

1
THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.57102/2021
Kailash Vs. Arjun Singh and others

Gwalior, Dated:21/04/2022

Shri Rohit Bansal, Advocate for applicant.

Shri Gaurav Mishra, Advocate for respondents.

This application under Section 482 of Cr.P.C. has been filed against the order dated 21/9/2021 passed by First Additional Sessions Judge, Ashoknagar in Criminal Revision No.6/2019, thereby affirming the order dated 9/4/2018 passed by JMFC, Ashoknagar in an unregistered Complaint Case No...../2016, by which the criminal complaint filed by the applicant for offence under Sections 193, 196, 465, 471 and 120-B of IPC has been dismissed under Section 203 of Cr.P.C.

2. The necessary facts for disposal of the present application in short are that the applicant had filed a suit against respondents no.1 to 6 for declaration of title and permanent injunction in respect of agricultural land bearing survey no.307 area 0.836 hectares and survey no.308 area 0.251 hectares situated at village Garethi, Tahsil Isagarh, District Ashoknagar. An affidavit of the applicant was filed by the respondents in which it was mentioned that the sale deed, which was executed by the father of the applicant in respect of the land in dispute, was in fact a document by way of security of loan and was not an out and out sale. The Trial Court decreed the suit and declared that the applicant is the owner and title holder of the land in dispute and the copy of the affidavit, which was filed by respondents no.1 to 6, was disbelieved.

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.57102/2021
Kailash Vs. Arjun Singh and others

3. Being aggrieved by the judgment and decree passed by the Trial Court on 16/11/2015 in Civil Suit No.63-A/2015, the respondents preferred a Civil Appeal, which was registered as Civil Appeal No.82-A/2015, and the said Civil Appeal was dismissed by the District Judge, Ashoknagar by judgment and decree dated 10/8/2016 and the copy of the affidavit, which was filed by the respondents, was once again disbelieved.

4. It is submitted that it is true that the Second Appeal is pending against the judgment and decree passed by the District Judge, Ashoknagar, but it has not been admitted so far.

5. The applicant filed a complaint against respondents for offence under Sections 193, 196, 465, 471 and 120-B of IPC on the ground that in the Civil Suit the respondents no.1 to 6 had filed a forged copy of an affidavit dated 18/6/2001 with a solitary intention to adversely effect the title of the applicant. The Trial Magistrate by order dated 9/4/2018 passed in an unregistered Criminal Complaint No...../2016 dismissed the complaint on the following grounds:-

- i. The complaint was not filed by the Court.
- ii. The applicant had filed the complaint only after the disposal of the Civil Appeal No.82-A/2015 and not prior to that.
- iii. The dispute is of civil in nature.

6. Being aggrieved by the order dated 9/4/2018 passed by JMFC, Ashoknagar, the applicant preferred Criminal Revision No.6/2019, which was dismissed by First Additional Sessions Judge, Ashoknagar

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.57102/2021
Kailash Vs. Arjun Singh and others

by order dated 21/9/2021 on the ground that the Court below had disbelieved the affidavit on the ground that the said affidavit was not a registered document, whereas the applicant had filed the suit on the basis of a registered sale deed. Even in the Civil Appeal, the Appellate Court has not given a finding that the document is a forged document, although it has found that the document is of suspicious in nature. Thus, it was held that since the complainant has not filed any document to show that the so called affidavit, which was filed by the respondents no.1 to 6 in the Civil Suit was a forged document, therefore, the Trial Court rightly did not take cognizance of the same. Further, it was also held that since the Trial Court as well as the Civil Appellate Court while deciding the Civil Suit as well as Civil Appeal had not given any direction for filing of the criminal complaint, therefore, it cannot be said that the copy of the affidavit filed in the Civil Suit was a forged document. Furthermore, the complainant/applicant has merely examined himself and has not examined any witness to show that the document in question was a forged document. It was also held that since the Civil dispute is pending between the parties, therefore, the allegations are civil in nature. Accordingly, the Revision was dismissed.

7. Challenging the orders passed by the Courts below, it is submitted by the counsel for the applicant that filing of forged document in a judicial proceeding cannot be said to be a dispute of civil in nature. Furthermore, it is a case of filing of a forged

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.57102/2021
Kailash Vs. Arjun Singh and others

document and not a case of manipulation or forging of document while it was in *custodia legis*. Forging a document while it was in the custody of the Court and filing of a forged document are two different things. Even otherwise, since the affidavit, which was filed before the Trial Court, was not forged while it was in *custodia legis* and a forged document was filed, therefore, in the light of the judgment passed by the Supreme Court in the case of **Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another** reported in **(2005) 4 SCC 370**, it was not necessary for the Court to file a complaint and the FIR was maintainable. It is further submitted that it is well established principle of law that the civil proceedings as well as criminal proceedings can proceed simultaneously. It is further submitted that it is well established principle of law that the findings recorded by the Civil Court are not binding on the Criminal Court, because the degree of proof in both the proceedings are altogether different and thus, the Courts below have committed a material illegality by dismissing the complaint at its threshold. It is further submitted that since the respondents no.1 to 6 had filed a forged affidavit of the applicant by alleging that the applicant had executed an affidavit to the effect that the sale deed executed by his father is a sham document and has been executed by way of security of loan and since it is the case of the applicant that he had not executed any such affidavit and the said affidavit is forged, therefore it makes out a *prima facie* case against the respondents. Sufficient averments were

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.57102/2021
Kailash Vs. Arjun Singh and others

there and, therefore, it was not required on the part of the applicant to get the document examined from a handwriting expert even before issuance of summons.

