

Keshrimal Vs. the State

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SooperKanoon Citation : sooperkanoon.com/754167

Court : Rajasthan

Decided On : Jan-23-1952

Reported in : AIR1953Raj198

Judge : Wanchoo, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 344

Appeal No. : Criminal Ref. No. 335 of 51

Appellant : Keshrimal

Respondent : The State

Advocate for Def. : Mansharam, Govt. Adv.

Advocate for Pet/Ap. : Mangimal, Adv.

Disposition : Reference rejected

Judgement :

ORDER

Wanchoo, C.J.

1. This is a reference by the Sessions Judge of Balotra recommending that a criminal case pending against the applicant Keshrimal be stayed pending disposal of a civil suit brought by Keshrimal against Saifal and his brothers.

2. The facts of the case are these. Saifal made a report to the police on 22nd of June 1950 that he had been cheated and that Keshri-mal had executed a 'farkhti' in his favour a few days before and antedated it to a date in March 1949. This matter was enquired into by the police and Keshrimal was prosecuted. A charge under Section 465 of the Indian Penal Code has been framed against Keshrimal by the Magistrate. In the meantime, Keshrimal filed a civil suit against Saifal and his brothers for the recovery of a large sum of money and that suit is pending, in the court of the Civil Judge. In the civil suit, Saifal has raised a plea that the 'farkhti', which bears to date in March 1949, was really executed in June 1950 and, therefore, nothing remains due from him to Keshrimal. In this way, the question whether the 'farkhti' was antedated arises both in the civil court and the criminal court. If the antedating is proved, there will be a conviction in the criminal court, while in the Civil Court, the suit will be dismissed. If on the other hand, the antedating is not proved, there will be an acquittal in the criminal court and the civil suit will be decreed. Obviously, therefore, the two matters are intimately connected and the question arises whether the criminal case should be stayed pending disposal of the civil as recommended by the learned Sessions Judge.

3. The learned Judge has relied on two old cases -- 'Bhojararn v. Emperor', 13 Ind Cas 927 (Lah) (A) and -- 'Janki Das v. Emperor', AIR 1922 Lah 424 (B). In addition to these cases, learned counsel for Keshrimal has also cited another case -- 'Mohlu Rai v. Emperor', AIR 1937 Pat 8 (C) but that case is easily distinguishable because the complaint in that case was filed after the complainant had been served with a notice of the civil suit as a defendant.

4. The question, whether a criminal case should be stayed because there is a civil suit pending about the same matter, has been the subject of debate among the various High Courts of India and it is now the accepted view that there is no invariable rule that a criminal proceeding should be stayed pending the issue of a civil suit, but that the matter was entirely one of discretion of the court to be exercised having regard to the merits and all the circumstances of the case. I consider it unnecessary to cite authorities in support of this well settled rule. I may, however, refer to one case of the Lahore High Court -- 'Bashesar Nath v. Ratan Chand', AIR 1933 Lah 37 (D) where the same rule has been laid down. Another

case to which reference may be made is -- 'Panna Lal v. Emperor', AIR 1943 All 14 (E) in which the civil suit was filed first and the criminal complaint was filed five months later and still the High Court refused to stay the criminal proceedings. I must, however say, with due respect, that this is an extreme case but it shows that the present trend of authorities is that each case should be considered on its own merits and a. criminal case should not be stayed because a civil suit had been filed unless a clear case is made out for such stay as for example, when it appears that the criminal proceeding was instituted with the motive of hampering conduct of civil proceeding. The reason why criminal proceedings should not generally be stayed pending result of civil proceedings is that there would be a good deal of delay in the disposal of criminal cases it may be possible for a clever person by means of well designed proceedings to stay off his prosecution for years and years.

5. It has, therefore, to be seen whether in this case Keshrimal has made out a clear case for stay of criminal proceedings pending disposal of the civil suit brought by him. The first point to be noticed in this connection is that the criminal proceedings were first instituted and the civil suit came a month or so after the criminal proceedings. It cannot, therefore, be said that the criminal proceedings in this case were instituted with the motive of hampering the conduct of the civil proceedings. Further, it may be mentioned that the prosecutor in this case is the State and where public prosecutions are concerned, the matter has to be looked at with even greater care. It is obvious that the criminal court will not be bound by the findings of the civil court as the judgment of the civil Court will not be a judgment in rem. There is, therefore, no clear case made out for the stay of criminal proceedings pending disposal of the civil suit filed by the applicant after the criminal proceedings were instituted against him. The reference is, therefore, rejected and the order of the Magistrate will stand.