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State Vs. Forest Range Officer

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Court : Kerala

Decided On : Sep-04-1959

Reported in : AIR1960Ker148; 1960CriLJ593

Judge : T.K. Joseph, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 151

Appeal No. : Criminal Revn. Petn. Nos. 387 to 389 of 1958

Appellant : State

Respondent : Forest Range Officer

Advocate for Def. : Thomas P. Mathekkel, Adv. for Respondents Nos. 11 to 15 in Crl. R.P. No. 387/58,; T.M. Mahalingam Iyer

Advocate for Pet/Ap. : Public Prosecutor

Judgement :

1. When it came to the notice of this court that some cases pending in criminal courts were stayed by subordinate civil courts in the State, this Court suo motu issued notices to the parties concerned to show cause why such orders should not be quashed as having been passed without jurisdiction. Notice was given to the Advocate-General also. Criminal R. P. No. 387 relates to an order of stay Issued by the Additional District Judge of Parur in O. S. No. 3 of 1957 staying the trial of

C. C. No. 305 of 1957 of the Second Class Magistrate's Court of Thodupuzha. Criminal R. P. No. 389 is in respect of an order issued by the Sessions Judge, Trichur staying trial proceedings in C. C. No. 312 of 1957 of the Sub-Magistrate's Court, Parur. Criminal R. P. No. 388 relates to an order passed by the Additional District Judge of Parur in C. M. A. No. 70 of 1957 staying trial proceedings in C. C. No. 248 of 1957 of the Sub-Magistrate's Court, Parur. The 11th respondent in Criminal R. P. No. 387 who in the accused in C. C. No. 303 of 1957 alone has appeared. The Public Prosecutor was also present at the hearing.

2 The question which arises for decision is whether the subordinate civil courts have jurisdiction to stay proceedings pending in criminal courts. This question does not arise in Criminal R. P. No. 389 as the order was issued by the Sessions Judge pending decision of an application to transfer of a criminal case. In the two other cases the orders were passed by civil court trying civil actions.

3. There is nothing in the Code of Civil Procedure which confers jurisdiction on civil courts to stay proceedings pending in criminal courts between the parties to the civil litigation. Learned counsel for the 11th respondent in Criminal R. P. No. 387 stated that such orders could be passed under Section 151 of the Code of Civil Procedure. No doubt, civil courts have wide powers under Section 151 of the Code, to make orders for the ends of justice or to prevent abuse of the process of the courts. But in my opinion this will not include the power to stay proceedings pending in criminal courts. Reference was made to Harnam Singh v. Mt. Atri, AIR 1925 Lah 323(1), a case in which the High Court stayed proceedings under Section 476 of the Code of Criminal Procedure in respect of an offence of forgery.

In that case the subordinate Judge who tried a suit held that a receipt produced in evidence fey the defendants was forged and he issued notice to the defendants to show cause why they should not be prosecuted. During the pendency of the said proceedings the defendants preferred an appeal from the decree to the High Court and an application was made to the High Court to stay the proceedings under Section 476 of the Code of Criminal Procedure. An objection was raised on behalf of the respondents that proceedings under Section 476 being of a quasi-criminal nature, no application could he made under the Code of Civil Procedure. It was

held that the High Court had jurisdiction under Section 151 of the Code of Civil Procedure to issue order staying proceedings under Section 476. as the proceedings were pending in a civil court. There is an earlier decision of the Allahabad High Court in Kirpal Ban v. Ram Dei, 7 Ind Cas 260 (All) which supports this view. These decisions arc of no help in this case because the proceedings which were stayed in those cases were pending in the civil courts. My attention has not been drawn to any case under Section 151 recognising such power in civil courts. Apart from Section 151 there is no provision in the Code of Civil Procedure to which such power can be traced.

It must therefore be held that the subordinate civil courts have no jurisdiction to stay proceedings in criminal courts.

4. Wide powers have been conferred on the High Courts under Section 561A of the Code of Criminal Procedure, which provides as follows:

'561A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.'

These powers, no doubt, can be exercised by the High Court but not by the subordinate criminal courts which can adjourn cases from time to time. Thus Section 476(3) confers powers on Magistrates to adjourn the hearing of cases covered by that section when it is brought to their notice that an appeal is pending against the decree in the judicial proceeding out of which such cases have arisen. I have referred to this merely to show that in appropriate cases the hearing of criminal cases can be adjourned by the courts in which the cases are pending.

5. In the light of what is stated above the three revision petitions may be considered.

Crl. R. P. No. 389 of 1958: The order of stay was passed by the Sessions Court pending a petition to transfer a case from the court of a Sub-Magistrate. This order is not open to this objection as it is not a civil court which passed the order. I may

add that the order of stay has been vacated by the Sessions Court and no order is called for in this revision petition.

Crl. R. P. No. 387 of 1958: Here, the order staying the criminal case was passed by the Additional District Judge of Parur trying an original suit in respect of the land which forms the subject-matter of the criminal prosecution. The order is unsustainable and is quashed.

Crl. R. P. No. 388 of 1958: The order of stay was passed by the Additional District Judge in a Civil Miscellaneous Appeal pending before him. The order is without jurisdiction and is quashed.

6. The three revision petitions are disposed of as indicated above.

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