

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2230 of 2017

1. Sheo Shankar Prasad @ Shiv Shankar Prasad,

2. Sunita Prasad,

... Petitioners

-Versus-

1. The State of Jharkhand
2. Karun Prasad Vishwakarma,

... Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Indrajit Sinha, Advocate
For Opposite Party No.2 : Mr. Anurag Kashyap, Advocate
For the Opposite Party-State : Mr. Sanjay Kumar Srivastava, A.P.P.

06/10.08.2022. Heard Mr. Indrajit Sinha, learned counsel for the petitioners, Mr. Anurag Kashyap, learned counsel for opposite party no.2 and Mr. Sanjay Kumar Srivastava, learned counsel for the State.

2. This petition has been filed for quashing the entire criminal proceeding arising out of C.P. Case No.607 of 2014, T.R. No.1210 of 2017 including the order taking cognizance dated 14.07.2014, pending in the court of the learned Judicial Magistrate, 1st Class, Giridih.

3. The complaint case was lodged by opposite party no.2 alleging therein that the marriage of daughter (Anjali Shreya) of the complainant was solemnized with brother (Prashant Anand) of petitioner no.1 on 13.12.2010 and at that time complainant had agreed to give sum of Rs.2,51,000/- as per demand of the petitioners. It was further alleged that on different dates in November, 2010 before marriage the complainant has deposited the said amount in the bank account of the petitioners. It was

also alleged that after one month of marriage, the petitioners behaviour with the daughter of the complainant was very cruel, then complainant had filed a case against the petitioners as Complaint Case No.1074 of 2012 dated 24.07.2012 (TR No.1041/12) and one case for maintenance vide Maintenance Case No.139 of 2012 and the same has been compromised between the parties before the mediation center at Giridih. It was further alleged that after a compromise, both the aforesaid cases have been withdrawn. It was also alleged that thereafter the complainant has demanded the amount of Rs.2,51,000/- from the petitioners and the notices have been sent to the petitioners for return of the said money. It was further alleged that the complainant sent a legal notice for refund the said money. As such, the accused persons have committed forgery with intent to cheat the complainant. Hence, this case has been filed by the complainant.

4. Mr. Indrajit Sinha, learned counsel for the petitioners submits that the learned court has taken cognizance only under Section 417/34 of the Indian Penal Code against the petitioners vide order dated 14.07.2014 and being aggrieved with that order, the complainant filed Criminal Revision No.97 of 2015, which was dismissed by the revisional court vide order dated 16.01.2017. He further submits that earlier daughter of the complainant namely Anjali Shreya had filed one complaint petition being Complaint Case No.1074 of 2012 under Section 498-A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act against the petitioners and other family members alleging therein the same set of allegations as alleged in the present case. He also submits that the amount in question was also the subject matter in the case filed under Section 498-A of the Indian Penal Code and in that case, the learned court has held that the complainant has

miserably failed to prove its case against the accused persons beyond all reasonable doubts and acquitted the petitioners and other family members vide order dated 02.07.2013. He further submits that thereafter the compromise was entered between the parties and it was agreed in the compromise petition that both of them will not raise any type of claim on each other and both will withdraw any other court case if filed earlier. He further submits that the same complainant has again filed one money suit being Case No.03 of 2017 for recovery of Rs.2,51,000/-, which is still pending. He also submits that if the civil suit is pending and complaint case has also been filed for the same allegation, the same should not be encouraged when it is found to be *mala fide* and for the purpose of finding out as to whether the said allegations are correct or not looking into other documents, the Court can exercise its power under Section 482 Cr.P.C., as has been held by the Hon'ble Supreme Court in the case of ***All Cargo Movers (India) Private Limited v. Dhanesh Badarmal Jain & another***, reported in ***(2007) 14 SCC 776***.

5. Paragraph 16 of the said judgment is quoted herein below:

"16. We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, this Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of Respondent 1-plaintiff in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simpliciter does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the

accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice."

6. Mr. Indrajit Sinha, learned counsel for the petitioners further submits that for the same set of occurrence, two cases are being filed by the complainant, one is complaint case and another is civil suit and for same occurrence, no one can be tried and convicted for the same offence. To buttress this argument, he relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao***, reported in ***(2011) 2 SCC 703***.

7. Paragraph 5 of the said judgment is quoted herein below:

"5. Thus, it can be seen that Section 300(1) Cr.P.C. is wider than Article 20(2) of the Constitution. While Article 20(2) of the Constitution only states that "no person shall be prosecuted and punished for the same offence more than once", Section 300(1) CrPC states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts."

8. Per contra, Mr. Anurag Kashyap, learned counsel for opposite party no.2 submits that the learned court after looking into the complaint, has rightly taken the cognizance. He further submits that there are allegations against the petitioners. He also submits that the cognizance order is a well speaking order. He further submits that if the criminality is there, civil case as well as criminal case can proceed simultaneously. He relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***M. Krishnan v. Vijay Singh***, reported in ***(2001) 8 SCC 645***.

9. Paragraph 5 of the said judgment is quoted herein below:

"5. Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil

nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in a criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of. The High Court was not, in any way, justified to observe:

"In my view, unless and until the civil court decides the question whether the documents are genuine or forged, no criminal action can be initiated against the petitioners and in view of the same, the present criminal proceedings and taking cognizance and issue of process are clearly erroneous."

10. Mr. Sanjay Kumar Srivastava, learned counsel for the State submits that there is no illegality in the impugned order taking cognizance.

11. This Court has gone through the materials on the record and finds that admittedly for recovery of Rs.2,51,000/-, the money suit has been filed, which is also the subject matter of the complaint case. The amount in question was made prior to marriage and subsequently in the case under Section 498-A of the Indian Penal Code, the accused persons have been acquitted. Looking into the averments made in Money Suit No.03 of 2017, it transpires that for recovery of the said amount, the suit has been filed. It is not in dispute that for recovery of Rs.2,51,000/-, the complaint case has been filed, which is also the subject matter of the said Money Suit. It

appears that for the same allegations, two cases are going on, which are not permissible in view of the judgment passed by the Hon'ble Supreme Court in the case of *Kolla Veera Raghav Rao (supra)*.

12. There is no dispute with regard to the fact that civil case and criminal proceeding can go simultaneously, if criminality is involved. In the judgment relied by the Mr. Anurag Kashyap, learned counsel for opposite party no.2 in the case of *M. Krishnan (supra)*, there are serious allegations of forgery of the documents which was the subject matter in that case and in that premises, the Hon'ble Supreme Court held that there are serious allegations of forgery of documents and, therefore, both the cases can go simultaneously. In the case in hand, for recovery of the amount in question, complaint case as well as money suit have been filed. In the case filed under Section 498-A of the Indian Penal Code, there is acquittal of the accused persons. Considering the judgments passed in the case of *All Cargo Movers (India) Private Limited* and *Kolla Veera Raghav Rao (supra)* and looking into the facts and circumstances of the present case, it is crystal clear that for recovery of the amount in question, complaint case has also been filed.

13. In view of the above discussions, the entire criminal proceeding arising out of C.P. Case No.607 of 2014, T.R. No.1210 of 2017 including the order taking cognizance dated 14.07.2014, pending in the court of the learned Judicial Magistrate, 1st Class, Giridih is, hereby, quashed.

14 Accordingly, this petition stands allowed and disposed of.

15. Interim order dated 10.11.2017 stands vacated.

(Sanjay Kumar Dwivedi, J.)