct of the criminal case. The mere fact that the claim made by the petitioner was the subject-matter of some investigation before the institution of the civil suit would not go to show that the civil suit was instituted mala fide. We do not think the ends of justice will suffer by postponement of the proceedings in the criminal Court.

13. We, therefore, order that the proceedings on the complaint shall be stayed till the final decision of the civil suit, which, we hope, will be expedited.

14. The Rule is made absolute.

Thadani C.J

15. I agree.