8. *Per contra*, the application is vehemently opposed by the counsel for the respondents no.1 to 6. It is submitted that the Courts below have rightly dismissed the complaint.

9. Whether the Civil Suit as well as the Criminal Case can go on simultaneously or not?

10. The Supreme Court in the case of **M.S. Sheriff and another Vs. State of Madras and others** reported in **AIR 1954 SC 397** has held that between the civil and criminal proceedings, the criminal matter should be given precedence. However, it was also observed that no hard and fast rule can be laid down. It was further held that possibility of conflicting decisions in civil and criminal Courts cannot be a relevant consideration, except that there is a likelihood of embarrassment. The Supreme Court in the case of **M.S. Sheriff (supra)** has held as under:-

(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 decision 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 the 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.

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.57102/2021
Kailash Vs. Arjun Singh and others

(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.

11. In the case of **M. Krishnan Vs. Vijay Singh and another** reported in **AIR 2001 SC 3014** the Supreme Court has held that the criminal proceedings cannot be quashed only because the respondents therein had filed a Civil Suit with respect to those documents. In a Criminal Court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a Civil Court. It was also held that 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. The Supreme Court in the case of **M. Krishnan**

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.57102/2021
Kailash Vs. Arjun Singh and others

(supra) has held as under:-

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 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 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."

12. In the case of **Kamaladevi Agarwal Vs. State of West Bengal and others** reported in **AIR 2001 SC 3846** it has been held that the criminal cases have to be proceeded with in accordance with the

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.57102/2021
Kailash Vs. Arjun Singh and others

procedure as provided under Cr.P.C. and pendency of a civil action in different Court even though higher in status and authority cannot be made a basis for quashing of the proceedings.

13. The Supreme Court in the case of **P. Swaroopa Rani Vs. M. Hari Narayana alias Hari Babu** reported in **(2008) 5 SCC 765** has held as under:-

11. It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case. (See *M.S. Sheriff v. State of Madras* [AIR 1954 SC 397] , *Iqbal Singh Marwah v. Meenakshi Marwah* [(2005) 4 SCC 370 : 2005 SCC (Cri) 1101] and *Institute of Chartered Accountants of India v. Assn. of Chartered Certified Accountants* [(2005) 12 SCC 226 : (2006) 1 SCC (Cri) 544] .)

14. Thus, it is clear that the Civil Suit as well as Criminal Proceedings can proceed simultaneously and the Criminal Case cannot be quashed or dismissed merely on the ground of pendency of a Civil Suit even before a higher Court.

15. Whether findings given by Civil Court are binding on the Criminal Court ?

16. It is well established principle of law that the findings recorded by the Civil Court are not binding on Criminal Court and vice-versa.

17. The Supreme Court in the case of **Syed Askari Hadi Ali Augustine Imam and another Vs. State (Delhi Administration) and another** reported in **(2009) 5 SCC 528** has held as under:-

21. Indisputably, in a given case, a civil

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.57102/2021
Kailash Vs. Arjun Singh and others

proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case.

24. If primacy is to be given to a criminal proceeding, indisputably, the civil suit must be determined on its own merit, keeping in view the evidence brought before it and not in terms of the evidence brought in the criminal proceeding. The question came up for consideration in *K.G. Premshanker v. Inspector of Police* [(2002) 8 SCC 87 : 2003 SCC (Cri) 223] wherein this Court inter alia held: (SCC p. 97, paras 30-31)

“30. What emerges from the aforesaid discussion is—(1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by *A* on *B*'s property, *B* filed a suit for declaration of its title and to recover possession from *A* and suit is decreed. Thereafter, in a criminal prosecution by *B* against *A* for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.57102/2021
Kailash Vs. Arjun Singh and others

hold that it conclusively establishes the title as well as possession of *B* over the property. In such case, *A* may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is—whether judgment, order or decree is relevant, if relevant—its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.”

18. The Supreme Court in the case of **Kishan Singh (Dead)**

Through LRs. Vs. Gurpal Singh and others reported in (2010) 8

SCC 775 has held as under:-

11. In *Karam Chand Ganga Prasad v. Union of India* this Court, while dealing with the same issue, held as under: (SCC p. 695, para 4)

“4. ... It is well-established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true.”

