

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 1ST DAY OF FEBRUARY 2017

BEFORE

THE HON'BLE MR. JUSTICE K.N.PHANEENDRA

CRIMINAL PETITION NO.101070/2016

Balaji Trading Company v/s. Saifulla Khan Gafar
Khan Savukar

ORDER

The petitioners have approached this court seeking quashing of the entire Criminal Proceedings in CC.No.32/2015 pending on the file of the Civil Judge (Sr.Dn) & Prl.J.M.F.C., Sirsi, Uttar Kannada, registered for the offences punishable under Sections 415, 417, 420, 463, 465, 468, 471, 472, 473 and 474 r/w Section 34 of IPC.

2. The brief factual matrix that emanate from the records are that, Respondent No.1 has filed a Private Complaint in PC No.4/2015, which subsequently registered as CC.No.32/2015, making allegations that the complainant- Saifulla Khan Gafarljam Savlar (for short, 'Saifulla Khan') has sold cotton worth Rs.32,64,313/- to Accused No.1-Firm (petitioner No.1 herein). The said

transaction has been explained in the complaint with all details. It is stated that the complainant also filed a suit for recovery of a sum Rs.26,64,313/- in O.S. No.49/2004 wherein the defendants in that suit, i.e., the petitioners herein, have entered their appearance and denied their liability. The defendant/accused also contended that the plaintiff/complainant has issued a letter dated 26.03.2004 stating that the accounts between the plaintiff/complainant and the defendants/accused are settled. The suit went on for trial and thereafter, it was disposed off. It is contended in the complaint that the defendants/accused have produced Exs. D.1 to D.10 and asserted that the said documents were executed by the plaintiff/complainant. In fact, the plaintiff/complainant disputed those documents as forged and concocted, and created for the purpose of producing the same before the court and to use them in evidence. It appears during the course of the trial, the trial Judge has referred the documents (Exs.D.1 to D.10) stating that those documents are forged and concocted. The suit also came to be disposed of.

After coming to know about the said documents being forged and concocted, the complainant (R1 herein) has filed a private complaint as noted above seeking indulgence of the criminal court to take appropriate action against the defendants/accused

(petitioners herein) for the alleged offences. The Trial Magistrate, after going through the contents of the complaint and also recording the sworn statement of the complainant, has passed an order for registration of a criminal case and issuance of summons against the petitioners herein. The said order is called in question before this court.

3. Learned counsel appearing for the petitioners strenuously contends before this court that the matter is *sub judice* before the civil court as the civil court has already given a finding that Exs. D1 to D10 are forged documents. However, the petitioners have preferred a Regular First Appeal before the Appellate Court and the court has granted an order of stay and the same is pending for consideration. If for any reason, the Appellate Court reverses the finding of the trial Court with reference to the genuineness or otherwise of the documents marked as Exs. D1 to D10, then the complaint is not maintainable against the petitioners, by the complainant (R1 herein). Secondly, learned counsel for the petitioners contends before this court that, when the trial Court has come to the conclusion that Exs. D1 to D10 are forged documents, the court itself should have referred the complaint to the jurisdictional Magistrate, as such, the private complaint is not maintainable. On

these two important grounds, the learned counsel contends that the criminal proceedings are liable to be quashed.

4. The learned counsel for the respondents contends that, the civil courts may take long time to conclude the proceedings and as such, there is no need to wait for conclusion of proceedings before the Civil Court. Therefore, the criminal courts have to proceed with the matter in order to ascertain whether those documents are forged or not, by means of independently examining those documents, the court can give its findings. Therefore, he contends that the criminal proceedings cannot be quashed on these grounds.

5. The learned counsel for the respondents has also strenuously contended that, it is the specific case of the complainant that the documents-Exs. D1 to D10 produced before the Civil Court are forged prior to production of those documents before the civil court and or before giving evidence before the civil court, therefore, the bar under Section 195(1)(b)(ii) of Cr.PC is not attracted and therefore, the private complaint is maintainable.

6. After going through the entire material on record, it is clear from the averments made in the complaint that the complainant came to know that, the

documents-Exs.D1 to D10, produced before the civil court are forged and concocted only after the Civil Court has secured the report from the expert to the effect that Exs. D1 to D10 are forged documents. Therefore, then the cause of action arose to lodge a complaint. By providing detail facts in the complaint at different paragraphs, as I could make-out, it is the specific stand of the complainant that the documents-Exs.D1 to D10 were forged and concocted prior to their production before the civil court with an intention to use them in the evidence. Therefore, in this background the point arises for consideration is, whether bar under Section 195(1)(b)(ii) of Cr.PC is attracted.

