

Surjeet Singh Vs. State and anr.

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Court : Jammu and Kashmir

Decided On : Nov-06-2001

Reported in : 2002CriLJ4462

Judge : R.C. Gandhi, J.

Appeal No. : Petn. u/S. 561-A Cr.P.C. No. 29 of 2001

Appellant : Surjeet Singh

Respondent : State and anr.

Advocate for Def. : B.S. Manhas, Sr. AAG

Advocate for Pet/Ap. : D.C. Raina and; Shobna Gosain, Advs.

Disposition : Petition allowed

Judgement :

ORDER

R.C. Gandhi, J.

1. The controversy involved in this petition is that a challan has been presented for prosecution of the petitioner on the ground that he has allegedly forged the Rent Deed. Simultaneously, a suit titled Ram Chand v. Shiv Ram has also been instituted before the learned Munsiff, Kathua wherein issue No. 10 has been

framed in the following terms :

Whether rent note dated 30-3-1976 is forged and does not bind the defendant OPD.

2. Petitioner presented an application for dropping of the proceedings before the Chief Judicial Magistrate, Kathua where the petitioner is facing trial. The learned Magistrate after hearing the parties has come to the conclusion that it is not a case where proceedings could be dropped and dismissed the application vide impugned order dated March 15, 2001 which has been assailed in this petition.

3. Heard the learned Counsel for the parties.

4. Facts have not been disputed by the other side with regard to the institution of the suit and framing of the issue regarding the validity of the Rent Note allegedly forged by the petitioner. Mr. Raina representing the petitioner has submitted that unless the genuineness and validity of the Rent Deed is determined, in the suit, the petitioner could not be tried. In support of his argument he has relied upon the judgment delivered in the case Sardool Singh v. Smt. Nasib Kaur reported in 1987 (Supp) SCC 146 wherein the Supreme Court has held that 'when the question regarding the validity of Will is sub-judice, criminal prosecution on the allegation of the Will being a forged one cannot be instituted.'

5. In case Tukaram Annaba Chavan v. Machindra Yeshwant Patil reported in AIR 2001 SC 994 : 2001 Cri LJ 1164 where the allegation in the complaint was that the accused persons have got affixed bogus/fake signatures/thumb impressions of the members of the Educational institution by themselves or through other persons, for the purpose of showing that there was necessary quorum in the General Body Meeting wherein Resolution was purportedly passed to set up a new Executive Body and validity of this charge Report is pending determination before the Assistant Charity Commissioner, Singli. Dealing with those facts the Supreme Court held :-

It is our considered view that in the interest of justice and for a fair trial the proceedings in the criminal case should remain suspended till the proceeding

pending before the Assistant Charity Commissioner, Sangli is disposed of by him. Accordingly, it is ordered that further proceedings in regular criminal case No. 82/1994 pending in the Court of Judicial Magistrate 1st Class, Atpadi shall remain stayed till disposal of the proceedings in C. R. (Changed Report) No. 385/91 by the Assistant Charity Commissioner, Sangli. The appeal is disposed of on the terms aforesaid.

6. The issue involved herein is the identical and covered by the judgment of the Supreme Court where the genuineness or interpretation of the document is being established in a suit. The said trial of the petitioner on the basis of the said allegedly tampered documents is required to be stayed otherwise it may result in miscarriage of justice if the Civil Court comes to the conclusion otherwise. This revision, petition is accordingly allowed. It is directed that till Issue No. 10 is finally determined by the Civil Court, proceedings before the criminal Court shall remain stayed, which shall be activated depending upon the final determination by the civil Court, if need arises.

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