IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G.S.AHLUWALIA

ON THE 7TH OF JANUARY, 2025

MISC. CRIMINAL CASE NO. 13070 OF 2012

SMT. KAMLA BAI & ORS.

VS.

DR. KAILASH SINGH RAGHUVANSHI AND ORS.

APPEARANCE
Shri Sameer Kumar Shrivastava – Advocate for applicants.
Shri Akram Khan – Advocate for respondent No. 1.
Shri Yogesh Parashar- Public Prosecutor for respondents No. 2 and 3/State.

ORDER

This application under Section 482 of Cr.P.C. has been filed against the order dated 20/11/2013 passed by 4th Additional Sessions Judge, Guna, District Guna in Criminal Revision No. 77/2023 by which the Revisional Court has reversed the order dated 1/5/2023 passed by JMFC, Aron, district Guna in UNCR/65/2022 and has directed the trial Court to take cognizance for offence under Sections 120-B, 471 and 417 of IPC.

2. Facts necessary for disposal of present application in short are that one Maniram, husband of applicant No. 1 and father of applicants No. 2 to 5 was the owner of the land in dispute. A sale deed was executed in favour of respondents. The applicants filed a suit for declaration of sale deed as null and void alleging that Maniram had expired on 2/4/1987; whereas, the sale deed was executed on 20/12/1988. Therefore, the primary bone of

contention of applicants before the Civil Court was that since Maniram had already expired on 2/4/1987, therefore, he could not have executed a sale deed on 20/12/1988. It was the case of the respondents that Maniram had executed a sale deed on 20/12/1988 and he expired on 16/11/1989. A death certificate issued on 3/9/2012 was also filed before the Civil Court. Civil Court dismissed the suit thereby raising a suspicion about the death certificate relied upon by the applicants. The Civil Appeal has also been dismissed. Second appeal is pending but it has not been admitted so far.

3. In the meanwhile, the respondents filed a criminal complaint against the applicants alleging that the applicants had filed a forged death certificate dated 3/9/2012 to project that Maniram had expired on 2/4/1987. The trial Magistrate after recording preliminary statement of the witnesses as well as complainant dismissed the complaint under Section 203 of Cr.P.C. on the ground that although civil suit has been dismissed but no finding was recorded by the civil Court to the effect that death certificate dated 3/9/2012 filed by the applicants before the Civil Court was a forged document and the respondent has not examined the competent authority to show that the death certificate was a forged document.

4. Being aggrieved by the said order, the respondent preferred a revision and the revisional Court by impugned order dated 20/11/2023 has set aside the order passed by the trial Court and gave a finding that prima facie there is sufficient material to hold that a forged death certificate was filed by the applicants before the trial Court, therefore, the trial Magistrate was directed to take cognizance for offence under Sections 120-B, 471 and 417 of IPC.

5. Challenging the order passed by the revisional Court, it is submitted

by counsel for applicants that in exercise of powers under Section 398 of Cr.P.C., the revisional Court can at the most remand the matter to the trial Magistrate to conduct further enquiry but the revisional Court cannot give a specific finding with regard to the guilt of the accused persons and therefore, the findings with regard to the nature of the death certificate as well as a specific direction to the trial Magistrate to take cognizance for offence under Section 120-B, 471 and 417 of IPC is beyond the competence/jurisdiction of the revisioanl Court.

6. To buttress his contentions, counsel for the applicants has also relied upon the judgment passed by this Court in the case of **Rajaram Gupta and Ors. Vs. Dharamchand and Ors., 1983MPLJ56, Rewaram and Anr. Vs. State of M.P.and Anr., 2004(4)MPLJ351** and **Bahadur Singh Vs. Ramcharan, 2016(2)MPLJ(Cri.)299**.

7. Per contra, application is vehemently opposed by counsel for the complainant as well as the State.

8. Heard learned counsel for the parties.

9. Section 398 of Cr.P.C. reads as under:-

> "398.Power to order inquiry.-On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or sub-section (4) of Section 204 or into the case of any person accused of an offence who has been discharged;
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> Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should

not be made."