12. The said judgment was delivered by a three-Judge Bench of this Court without taking note of the Constitution Bench judgment in *M.S. Sheriff v. State of Madras* on the same issue, wherein this Court has held as under: (AIR p. 399, paras 15-16)

“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

THE HIGH COURT OF MADHYA PRADESH

M.Cr.C. No.57102/2021

Kailash Vs. Arjun Singh and others

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.”

13. In *V.M. Shah v. State of Maharashtra* this Court has held as under: (SCC p. 770, para 11)

“11. As seen that the civil court after full-dressed trial recorded the finding that the appellant had not come into possession through the Company but had independent tenancy rights from the principal landlord and, therefore, the decree for eviction was negatived. Until that finding is duly considered by the appellate court after weighing the evidence afresh and if it so warranted reversed, the findings bind the parties. The findings, recorded by the criminal court, stand superseded by the findings recorded by the civil court. Thereby, the findings of the civil court get precedence over the findings recorded by the trial court, in particular, in summary trial for offences like Section 630. The mere pendency of the appeal does not have the effect of suspending the operation of the decree of the trial court and neither the finding of the civil court gets disturbed nor the decree becomes inoperative.”

14. The correctness of the aforesaid judgment in *V.M. Shah* was doubted by this Court and the case was referred to a larger Bench in *K.G. Premshanker v. Inspector of Police*. In the said case, the judgment in *V.M. Shah* was not approved. While deciding the case, this Court placed reliance upon the judgment of the Privy Council in *King Emperor v. Khwaja Nazir Ahmad* wherein it has been held as under: (IA p. 212)

“... It is conceded that *the findings in a civil proceeding are not binding in a subsequent prosecution founded [upon] the same or similar*

THE HIGH COURT OF MADHYA PRADESH

M.Cr.C. No.57102/2021

Kailash Vs. Arjun Singh and others

allegations. Moreover, the police investigation was stopped, and it cannot be said with certainty that no more information could be obtained. But even if it were not, it is the duty of a criminal court when a prosecution for a crime takes place before it to form its own view and not to reach its conclusion by reference to any previous decision which is not binding [upon] it.”

(emphasis added)

15*. In *P. Swaroopa Rani v. M. Hari Narayana* this Court has held as under: (SCC pp. 769-71, paras 11, 13 & 18)

“11. It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the facts and circumstances of each case. ...

* * *

13. Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute. ...

* * *

18. It goes without saying that the respondent shall be at liberty to take recourse to such a remedy which is available to him in law. We have interfered with the impugned order only because in law simultaneous proceedings of a civil and a criminal case are permissible.”

16**. In *Iqbal Singh Marwah v. Meenakshi Marwah* this Court held as under: (SCC pp. 389-90, para 32)

“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 is 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 HIGH COURT OF MADHYA PRADESH

M.Cr.C. No.57102/2021

Kailash Vs. Arjun Singh and others

the other, as both the cases have to be decided on the basis of the evidence adduced therein.”

17. In *Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.)* this Court considered all the earlier judgments on the issue and held that while deciding the case in *Karam Chand*, this Court failed to take note of the Constitution Bench judgment in *M.S. Sheriff* and, therefore, it remains per incuriam and does not lay down the correct law. A similar view has been reiterated by this Court in *Vishnu Dutt Sharma v. Daya Sapra*, wherein it has been held by this Court that the decision in *Karam Chand* stood overruled in *K.G. Premshanker*.

18. Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration.

19. Whether bar as contained under Section 195 Cr.P.C. would apply in cases of forged documents are filed before the Court.

20. So far as the question as to whether in case of filing of a forged document, a complaint is to be filed by the Court or not is concerned, it is a case of filing of a forged document before the Court, which was not manipulated while it was in *custodia legis*, therefore, the bar as contained under Section 195 of Cr.P.C. would not be applicable

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.57102/2021
Kailash Vs. Arjun Singh and others

and the FIR or the complaint by the complainant is maintainable under Section 200 of Cr.P.C. The Supreme Court in the case of **Iqbal Singh Marwah (supra)** has held as under:

33. In view of the discussion made above, we are of the opinion that *Sachida Nand Singh* has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision 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*.

21. Under these circumstances, this Court is of the considered opinion that the Courts below committed material illegality by rejecting the complaint filed by the applicant in *limine*. Accordingly, the order dated 21/9/2021 passed by First Additional Sessions Judge, Ashoknagar in Criminal Revision No.6/2019 and order dated 9/4/2018 passed by JMFC, Ashoknagar in an unregistered Complaint Case No...../2016 are hereby set aside and the matter is remanded back to the Trial Magistrate for proceeding further in accordance with law.

22. No order as to cost.

23. The application succeeds and is hereby **allowed**.

(G.S. Ahluwalia)
Judge

Arun*