

Jay Narayan Misra Vs. the State and ors.

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Court : Kolkata

Decided On : Mar-19-1965

Reported in : 1966CriLJ207

Judge : K.C. Sen and ;Das, JJ.

Appellant : Jay Narayan Misra

Respondent : The State and ors.

Advocate for Pet/Ap. : Mr. Mukherjee

Judgement :

Das, J.

1. This is an application under Section 439 of the Code of Criminal Procedure for staying the Criminal cases pending before the Special Judge, Midnapore until hearing of the civil suits pending before the Subordinate Judge of Midnapore.

2. On the 1st of January, 1953. there was an agreement between the petitioner, and the Government of West Bengal for transportation of paddy and rice from Contai and other places in the district of Midnapore to Calcutta. According to the prosecution, the petitioner committed criminal breach of trust in respect of hundreds of maunds of paddy and for the purpose, he entered into a conspiracy with the other opposite parties to commit criminal breach of trust. Investigation was

carried on by an Inspector of D. D. Calcutta and a case was registered at Section I. Police station of Calcutta on the complaint of the Director of Storage alleging criminal breach of trust, forgery, conspiracy and other cognate offences in respect of 17758 mounds and orders. of paddy valued at Rs. 193,340/12/-- The Chief Presidency Magistrate, Mr. D. N. Das Guptajnow Justice D. N. Das Gupta) however ultimately discharged the accused persons by his order dated 9th April, 1958. Thereafter a First Information Report was lodged at Contai Police Station on the 5th September, 1958 and a case for trial by the Special Judge was allotted by Government Order dated 15-1L19H3, On the 14th December. 1963, a Sub Inspector attached to the D. E B. Midna. pore lodged a complaint before the Judge, Special Court, Midnapore against the present petitioner and other accused persons starting a case for offences under Ss, 409i 409/109 and 409 read with Section 120B of the Indian Penal Code. Twelve such separate com. plaints were filed against these persons and these cases are pending for trial before the Special Judge. A few of these cases have already started and evidence has been recorded though no charge has been framed as yet in any of these cases. In the meantime, the State of West Bengal instituted a civil suit at Contai in 1953 and thereafter another, being Money Suit No. 2/1958 (No. M. S. No. 2/84) at Midnapore for realisation of a sum of Rs. 1,99,140.9 nP. The allegations in the civil suit are substantially the same against petitioner Joy Narayan Misra who along with another man, Suiendra Nath Jana were made defendants. According to the petitioner, the pith and sub-stance of the civil suits and criminal cases are the same and the parties are virtually the' same inasmuch as the civil suit was between the State and Jay Narayan Misra and the criminal cases were between the same parties, besides the employees of Jay Narayan excepting three of the employees under the Food Department. On a preliminary objection raised, the learned Subordinate Judge by his order dated 5-9-60 struck off the name of Surendra Nath Jana from the list of the defendants.

3. The petitioner has now come before this Court with the case that in view of the inordinate delay made by the prosecution in filing the complaint and in view of the further fact that he would have to face a protracted trial before the Special Judge in twelve cases, he would be prejudiced if these twelve cases are heard before the civil suit: instituted ear liar for realisation of the same amount.

4. Mr. Sanyal appearing for the State has opposed the Rule principally on the ground that some of the cases have already started and evidence has been recorded and also on the further ground that the accused persons before the Special Judge are not parties in the Civil Suit. So far as the first objection is concerned, it appears that evidence has been recorded in two or three out of twelve cases ; but charges have not yet been framed in any of these cases. Trials before the Special Court are, therefore, at a very initial stage and any stay of the Criminal cases at this stage is not likely to prejudice either party. So far as the other ground is concerned, it is apparent that the real party is Jay Narayan Misra against whom a Civil suit has been brought and the other opposite parties come only as employees of Jay Narayan besides three persons who are officers of the Civil Supplies Department. One of the latter group has also appeared and supported the petitioner that the hearing of the criminal cases be stayed while the others have not appeared.

5. As we have already pointed out the agreement on which the Civil and the Criminal cases have been filed is dated 1-1-1953 and the endorsement is alleged to be round about 23rd October 1955. There was a protracted Investigation and as a result of the failure to submit a charge sheet, the learned Chief Presidency Magistrate discharged the accused persons by his order dated 9th April 1958. Thereafter a first information report was given on 5th September 1958-But then the allotment followed by a complaint came some time in November, December, 1963. This clearly shows that the prosecutor was proceeding in a leisurely fashion and the matter was kept pending for long for which no justification beyond the requirements of investigation has been placed before us. The Civil Suits came earlier the case in the Contai Court some time in 1953 and that before the Sub Judge at Midnapore in 1958. There is also no dispute that the pith and substance of the Civil Suits and of the Criminal cases is the same. That being the position there is no reason why the earlier instituted Civil Suits should not be heard prior to the criminal cases. We see the force in the argument of the learned Advocate for the petitioner, Mr. S. S. Mukherjee, that a protracted trial in 12 cases into which it has been split up is likely to put the petitioner into great difficulties in subsequently contesting the Civil Suits and the subject-matter being the same, viz., the offence in respect of Rs. li99,140/odd annas an earlier decision in the Civil Suit may not

ultimately encourage the continuance of the Criminal Proceedings.

6. Mr. Sanyal has referred to a Supreme Court decision reported in *M. S. Sheriff v. State of Madras* : [1954]1SCR1144 , wherein the learned Judge stated that as between the Civil and the Criminal Proceedings the criminal matters should be given precedence. This decision at the same time lays down that 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. On the facts of the case as discussed earlier it appears that the matter had a protracted life since at least 23.10-1955 and there would, in the facts of the case, be little justification for giving priority to the later instituted criminal cases. Mr. Mukherjee appearing for the petitioner has drawn our attention to a case reported in *Thames Launches Ltd. v. Corporation of the Trinity House of Deptford Strond* (1961) 1 All E R 26, where it was stated as follows j--

Where matters which involved substantially the same issues were raised both in Civil Proceedings and at a later stage in Criminal Proceedings in an inferior Court between parties who looking at the substance of the matter were in reality the same, the Court could restrain the prosecutor in the Criminal Proceedings from continuing them until the Civil Proceedings had been decided.

In a Bench decision of this Court reported in *J. M. Lucas v. Official Assignee of Bengal* 24 Cal W N 418 at p. 419 : AIR 1920 Cal 624 (2) at p. 629, Jenkins C. J. held--

Though no universal rule can be laid down, it is ordinarily undesirable to institute Criminal Proceedings until determination of Civil Proceedings in which the same issues are involved. It is too well known to need elaboration that Criminal Proceedings land themselves to the unscrupulous application of improper pressure with a view to influencing the course of the Civil Proceedings;....

It is, therefore, proper in the facts of the present case that the Civil Suits instituted earlier should be given precedence over the trial of the Criminal cases in respect of the same subject-matter. We are of the view that the trials of the Criminal Cases before the Special Judge should be stayed pending decision of the Civil Suits.

7. Before we end we may point out that the Civil Suit before the learned Subordinate Judge has been pending for long, having been instituted earlier at Contain in 1953 and then before the learned Subordinate Judge on 21-7-1958 and it is extremely desirable that the Civil Suit, which is money suit No. 2/58 (M. S. No. 2/64 before the Subordinate Judge's Court Midnapore) be disposed of at an early date. We direct that a copy of the Judgment be sent to the District Judge Midnapore for necessary action.

8. In the result, therefore, we are of the view that the trial of the Special Court cases be stayed pending decision of the Civil Suit and the Rule be made absolute in those terms.

K.C. Sen, J.

9. I agree.

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