

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CRIMINAL PROCEDURE

Date of Reserve: October 31, 2008

Date of Order: December 01, 2008

CM(M) 532/2007

VIPIN JAIN and ORS.

...Petitioners

Through: Mr. Ashish Bhagat with
Mr. Abdesch Chaudhary and Ms. Prerna, Advs.

Versus

YOGESH JAIN

...Respondent

Through: Mr. B.S. Chauhan, Adv.

JUSTICE SHIV NARAYAN DHINGRA

JUDGMENT:

1. By this petition, the petitioner has assailed an order of learned ADJ whereby an application of the petitioner under Section 151 for stay of suit pending before the ADJ was dismissed.
2. The brief facts relevant for purpose of deciding this petition are that the petitioner was involved in a criminal case under Section 326 of IPC and an FIR bearing no. 18/2005 was registered against the petitioner. The incident involved throwing of sulphuric acid on the respondent which caused disfigurement and severe bodily injuries. The respondent also filed a criminal complaint regarding this incident under Sections 307/326/328/201/120-B/506 read with Sections 190 and 200 of Cr.P.C. in the Court of MM. The criminal case as registered against the petitioner as well as the criminal complaint are at the stage of evidence.

3. The respondent filed a civil suit against the petitioner and others claiming damages of Rs. 12 lacs for dis-figuring his face and right side of the body, and for damaging right eye and right ear by throwing sulphuric acid mixture with toxic chemical solution. When the suit came up for hearing, the petitioner did not file WS and moved an application under Order 7 Rule 11 CPC read with Section 151 for rejection of the plaint. This application was dismissed by the learned ADJ with costs of Rs.500/-. The petitioner then filed an application under Section 151 CPC for stay of proceedings and still did not file WS which was dismissed by the learned ADJ subject to costs of Rs.2,000/- and petitioner was directed to file the written statement as on 22nd April, 2007.

4. The petitioner preferred this petition against the order of the learned ADJ. This Court granted an interim injunction on 20th April, 2007 and directed for service of notice. A perusal of record shows that defective PF was filed on first hearing so the notice could not be served upon the respondent and the interim order continued. Thereafter, the respondent was served for 16th November, 2007. On that date the matter was adjourned to 17th July, 2008. On 17th July, 2008 petitioner's counsel was not available to argue the petition and an adjournment was sought. Finding that since the proceedings before the Trial Court had been stayed and the matter was not being argued this Court vacated the stay in view of non-availability of the counsel for arguments and gave direction for filing WS within one week and directed the suit to proceed. The matter was fixed in the 'Regular Category'. Soon after vacating the stay an application for early hearing was made by the petitioner and undertaking was given that the WS shall be filed before the Trial Court within 2 weeks. However, the matter was taken up on 31st October, 2008 for final disposal.

5. It is argued by counsel for the petitioner that if the trial of the Civil Court is not stayed, the petitioner would suffer grave prejudice as his defence would get disclosed. This plea of the petitioner is not supported from the facts and circumstances. The criminal case against petitioner is already in progress and is at the stage of evidence. It is the petitioner who is dragging the criminal case and does not allow the Trial Court to proceed and seeks adjournments, as has been done before this Court and due to this reason, the Criminal case shall not drag and evidence shall be over in a short time. The criminal case in which evidence started more than a year back would be at

an advanced stage and the civil case is only at the initial stage of filing of WS.

6. The question of disclosure of defence by the petitioner and getting prejudiced does not arise at all. In fact in this petition itself, the petitioner has already disclosed his defence. The only defence taken by the petitioner is that the incident alleged against the petitioner was false and fabricated; in the FIR false allegations have been made; in the complaint also false allegations had been made. This is not a case where certain documents are involved and the petitioner has to disclose his defence about the documents. The petitioner's total defence is bare denial of the incident and denial of his liability for payment of damages as is evident from the petition. Under these circumstances saying that the petitioner would be prejudiced, is beyond comprehension. The evidence in the criminal case is already going on. The evidence in the civil case has yet to start. Moreover in the evidence before civil court, the plaintiff apart from proving who caused him injuries would have to prove the quantum of damages due to dis-figuring of his face, mental agony etc. etc. which would not be issues involved in the criminal Court.

7. The petitioner's counsel relied upon M.S. Sheriff vs. State of Madras AIR 1954 Supreme Court 397 wherein the Supreme Court observed that as between the civil and the criminal proceedings the criminal matters should be given precedence but no hard and fast rule should be laid down. The possibility of conflicting decisions in the Civil and Criminal courts is not a relevant consideration. The Court observed that the factor which weighs with the Court was that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime so criminal matters should have precedence.

