

Krishnan Vs. Chitran

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Court : Kerala

Decided On : Jun-03-2005

Reported in : 2005(3)KLT282

Judge : K.T. Sankaran, J.

Acts : [Limitation Act, 1963](#) - Sections 3, 4 to 24 and 29 - Schedule - Article 113; [Fatal Accidents Act, 1855](#); ;Code of Criminal Procedure (CrPC) - Sections 357, 357(1), 357(3) and 357(5) - Order 33, Rule 5

Appeal No. : C.R.P. No. 1140 of 1996

Appellant : Krishnan

Respondent : Chitran

Advocate for Def. : Vakkom N. Vijayan,; Vinitha Prasannan,; P.S. Nandan

Advocate for Pet/Ap. : C.M. Nazar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.T. Sankaran, J.

1. The petitioner in Indigent O.P. No. 1 of 1994, on the file of the Court of the Munsiff of Vaikom is the revision petitioner. The Court below rejected the Indigent O.P. on the ground that as on the date of the petition, the suit is barred by limitation.

2. The petitioner claimed a sum of Rs. 15,000/- as damages in the plaint. It is alleged that the respondents attacked the petitioner with dangerous weapons on 10.5.1985 and caused grievous injuries. The petitioner was taken to the hospital and after the treatment for 41 days, he was discharged from the hospital on 20.6.1985. Criminal proceedings were initiated against the respondents in C.C.No. 344 of 1985. The Criminal Court found the respondents guilty of the offence and convicted and sentenced them to undergo imprisonment. On appeal by the respondents, the Appellate Court acquitted respondents 3 to 7 and a lesser sentence was imposed on respondents 1 and 2. The High Court confirmed the decision of the Appellate Court in revision. The sentence was executed on 8.10.1993. The present suit is sought to be filed as an indigent person claiming damages of Rs. 15,000/- from the respondents in respect of the incident involved in the criminal case. It is stated in the plaint that the cause of action for the suit arose on 10.5.1985, 31.12.1988, 1.3.1991, 11.8.1992 and 8.10.1993, the dates being respectively the date of occurrence, date of the Trial Court judgment, the date of the appellate judgment, date of disposal of the Criminal Revision Petition by the High Court and the date of execution of the sentence.

3. The Court below held that the petitioner has no means to pay the court fee. However, the Court below held that the suit would be barred by limitation as the cause of action arose on 10.5.1985 and the Indigent O.P. was filed only on 11.2.1994. The Court below held that Article 113 of the Limitation Act applies and the period of limitation is three years from the date on which the right to sue accrues. The Court below rejected the contention of the petitioner that the right to sue accrued only on 8.10.1993, the date of execution of the sentence. The Court below also rejected the alternative contention that the right to sue accrued only on 11.8.1992, the date of disposal of the Criminal Revision Petition.

4. It is not disputed that Article 113 of the Limitation Act applies to the case and that the period of limitation is three years from the date when the right to sue accrued. It is also not disputed that the Trial Court is entitled to reject the application for permission to sue as an indigent person under Order XXXIII Rule 5(f) of the Code of Civil Procedure if the suit is barred by limitation as on the date of the filing of the Indigent O.P.

5. The counsel for the petitioner raised a contention that the period of limitation begins to run not from the date of occurrence but from the date of the final judgment by the High Court in Criminal Revision Petition. The reason for this submission, according to him, is based on Section 357 of the Code of Criminal Procedure.

6. Section 357 of the Code of Criminal Procedure (omitting unnecessary portions) reads thus:

'357. Order to pay compensation.--

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied--

(a) ** ** *(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the [Fatal Accidents Act, 1855](#) (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) ** ** *

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or

if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.'

