

Laya Vs. Sumesh

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Court : Kerala

Decided On : Aug-04-2006

Reported in : 2006(4)KLT517

Judge : K.R. Udayabhanu, J.

Acts : Indian Penal Code (IPC) - Sections 498A; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 309 and 309(2)

Appeal No. : W.P. (C) No. 7936 of 2006

Appellant : Laya

Respondent : Sumesh

Advocate for Def. : K. Ramakumar and; Saritha David Chungath, Adv.

Advocate for Pet/Ap. : Denizen Komath, Adv.

Disposition : Petition dismissed

Judgement :

K.R. Udayabhanu, J.

1. The relief sought for by the de facto complainant in C.C.No.1883/2002 with respect to the offence under Section 498A, I.P.C. is an order directing the Additional Chief Judicial Magistrate, Ernakulam to stay the above proceedings in

exercise of the power under Section 309 Cr.P.C. till the disposal of the civil disputes in the Family Court, Ernakulam in O.P. No. 114/2003 & O.P. No. 115/2003. The proceedings initiated by the petitioner pending before the Family Court are with respect to dissolution of marriage and realisation of money and gold ornaments respectively. The O.Ps. before the Family Court are being tried jointly and the matter is in the process of trial and some of the witnesses have been examined. The petitioner moved the court of Additional Chief Judicial Magistrate to stay the criminal proceedings till the disposal of the above matters in the Family Court, but was bluntly turned down as per order in M.P. No. 1125/2005 on the ground that it appeared that the attempt of the petitioner is only to protract the matter. The court below has rested its finding on the premise that Section 309 Cr.P.C. is enacted for speedy trial and the proposition to stay the proceedings is not intended to be advanced under Section 309 Cr.P.C. The above reasoning according to the petitioner, is facile down right and deeply flawed.

2. Mr. Denizen Komath, counsel for the petitioner has relied on the decisions reported in *Vasu Vydier v. State of Kerala* 1974 KLT 24 and *Madhavan Nambiar v. Bharathan* 1995 (1) KLT 591. In the former decision, this Court has exhaustively considered the point in question and has also referred to the decisions relevant mainly the judgment of the top court in *M.S. Sheriff v. The State of Madras and Ors.* AIR 1954 SC 397.

3. On the other hand, Mrs. Saritha David Chungath, counsel for the respondent opposing the petition has brought to the notice of this Court the judgment in *Ramachandra Iyer v. N.C. Menon* 1961 KLT 419 and has also based her contentions on the decisions cited by the counsel for the petitioner, particularly the judgment in *M.S. Sheriff's case* (op.cit). It was also pointed out that in the above cases it is the accused who had moved the court seeking stay of the criminal proceedings and that the petitioner prosecuting the matter herein herself has moved the court which is on account of a misplaced perception of the legal position and evidently hellbent to harass the respondent/accused.

4. The Supreme Court in *M.S. Sheriff's case* (op.cit) has held that no hard and fast rule can be laid down although criminal matters should be given precedence is the

general principle. Possibility of conflicting decisions in civil and criminal proceedings is also a relevant consideration. The law envisages such an eventuality as it has been expressly refrained from making the decision of one such court binding on the other, or even relevant, except for certain limited purposes such as sentences or damages. The only relevant consideration is the likelihood of embarrassment. It was also pointed out that criminal justice should be swift and sure and 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, before responses get blunted, witnesses pass away and the will to unearth truth weakens. The court in Ramachandra Iyer's case (op.cit) has quoted the decisions of the Madras High Court, Chitralla Ramiah v. Natukula Ramiah AIR 1927 Mad. 778 and Gnanasigamani Nadar v. Vedamuthu Nadar 52 MLJ 80 to the effect that criminal charge should not be kept hanging indefinitely over the head of a person and that the inherent risk of conflicting decisions of civil and criminal courts as such should not be the basis to stay the criminal proceedings. It is also pointed out that the principle that govern the criminal court is that guilt must be established beyond all possibility of doubt, but the civil court weighs probability. But in case if it appears that the criminal proceedings have been initiated just to prejudice the trial of the civil suit or to use the same as a lever to coerce the accused into a compromise of the civil suit, the criminal proceedings can be stayed under Section 309(2) Cr.P.C. till the decision of the civil suit is pronounced. That it why as rightly pointed out by the counsel for the respondent, it is the accused who has resorted to the provision always.

5. It comes out of the above decisions that in appropriate cases the court is empowered to stay the proceedings till the disposal of the civil case and the court is competent in such circumstances to invoke the power under Section 309(2) Cr.P.C. although there cannot be an inexorable formula, straight jacket prescription on inflexible rules in its application. Hence the diverse view point of the court below that Section 309 did not envisage such a power is in conflict with the precedents. All the same, in the instant case I find that the trial of the civil case has commenced and is in mid way. Further considering the nature of the reliefs

sought in the civil proceedings and the allegations in the criminal case, it cannot be held that the de facto complainant would be prejudiced in any way if the trial of the criminal case is commenced right now. The case set up for staying the criminal proceedings till the disposal of the civil cannot be endorsed.

Hence, the Writ Petition is devoid of merit and is hereby dismissed.

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