7. The Five Judges' Bench of the Hon'ble Apex Court, had an occasion to deal with this particular legal question in a decision reported in *2005(4) SCC 370 between Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another*, wherein it is meticulously observed that, -

"A. Criminal Procedure Code, 1973 – S. 195(1)(b)(ii) – Commission of forgery in respect of a document produced or given in evidence in a proceeding in any court – Bar under S. 195(1)(b)(ii) that no court shall take cognizance of any such offence except on the complaint in writing of the court concerned –

Scope and applicability of – Private complaint in such matter – Maintainability – Held, the said bar would be attracted only when the offences enumerated in S. 195(1)(b)(ii) have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e., during the time when the document was in custodia legis – If such offence is committed prior to its production giving in evidence in Court, no complaint by Court would be necessary and a private complaint would be maintainable – Scheme of S.195, taken note of – Heading of Ch.XXVI Cr.PC – Consideration of – Further held, complaint as to offence

referred to in S.195(1)(b) was to be made by the Court concerned only if it was expedient in the interests of justice and not in every case – Thus, broad view of clause(b)(ii) of S. 195(1) ie. Extending it to cases where forgery of a document is committed prior to that document being produced or given in evidence in a proceeding in any Court would render the victim of such forgery or forged document remediless in cases where the court may not consider it expedient in the interest of justice to make a complaint – Further, the procedure for filing a complaint by Court was such that it may delay the trial and thus lead to loss of evidence – Hence, broad view of S.195(1)(b)(ii) not acceptable – Contention that due to above interpretation by Supreme Court there was possibility of conflicting

findings being recorded by the civil or revenue court where the document had been produced or given in evidence and that recorded by the criminal court on the basis of private complaint, not sustainable.

B. Criminal Procedure Code, 1973 – S. 195(1)(b)(ii) – Expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court" – Meaning of – Held, would normally mean commission of such an offence after the document has actually been produced or given in evidence in court.

C. Criminal Procedure Code, 1973 – Ss.340n and 195(1)(b) – Making complaint regarding commission of an offence referred to in S.195(1)(b) – Power of the court concerned in respect of – Held, the court is not bound to make such complaint – Complaint will be made only if it is expedient in the interest of justice and not in every case – This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by the offence, but having regard to the effect or impact of that offence upon administration of justice."

8. The above said observation and guidelines of the Hon'ble Apex Court makes it abundantly clear that, the offences enumerated under Section 195(1) of Cr.PC

are committed in respect of any document prior to the production of the documents or before giving evidence before the court, then the bar under Section 195(1)(b)(ii) is not attracted. Therefore, it goes without saying that the documents which are forged or concocted prior to production of the same before the court being given in evidence, the private complaint can be maintained by the aggrieved party. It also clears out the doubt that, after production of the said documents, if the documents are tampered with or forgery or concoction takes place when the documents are in the custody of the court and if those documents are given in evidence, under such circumstances, the bar under Section 195(1)(b)(ii) of Cr.PC is attracted and in such circumstances, except on the complaint in writing by that court before which the offences under Sections 463 or 471 or 475 or 476 are committed, the criminal court cannot entertain the complaint. The above said ruling of the Hon'ble Apex Court also makes it abundantly clear that it is not only the offence pertaining to the documents and against a private individual, but it amounts to an offence affecting administration of justice by the courts. Therefore, it is made clear that, under the said provision, when the documents are in the custody of the court, and such offences are committed, with reference those documents,

it becomes expedient to the said court to refer the said offences to the competent court having jurisdiction to deal with the matter.

9. As I have already stated, learned counsel for the petitioner has tried to distinguish the provision and the judgment of the Hon'ble Apex Court by arguing that, if the documents are forged or tampered prior to filing of any civil proceedings, a private complaint cannot be filed on the basis of such disputed documents, if they are used in giving evidence, then the civil court itself has to take note of that and refer a complaint to the competent court having jurisdiction to deal with such criminal offences. But the said argument of the learned counsel cannot be accepted. If a correct and meaningful interpretation is made to Section 195(1)(b)(ii) one can understand that such offences must have been taken place before the court after production of such documents or at the time of giving evidence before the court.