7. Under Section 357 of the Code of Criminal Procedure, the Criminal Court may award compensation to the victim either under Sub-section (1) (b) or under Sub-section (3). When the Court imposes a sentence of fine or a sentence of which fine forms a part, the Court may award compensation to any person for any loss or injury caused by the offence under Clause (b) of Sub-section (1) of Section 357, if in the opinion of the Court compensation is recoverable by such person in a Civil Court. Even when the fine does not form part of the sentence, the Court may award compensation to the victim, payable by the accused person, as per Sub-section (3) of Section 357. It is not provided in Sub-section (3) of Section 357 that the person to whom compensation is to be awarded must be a person who could recover such compensation in a Civil Court, as is the case in Clause (b) of Sub-section (1) of Section 357 of the Code of Criminal Procedure. Sub-section (4) provides that the Appellate Court or the Revisional Court may also pass an order under Section 357. Relying on Sub-section (5) of Section 357, the counsel for the petitioner contended that since the Civil Court shall take into account any sum paid or recovered as compensation under Section 357 of the Code of Criminal Procedure, at the time of awarding compensation in the civil suit, it is to be held that the period of limitation for filing the suit starts from the date of disposal of the criminal case. Therefore, it is contended that the victim could wait till the disposal of the criminal case and his right to file a civil suit for compensation could be

reckoned from the date of disposal of the criminal case.

8. I do not agree with the contentions raised by the counsel for the petitioner on the question of limitation, for the following reasons;

The [Limitation Act, 1963](#) is an exhaustive Code. In *A.S.K. Krishnappa Chettiar and Ors. v. S. V. V. Somiah @ Navniappa Chettiar and Anr.*, AIR 1964 SC 227 the Supreme Court held that:

'... The Limitation Act is a consolidating and amending statute relating to the limitation of suits, appeals and certain types of applications to Courts and must, therefore, be regarded as an exhaustive Code. It is a piece of adjective or procedural law and not of substantive law. Rules of procedure, whatever they may be, are to be applied only to matters to which they are made applicable by the legislature expressly or by necessary implication. They cannot be extended by analogy or reference to proceedings to which they do not expressly apply or could be said to apply by necessary implication....'

In *Nagendra Nath Dey and Anr. v. Suresh Chandra Dey and Ors.*, AIR 1932 PC 165, the Privy Council held:

'The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide.'

In *General Accident Fire & Life Assurance Corporation Ltd. v. Janmahomed Abdul Rahim*, AIR 1941 PC 6, the following passage from Tagore Law Lectures was quoted with approval:

'A law of limitation and prescription may appear to operate harshly or unjustly in particular cases, but where such law has been adopted by the State.... it must if unambiguous be applied with stringency. The rule must be enforced even at the risk of hardship to a particular party. The Judge cannot on equitable grounds enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognized by it.'

The Privy Council in the said decision held:

'Very little reflection is necessary to show that great hardship may occasionally be caused by statutes of limitation in cases of poverty, distress and ignorance of rights; yet the statutory rules must be enforced according to their ordinary meaning in these and in other like cases.'

The decisions in AIR 1932 PC 165 and AIR 1941 PC 6 were quoted with approval in *Bootamal v. Union of India*, AIR 1962 SC 1716.

9. In *Balakrishnan v. Mohammed Basheer and Ors.*, 1999 (3) KLT SN 68 = 1999 (2) KLJ 758 this Court held that:

'The law of limitation is not an equitable statute. It is a statute of repose. It is enacted pursuant to a public policy that legal rights ought to be enforced through Courts within a time frame and stale causes of action should not be permitted to be agitated.'

10. There is no law of limitation outside the Limitation Act excepting specific provisions of limitation for suits or proceedings contained in some specified Acts. The Limitation Act forbids suits or proceedings being brought after the period prescribed which commences from some definite event. 'Period of limitation' as defined in the Limitation Act means the period of limitation prescribed for any suit, appeal or application by the Schedule and 'prescribed period' means the period of limitation computed in accordance with the provisions of the Limitation Act. The purpose of the Limitation Act is not to give a right where there is none. It is intended to impose a bar on filing suits and initiating proceedings after a certain period. Section 29 of the Limitation Act provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. Section 3 of the Limitation Act is peremptory; every suit