10. The Supreme Court in the case of **Shivjee Singh Vs. Nagendra Tiwary and Ors.,(2010)7SCC578** has considered the scope of enquiry at the stage of taking of cognizance and has also explained the meaning of sufficient grounds for taking cognizance which reads as under:-.

> "**18.** The expression "sufficient ground" used in Sections 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. This interpretation of the provisions contained in Chapters XV and XVI CrPC finds adequate support from the judgments of this Court in Ramgopal Ganpatrai Ruia v. State of Bombay [AIR 1958 SC 97 : 1958 Cri LJ 244 : 1958 SCR 618], Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar [AIR 1960 SC 1113 : 1960 6 M.Cr.C.No.8052/2024 Cri LJ 1499 : (1961) 1 SCR 1], Chandra Deo Singh v. Prokash ChandraBose [AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639] , Nirmaljit Singh Hoon v. State of W.B. [(1973) 3 SCC 753 : 1973 SCC (Cri) 521], Kewal Krishan v. Suraj Bhan [1980 Supp SCC 499 : 1981 SCC (Cri) 438], Mohinder Singh v. Gulwant Singh [(1992) 2 SCC 213 : 1992 SCC (Cri) 361] and Chief Enforcement Officer v. Videocon International Ltd. [(2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471].
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> **19.** In Chandra Deo Singh v. Prokash Chandra Bose [AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639], it was held that where there was prima facie evidence, the Magistrate was bound to issue process and even though the person charged of an offence in the complaint might have a defence, the matter has to be left to be decided by an appropriate forum at an appropriate stage. It was further held that the issue of process can be refused only when the Magistrate finds that the evidence led by the complainant is self-contradictory or intrinsically untrustworthy.
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> **20.** In Kewal Krishan v. Suraj Bhan [1980 Supp SCC 499 : 1981 SCC (Cri) 438], this Court examined the scheme of Sections 200 to 204 and held: (SCC p. 503,

para 10)

> "10. … At the stage of Sections 203 and 204 of the Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202 of the Criminal Procedure Code, there is prima facie evidence in support of 7 M.Cr.C.No.8052/2024 the charge levelled against the accused. All that he has to see is whether or not there is 'sufficient ground for proceeding' against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges."

21. The aforesaid view was reiterated in Mohinder Singh v. Gulwant Singh [(1992) 2 SCC 213 : 1992 SCC (Cri) 361] in the following words: (SCC p. 217, para 11)

> "11. … The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full-dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made

> against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is 8 M.Cr.C.No.8052/2024 adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry."
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> (emphasis supplied)
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> **22.** The use of the word "shall" in the proviso to Section 202(2) is prima facie indicative of mandatory character of the provision contained therein, but a close and critical analysis thereof along with other provisions contained in Chapter XV and Sections 226 and 227 and Section 465 would clearly show that non-examination on oath of any or some of the witnesses cited by the complainant is, by itself, not sufficient to denude the Magistrate concerned of the jurisdiction to pass an order for taking cognizance and issue of process provided he is satisfied that prima facie case is made out for doing so. Here it is significant to note that the word "all" appearing in the proviso to Section 202(2) is qualified by the word "his". This implies that the complainant is not bound to examine all the witnesses named in the complaint or whose names are disclosed in response to the order passed by the Magistrate. In other words, only those witnesses are required to be examined whom the complainant considers material to make out a prima facie case for issue of process."

11. If the facts of the present case are considered then it is a case of respondent that the applicants had filed a forged death certificate of

Maniram to show that he had expired on 2/4/1987. The aforesaid forged document was filed with an intention to claim that since Maniram had already expired much prior to execution of the impugned sale deed, therefore, the sale deed dated 20/12/1988 executed in favour of the respondent is a forged document. The moot question for consideration is as to whether the findings given by the Civil Court are bindings on the Criminal Court or not.

12. The Supreme Court in the case of **Kishan Singhn (Dead) Through LRs. v. Gurpal Singh and Others, reported in (2010) 8 SCC 775** has held as under :

> "**16.** In Iqbal Singh Marwah v. Meenakshi Marwah this Court held as under : (SCC pp. 389-90, para 32)
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> > "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 5 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."
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> **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.
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> **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."

