

**Rajendra Kumar Vs. Sandhya**

**Rajendra Kumar Vs. Sandhya**

**SooperKanoon Citation :** [sooperkanoon.com/508056](http://sooperkanoon.com/508056)

**Court :** Madhya Pradesh

**Decided On :** Feb-27-1996

**Reported in :** II(1996)DMC142

**Judge :** R.D. Shukla, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 11 and 12; [Indian Penal Code \(IPC\), 1860](#) - Sections 420, 498A

**Appeal No. :** Civil Revn. No. 68 of 1993

**Appellant :** Rajendra Kumar

**Respondent :** Sandhya

**Advocate for Def. :** Z.A. Khan, Adv.

**Advocate for Pet/Ap. :** M.G. Upadhyay, Adv.

**Disposition :** Revision allowed

**Judgement :**

**R.D. Shukla, J.**

1. This revision under Section 115 of the Cr.P.C. is directed against the order dated 13.1.93 of District Judge, Rajgarh (Biora) passed in Hindu Marriage Case No. 19/91, whereby the learned Judge has refused to stay civil proceedings.

2. Brief history of the case is that non-applicant, who was married to applicant somewhere in January 90, has filed a petition under Sections 11 & 12 of Hindu Marriage Act for divorce and for return of property given to her during marriage. The respondent applicant (husband) made appearance and filed an objection that as the criminal proceeding is pending on same facts, the civil proceeding be stayed till disposal of the criminal case. The same did not find favour with the District Judge, hence, this revision.

3. The contention of the learned Counsel for the applicant is that since applicant (here) is being prosecuted for an offence under Sections 420, 498A of the I.P.C. & the Dowry Prohibition Act on the complaint of non-applicant (wife) and on the same grounds, therefore, any disclosure of defence by way of written statement is likely to embrace the accused and shall further jeopardise defence of accused applicant (here) and, therefore, the civil suit be stayed till disposal of the criminal case.

As against it learned Counsel for the non-applicant has submitted that cases under Hindu Marriage Act are required to be disposed of at the earliest and, therefore, the same does not deserve to be stayed. It has also been submitted that the civil case would be decided on the basis of preponderance of probability while the criminal case would be decided on the basis of certainty and, therefore, different degree of proof would be required in both the cases. Learned Counsel therefore strongly argued against stay of the suit.

4. This is not in dispute that FIR in the case was lodged on 11.6.91. The investigation was started and, thereafter, this petition has been filed on 30th June, 91 i.e., after filing of the complaint before the police. The challan in the case has been filed on 16.9.91. The allegations in criminal complaint and the petition for divorce are almost the same. The defendant (applicant here) is required to meet the allegations of similar facts in both the cases. If the applicant-defendant, who is an accused in criminal case is required to disclose the defence much before the prosecution evidence. The same is likely to cause embarrassment and is further likely to prejudice the defence. The Supreme Court in a case reported in A.I.R. 1954 S.C. 397 has laid down following principles regarding stay of proceedings :

'As between the civil and the criminal proceedings, the criminal matters should be given precedence. No hard and fast rule can be laid down but the possibility of conflicting decisions in the Civil and Criminal Courts is not a relevant consideration. 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 purpose, such as sentence or damages. The only relevant consideration is the likelihood of embarrassment. Another factor which weighs with the Court is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure 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.

Another reason is that it is undesirable to let things slide till memories have grown too dim to trust. This, however, is not a hard and fast rule. Special consideration obtaining in any particular case might make some other course more expedient and just . For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to prosecution ordered under Section 476.

Held that the simultaneous prosecution of the present criminal proceedings and the civil suits will embarrass the accused and that the civil suits should be stayed till the criminal proceedings have finished.'

5. In the opinion of this Court the principle laid down by their Lordships of the Supreme Court squarely applies in this case. Similar view was taken by this High Court in order dated 21.9.88 passed in C.R. No. 62/88, order dated 30.7.88 passed in C.R. No. 345/86 (1988 JLL 687) and order dated 16.1.81 passed in C.R. No 1170/80 (1981 JLL SN 24).

6. Learned Counsel for the non-applicant has referred to a case reported in AIR 1980 SC 1354 and submitted that like claim case under Motor Vehicles Act cases under H.M. Act require expedient disposal and, therefore, civil suit does not deserve to be stayed. In this case the non-applicant petitioner herself is

complainant in criminal case. Allegations in both (civil & criminal) case are similar. Subject matter of dispute is the same and, therefore, it would not be proper to compel the applicant (husband) to disclose his defence much before the close of prosecution evidence. In the opinion of this Court, therefore, this civil suit deserves to be stayed.

7. As a result, revision is allowed. The Civil Suit No. 19/91 is directed to be stayed till recording of evidence in Cri. Case No. 158/92 pending in the Court of JMFC Rajgarh (Biora). However, if parties enter in to a compromise and file at any compromise deed the same may be considered by the learned District Judge in accordance with law. Parties shall bear their own costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**