instituted, appeal preferred and application made, after the prescribed period shall be dismissed, although limitation has not been set up as a defence. If any special or local law prescribes a period different from the period provided in the Limitation Act, the period of limitation provided in such special or local law would apply. It cannot be said that Section 357 of the Code of Criminal Procedure provides for a period of limitation different from the period prescribed by the Schedule to the [Limitation Act, 1963](#). In fact, no period of limitation is provided in Section 357 of the Code of Criminal Procedure. Therefore, there is no question of any period of limitation being different from the period of limitation provided in the Limitation Act.

11. It is a well-settled principle of interpretation of statutes that the provisions of a statute ought not to be used for the purpose of defeating the legislative mandate of another statute. The provision for awarding compensation under Section 357 of the Code of Criminal Procedure does not have any relevance in computing the period of limitation for filing a suit for compensation. Sub-section (5) of Section 357 of the Code of Criminal Procedure which provides that at the time of awarding compensation in the civil suit, the Court shall take into account any sum paid or recovered as compensation, does not govern the period of limitation for filing the suit. It has relevance only in fixing the compensation to be paid to the plaintiff in the suit. Such a provision of law which has only such relevance in the matter of fixation of the quantum of compensation cannot be interpreted as governing the period of limitation. The suit for compensation is to be filed within the specified period from the date of accrual of the cause of action. It cannot be said that the cause of action for filing a suit for compensation would accrue on the disposal of the criminal case in which compensation is awarded under Section 357 of the Code of Criminal Procedure. The chance of the Criminal Court awarding compensation to the victim under Section 357 of the Code of Criminal Procedure would not constitute a cause of action for filing a suit for compensation. On the other hand, the cause of action for the suit is the tortious act and not the awarding of compensation under Section 357 of the Code of Criminal Procedure. In a given case, the Criminal Court may or may not grant compensation even after holding that the accused person is guilty and liable to sentence of fine. Or, in a case where no fine is imposed, the Criminal Court may or may not be inclined to grant compensation to the victim under Sub-section (3) of Section 357 of the Code of

Criminal Procedure. The award of compensation under Section 357 of the Code of Criminal Procedure is only a chance and not a specified certain event. It does not create a cause of action for the awardee of compensation for claiming more compensation. It does not take away or abridge the accrued right of the victim to claim compensation. When a right to institute a suit accrues, nothing prevents the running of the period of limitation. In the criminal case, the final report may be filed by the police after quite some time from the date of the incident. The cause of action for filing a suit for compensation accrues on the date of the incident in which the plaintiff suffers loss or injury and the period of limitation for filing the suit for compensation begins to run from that date. The initiation of criminal proceedings would not stop the running of the period of limitation for filing the suit. Period of limitation does not get arrested by the pendency of the criminal proceedings. No exclusion of the period of limitation is possible under the Limitation Act to exclude the period covered by the pendency of the criminal proceedings. Awarding compensation under Section 357 of the Code of Criminal Procedure is in the discretion of the Criminal Court. Compensation may or may not be granted by the Criminal Court. It does not govern the proceedings in the civil suit. The only relevance of the compensation being awarded in the criminal case is on the question of the quantum of compensation to be awarded in the civil suit. If the civil suit has already been disposed of before the disposal of the criminal case and compensation has already been awarded to the plaintiff, that may be a ground for denying compensation under Section 357 of the Code of Criminal Procedure; or it may be a ground even for not imposing fine out of which compensation could be awarded to the victim. It is well-settled that a finding by the Criminal Court is not binding on the Civil Court. Section 357 is an exception to the said rule to the limited extent of the judgment of the Criminal Court being relevant for the fixation of the quantum of compensation in the civil suit for damages.

For the reasons stated above, I am of the view that the Court below was justified in rejecting the Indigent O.P. No interference is called for in this revision. The Civil Revision Petition is accordingly dismissed. No order as to costs.