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

> "**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 wherein this Court inter alia held: (SCC p. 97, paras 30-31)
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> > "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 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."

25. It is, however, significant to notice that the decision of this Court in Karam Chand Ganga Prasad v. Union of

India, wherein it was categorically held that the decisions of the civil courts will be binding on the criminal courts but the converse is not true, was overruled, stating: (K.G. Premshanker case, SCC p. 98, para 33)

> "33. Hence, the observation made by this Court in V.M. Shah case that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in Karam Chand case are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff case as well as Sections 40 to 43 of the Evidence Act." Axiomatically, if judgment of a civil court is not binding on a criminal court, a judgment of a criminal court will certainly not be binding on a civil court.

26. We have noticed hereinbefore that Section 43 of the Evidence Act categorically states that judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of the Act. No other provision of the Evidence Act or for that matter any other statute has been brought to our notice.

27. Another Constitution Bench of this Court had the occasion to consider a similar question in Iqbal Singh Marwah v. Meenakshi Marwah wherein it was held: (SCC p. 387, para 24)

> "24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 CrPC contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is

> concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii)."

28. Relying inter alia on M.S. Sheriff, it was furthermore held: (Iqbal Singh Marwah case, 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 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."

29. The question yet again came up for consideration in P. Swaroopa Rani v. M. Hari Narayana, wherein it was categorically held: (SCC p. 769, para 11)

> "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."

14. The Supreme Court in the case of **Prem Raj Vs. Poonamma Menon and Another decided on 02.04.2024 in S.L.P.(Cr.) No.9778/2018** has held as under :

> "9. In advancing his submissions, Mr. K. Parameshwar, learned counsel appearing for the appellant, placed reliance on certain authorities of this Court. In M/s. Karam Chand Ganga Prasad and Anr. vs. Union of India and Ors.(1970)3 SCC 694, this Court observed that:
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> > "…….It is a well-established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true."
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> In K.G. Premshanker vs. Inspector of Police and Anr, (2002)8 SCC 87, a Bench of three learned Judges observed that, following the M.S. Sheriff vs. State of Madras, AIR 1954 SC 397, no straight-jacket formula could be laid down and conflicting decisions of civil and

criminal Courts would not be a relevant consideration except for the limited purpose of sentence or damages.

10. We notice that this Court in Vishnu Dutt Sharma vs. Daya Sapra (Smt.) (2009)13 SCC 729, had observed as under:

> "26. It is, however, significant to notice a decision of this Court in Karam Chand Ganga Prasad v. Union of India (1970) 3 SCC 694, wherein it was categorically held that the decisions of the civil court will be binding on the criminal courts but the converse is not true, was overruled therein…"

This Court in Satish Chander Ahuja vs. Sneha Ahuja (2021)1 SCC 414, considered a numerous precedents, including Premshanker (supra) and Vishnu Dutt Sharma (supra), to opine that there is no embargo for a civil court to consider the evidence led in the criminal proceedings.

The issue has been laid to rest by a Constitution Bench of this Court in Iqbal Singh Marwah vs. Meenakshi Marwah, (2005)4 SCC 370 :

> "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 the old Code, the following observations made by a Constitution Bench in M.S. Sheriff v. State of Madras [1954 SCR 1144: AIR 1954 SC 397: 1954 Cri LJ 1019] give a complete answer to the problem posed: (AIR p. 399, paras 15-16)
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> "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.
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> 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 Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."
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> (Emphasis Supplied)"

15. Furthermore, the Supreme Court in the case of **Pratibha Vs. Rameshwari Devi and Others reported in (2007) 12 SCC 369**, in which it has been held as under:

