

In Re: N.F. Markur

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Court : Mumbai

Decided On : Apr-01-1914

Reported in : (1917)ILR41Bom1; 33Ind.Cas.633

Judge : Heaton and ;Shah, JJ.

Appellant : In Re: N.F. Markur

Judgement :

Shah, J.

1. The learned Magistrate has based his order on the ground that the judgment of the civil Court is irrelevant. It also appears from his order that he was under the impression that the decision of the civil Court was in favour of the accused only partially, that is, with respect to certain items only. But it is admitted before us that all the items in dispute between the parties have been dealt with by the civil Court and that the contentions of the accused with reference to all of them have been found to be correct. Under the circumstances it appears to me that the judgment of the civil Court is admissible in evidence. The accused is charged with criminal breach of trust with reference to certain items. It would be certainly relevant and important to know what the rights of the parties (that is, the complainant and the accused) are with respect to those items. 'Where the civil liability is determined by a competent Court, the judgment of that Court would be the best evidence of the civil rights of the parties, and, in my opinion, it is relevant and ought to have been

admitted in evidence. In this case the existence of the judgment in question is clearly a relevant fact.

2. It is next urged that the accused should be discharged on the strength of this judgment. It is not a matter, however, which we can properly deal with on this application. It will be for the Magistrate to consider the effect of the judgment on the case, and to deal with the accused's application to discharge him. We are informed, however, that the complainant has preferred an appeal to this Court against the decree of the First Class Subordinate Judge of Nasik; and it is suggested on behalf of the prosecution that the further proceedings on the pending complaint be stayed during the pendency of the civil appeal. The learned Counsel for the accused accepts this suggestion. Under the circumstances it is quite clear that the complaint ought not to be proceeded with during the pendency of the civil proceedings by way of appeal. I, therefore, set aside the order of the lower Court, and direct that the proceedings be stayed during the pendency of the appeal filed by the complainant.

Heaton, J.

3. I concur in the order proposed. I would just like to add a word or two on the very important matter of the admissibility of the judgment of the civil Court. I hold undoubtedly that it was admissible and for this reason. If we are to administer justice as a civilized country, if we are to avoid those conflicts between civil and criminal Courts which ordinarily must be fraught with evil and can produce no good, if, in short, we are to make the actual administration of justice in this country bear a proper relation to that which we profess it to be, then we cannot have criminal Courts trying over again matters which have been thoroughly dealt with and finally decided by a civil Court of competent jurisdiction. It may be that to this principle there would be rare exceptions founded on, possibly, the discovery of new, cogent and important evidence. But ordinarily that principle must prevail, and if that principle must prevail, then it is a matter of the first importance, of the very highest relevancy to show to a criminal Court that the matter which the criminal Court is asked to adjudicate on has already been fully dealt with by a civil Court. That is all it was proposed to do in this case by the production of the judgment of

the civil Court, and, I think, it was undoubtedly relevant and of the very highest importance. It was so, however, not for the purpose of proving or disproving facts in dispute in the case, but for the purpose of enabling the Magistrate to decide whether he should or should not exercise the discretion given him by Clause (2) of Section 253 of the Criminal Procedure Code.

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