8. There is no quarrel with this legal proposition rather this is a situation in this case. Criminal proceedings got initiated in 2005 itself while the civil suit was instituted in 2007. It is the petitioner who is trying to drag the civil suit. This Court does not know at what stage is the evidence in criminal proceedings. The only submission made is that the criminal proceedings is at the evidence stage. Thus, criminal case is already having precedence. There is no reason why the civil proceedings should be stayed.

9. This Court in Harinder Jit Singh Walia vs. The State and Another 2000 I AD (Delhi) 389 had occasion to consider similar situation and observed as

under : “14. The question whether it is desirable to permit civil and criminal proceedings to be taken simultaneously, has come up for consideration before the Supreme Court in a number of cases, where the Court in fact was dealing with the converse situation namely, whether the civil suit/departmental proceedings, should be stayed till the disposal of criminal proceedings. In those cases, the argument was primarily based on the right of a person to protection against self-incrimination or testimonial compulsion, as enshrined in Article 20(3) of the Constitution and it was sought to be contended that all accused have a constitutional right to maintain silence and he cannot be compelled to state his defense in a criminal proceeding by filing affidavit in suit. The theory of protection under Article 20(3) in a case where the accused files an affidavit or examines himself as a witness in a civil suit on the plea that it would be tantamount to compelling has to be a witness against himself in respect of the criminal proceedings was rejected on the ground that protection under Article 20(3) relates to the question of compulsion, which was non-existent in the aforementioned situation. It was observed that the rule against testimonial compulsion does not go to the extent of making the accused a universally privileged person. 15. Dealing with the question whether the civil action namely, disciplinary proceedings for assaulting a supervisory officer should be stayed till the disposal of criminal case instituted against an employee, the Supreme Court in *Kusheshwar Dubey Vs. M/s. Bharat Coking Coal Limited and Ors.*, MANU/SC/0246/1988, applying the ratio of its earlier decisions in *Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan* MANU/SC/0228/1960, *Tata Oil Mills Co. Ltd. Vs. Its Workmen* MANU/SC/0206/1964, *Jang Bahadur Singh Vs. Baij Nath Tiwari* MANU/SC/0354/1968, held that there is no legal bar for simultaneous proceedings being taken, but the question whether in a particular case disciplinary proceedings should be interdicted pending criminal trial has to be decided in the facts and circumstances of each case and it is neither possible nor advisable to evolve any hard and fast, straight - jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. 16. In *M.S. Sheriff and Anr. Vs. State of Madras and Ors.*, MANU/SC/0055/1954, rejecting the argument that simultaneous prosecution for perjury and the civil for damages for wrongful confinement would embarrass the accused and considering the question as to which of the proceedings should be stayed, the Apex Court while opining that as between the civil and criminal proceedings, the criminal matters should be given precedence, observed ``that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the

crime. The public interests demand that criminal justice should be swift and sure; that 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.” 17. In a recent decision in V.M. Shah Vs. State of Maharashtra and Anr., MANU/SC/0087/1996, the Supreme Court has re-emphasised the need for giving preference to the criminal proceedings. 18. The settled principle of law, thus, is that there is no constitutional or legal bar or prohibition for both the civil as well as the criminal proceedings, to go on simultaneously. There is no rigid straight-jacket fixed formula for staying proceedings in a criminal case while civil proceedings are pending and it would depend on the facts of each case. Indeed, as observed by the Apex Court in M.S. Sheriff's case (Supra) the public interest demands that criminal justice should be swift and sure so that the guilty are punished while the events are still fresh in the public mind. Therefore, criminal matters should be given precedence over the civil matters. Besides, ordinarily, decision of a civil court is not binding on a criminal Court. Nor is a criminal court's decision binding on the civil court. In a criminal case all the ingredients of the offences have to be established in order to secure the conviction of the accused.”

10. In Iqbal Singh Marwah and Anr. vs. Meenakshi Marwah and Anr. AIR 2005 SC 2119, Supreme Court observed that both civil and criminal proceedings in respect of an incident can go ahead simultaneously. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases are to be decided on the basis of the evidence adduced therein.

11. Similarly, in P.Swaroop Rani vs. M. Hari Narayana @ Hari Babu, AIR 2008 SC 1884 Supreme Court observed that criminal proceedings and civil proceedings can proceed simultaneously and there was no statutory bar on two proceedings being conducted simultaneously.

12. In the present case, the effort of the petitioner has been to see that civil proceedings are dragged and the respondent who had filed suit for damages for dis-figurement of his face, loss of right eye and right ear allegedly at the hand of the petitioner and others was made to suffer further mental agony continuously and not even being heard for damages. I consider that in the present case, when criminal proceedings are already in progress and the civil proceedings were only at the initial stage the applications made by the petitioner were only the efforts to prolong and further torment the

respondent. The petition is a frivolous petition and is liable to be dismissed with costs. The petition is hereby dismissed with costs of Rs. 25,000/-.

Sd/-
SHIV NARAYAN DHINGRA J.