> "**14.** From a plain reading of the findings arrived at by the High Court while quashing the FIR, it is apparent that the High Court had relied on extraneous considerations and acted beyond the allegations made in the FIR for quashing the same in exercise of its inherent powers under Section 482 of the Code. We have already noted the illustrations enumerated in Bhajan Lal case [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and from a careful reading of these illustrations, we are of the view that the allegations emerging from the FIR are not covered by any of the illustrations as noted hereinabove. For example, we may take up one of the findings of the High Court as noted hereinabove. The High Court has drawn an adverse inference on account of the FIR being lodged on 31-12-2001 while the appellant was forced out of the matrimonial home on 25-5- 2001.
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> **15.** In our view, in the facts and circumstances of the case, the High Court was not justified in drawing an adverse inference against the appellant wife for lodging the FIR on 31-12- 2001 on the ground that she had left the matrimonial home at least six months before that. This is because, in our view, the High Court had failed to appreciate that the appellant and her family members were, during this period, making all possible efforts to enter into a settlement so that Respondent 2 husband would take her back to the matrimonial home. If any complaint was made during this period, there was every

possibility of not entering into any settlement with Respondent 2 husband.

16. It is pertinent to note that the complaint was filed only when all efforts to return to the matrimonial home had failed and Respondent 2 husband had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955. That apart, in our view, filing of a divorce petition in a civil court cannot be a ground to quash criminal proceedings under Section 482 of the Code as it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts. Such being the position, we are, therefore, of the view that the High Court while exercising its powers under Section 482 of the Code has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations.

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22. For the reasons aforesaid, we are inclined to interfere with the order of the High Court and hold that the High Court in quashing the FIR in the exercise of its inherent powers under Section 482 of the Code by relying on the investigation report and the findings made therein has acted 14 beyond its jurisdiction. For the purpose of finding out the commission of a cognizable offence, the High Court was only required to look into the allegations made in the complaint or the FIR and to conclude whether a prima facie offence had been made out by the complainant in the FIR or the complaint or not."

16. Thus, it is clear that findings recorded by the Civil Court are not binding on the criminal Court and vice versa.

17. The next question is as to whether the civil proceedings and criminal proceedings can go on simultaneously or not.

18. The aforesaid question is no more res integra. 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.
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> (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.
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> 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."

19. 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 (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 :
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> "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."

20. 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 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.

21. 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] .)"

22. 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.

23. If the reasonings assigned by the trial Magistrate for dismissing the complaint under Section 203 of Cr.P.C. are considered then it can be divided into two parts. (i) that the Civil Court has not given any finding that the applicants had filed the forged death certificate and (ii) that the respondent has not placed any evidence on record to show that he had initiated any proceedings to find out as to whether the death certificate relied upon by the applicants in the Civil Court was a genuine document or not.

Whether the Civil Court had not given any finding that the applicants had filed the forged death certificate.

24. The applicants have placed the copy of the judgment passed by the Civil Court on 14/12/2017 in Civil Suit No. 27-A/2016. Para 20 of the aforesaid judgment reads as under:-

> "20. *रधुवीर वादी साक्षी क0 1 द्वारा वादग्रस्त भूमि के संबंध में निष्पादित विकयपत्र मणीराम की मृत्यु के 19 माह पश्चात् निष्पादित कराया गया है, इस कारण विकयपत्र फर्जी तथा कूटरचित है, का अभिवाचन करते हूए दावा पेश किया गया है तथा न्यायालय के समक्ष मृत्यु प्रमाणपत्र प्र0पी02 पेश किया गया है, वह वादी के अनुसार अभिकथित दिनांक 2/4/1987 के पच्चीस वर्ष पश्चात् तैयार कराया गया है । दिनांक 3/9/2012 के पूर्व मणीराम का मृत्यु प्रमाणपत्र वादी द्वारा क्यों जारी कराया गया था, के संबंध में कोई स्पष्ट अभिवचन वादी द्वारा नहीं किया गया है , जबकि मणीरम की मृत्यु दिनांक 2/4/1987 को ही हुई थी, को प्रमाणित करने हेतु वादी को वर्ष 1987 में ग्राम आरोन के कोटवार की पंजी न्यायालय के समक्ष पेश की जानी चाहिए थी, जिससे यह सुनिश्चित किया जा सकता कि मणीराम*