Some times it may happen before the civil court that the documents which are tampered or forged prior to production of the said documents, are produced before the Court. Though the Civil Court finds that those documents are forged, but it may not be in a position to give its verdict as to whether those documents are forged

prior to production or after production before the court. Under such circumstances also, the court having *sesin* of those documents may not feel it expedient to refer the offences to the competent criminal court. In such an event, if the Civil Court does not refer the complaint to the competent Civil Court, the party who suffered due to the forgery or tampering of these documents prior to their production before the Court should not be made without any remedy. Therefore, it can be clarified that, if such an offence is committed with reference to the documents produced before the civil court and if those offences are prior to production of those documents before the Court or giving evidence before the court, in such an eventuality, the private complaint is maintainable before the competent criminal court.

10. Let me give another illustration, wherein the documents are produced before the Court after committing forgery prior to production, but those documents were not subjected to any evidence before the court, both the parties are left those documents as they are, without being any evidence led to establish the offences with reference to those documents before the civil court. Under such circumstances also the Civil Court may not be in a position to refer the said documents to the competent civil court and the court becomes

handicapped in drawing any inference or giving any finding with regard to the concoction or forgery of those documents. Under such circumstances also, the party who suffers any injury out of those offences committed with reference to the documents, can also file a private complaint before the competent court of law.

11. In view of the above, it may not be proper for this court to accept the contention taken up by the learned counsel for the petitioner. As I have already referred to above, the contents of the private complaint filed by the respondent herein, making it clear that, the documents (Exs.D1 to D10) were forged, even much prior to production of the same before the court. It is not the case of the petitioners herein also before this court that those documents were tampered or forged during the course of the proceedings before the civil court. But it is the case of the petitioners that those documents are genuine when they were relied upon by them before trial court.

12. Under the above circumstances, with all certainty, this court can say that, when the offences with reference to those documents (Exs.D1 to D10) were alleged to have been committed prior to production of those documents before the Civil Court, then a private

complaint is very well maintainable before the Criminal Court by the aggrieved party. Therefore, there is no question of quashing such criminal proceedings initiated before the competent criminal court when the allegations made in the complaint clearly attract the provisions under the penal provisions of any law for the time being in force and that rider under Section 195(1)(b)(ii) of Cr.PC is not attracted.

13. The second ground urged before this court by the learned counsel for the petitioners is that, when the Appellate (Civil) court is ceased of the matter and the trial (Civil) Court has given its opinion that Exs. D1 to D10 are forged documents, but it failed to refer the complaint to the competent court and further an appeal is already pending before the First Appellate Court, until the disposal of the civil matter, criminal case cannot be launched or proceeded with. This argument is also in my opinion, not tenable as the proceedings before the Civil Court and Criminal Court are altogether different. It is evident from the legal principles that the documents which are produced before the Civil Court can be proved to be forged by means of preponderance of probabilities, wherein such offences have to be proved with reference to the documents before the criminal court beyond

reasonable doubt. Therefore, more responsibility is upon the complainant to prove that those documents are forged, in a criminal case and in such an eventuality, the accused will get sufficient opportunity to question the said disputed documents. Further, added to that, this particular point raised by the learned counsel is also considered by the Hon'ble Apex Court in the above said decision at Paras-32 of the judgment of the Hon'ble Apex Court referred to supra after considering its previous judgment in M.S. Sheriff Vs. State of Madras [AIR 1954 SC 397], wherein it has laid down the principles, which reads as under:-

"32.Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. 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 have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against

an order directing filing of a complaint under Section 476 of old Code, the following observations made by a Constitution Bench in M.S. Sheriff vs. State of Madras AIR 1954 SC 397 give a complete answer to the problem posed :

"(15) As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

(16) Another factor which weighs with us is 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. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under S. 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

From the above, it is very clear that, the criminal proceedings cannot be stalled merely because the civil suit is also pending with reference to those documents. However, it is made clear that there is no hard-and-fast rule that both the cases can continue together, but for

special consideration and on any special circumstances, if the civil case and the criminal proceedings which are so near for disposal, and a ground is made out to stay, either of the proceedings in such an eventuality, the concerned civil court can stay its proceedings.. till the criminal proceedings are finished or *vice versa* as the case may be under the special and peculiar circumstances of the case.

For the above said reasons, filing of a private complaint and the proceeding with the private complaint is not a bar under any law for the time being in force and the bar which is enumerated under Section 195(1)(b)(ii) of Cr.PC is not at all attracted insofar as this case is concerned. Hence, for no reason the petition can be allowed. Hence, the petition deserves to be dismissed. Accordingly, the petition stands dismissed.