की मृत्यु दिनांक 2/4/1987 को ही हुई है अथवा नहीं ।

25. Thus, it is clear that Civil Court had not relied upon the death certificate filed by the applicants by giving specific finding that suspicious circumstances attached to this document have not been clarified by the applicants or in nutshell it can be said that Civil Court has also found that the death certificate relied upon by the applicants is a suspicious document. Furthermore, the applicants have also filed copy of the death certificate as Annexure P/7 which is at page 51 of the application. According to this death certificate, the date of death of Maniram Gwal is 2/4/1987. However, the aforesaid fact was got registered by the applicants on 28/7/2021 and death certificate was also issued on 28/7/2021. Necessary entries made in the death certificate reads as under:-

"*पंजीकरण तारीख/* DATE OF REGISTRATION:

28-07-2021

जारी करने की तिथि/ DATE OF ISSUE:

28-07-2021

UPDATED ON:

28-07-2021 13:16:17"

26. The Civil Court has raised its concern about the fact that if Maniram Gwal had expired on 2/4/1987 then why the applicants got his death registered on 3/9/2012 has not been clarified. Furthermore, the Civil Suit was filed in the year 2016. When this Court was going through the findigns recorded by the trial Corut then it was found that the certificate which was issued on 28/7/2021 which has been filed as Annexure P/7 and is at page 51 of the application was never filed before the Civil Court and it is not the subject matter of the complaint but one death certificate dated 3/9/2012 was filed before the Civil Court and the Civil Court had raised an

suspicion that if Maniram had expired on 2/4/1987 then why the death certificate was obtained on 3/9/2012 i.e. after 25 years of the death of Maniram.

27. Annexure P/7, which is the death certificate filed alongwith this application was issued on a subsequent date i.e. 28/7/2021 but if the findigns given by the trial Court are considered then it is clear that death certificate which is subject matter of the complaint was issued on 3/9/2012 i.e. after 25 years of death of Maniram Gwal. No explanation has been given by the applicants as to why the death certificate was got issued after 25 years of death of Maniram Gwal.

28. Be that whatever it may be.

29. Once the Civil Court has given a finding that the death certificate dated 3/9/2012 filed by the applicants before the Civil Court appears to be a suspicious document then for the purposes of taking cognizance it can be said that there is a sufficient ground for the trial Court to rely on the findings because the findings given by the Civil Court can have some relevance in the criminal proceedings. Furthermore, as already held, the civil proceedings and the criminal proceedings can go on simultaneously. Therefore, the first reasoning assigned by the trial Magistrate to dismiss the complaint under Section 203 of Cr.P.C. cannot be upheld and therefore, it was rightly rejected by the revisional Court.

Whether the respondents should have initiated proceedings for examining the genuineness of death certificate dated 3/9/2012 relied upon by the applicats before the Civil Court or not:

30. As already pointed out, the trial Magistrate is required to see as to whether there is a sufficient ground for taking cognizance or not. Full fledged enquiry to find out as to whether the suspect can be convicted or

not cannot be done at that stage. As already pointed out, the findings recorded by the Civil Court may have some relevance. If Maniram had expired on 2/4/1987 then why the death certificate was obtained for the first time on 3/9/2012 has also not been explained. Furthermore, applicants have filed the death certificate dated 28/7/2021 and this Court has already reproduced certain entries made in the aforesaid death certificate which clearly show that another death certificate was obtained on 28/7/2021.

31. Since the death certificate filed by the applicants as Annexure P/7 is not the subject matter of the complaint, therefore, for all practical purposes, it is ignored. One thing is clear that once the Civil Court has raised a suspicion with regard to the genuineness of death certificate dated 3/9/2012 and has refused to rely on the same and dismissed the suit filed by the applicants then in the considered opinion of this Court, there is sufficient ground for the Magistrate to take cognizance. However, counsel for the applicants is also right in submitting that a specific direction should not have been given to the Magistrate to take cognizance for offence under Sections 120-B, 471, 417 of IPC.

32. Accordingly, it is directed that the trial Magistrate shall take cogniance of offences which are made out without getting influenced or prejudiced by the directions given by the revisional Court and can also take cognizance for some other offence which is not mentioned in the order passed by the revisional Court.

33. With the aforesaid observations, the revision is dismissed.

(G.S.AHLUWALIA)
JUDGE

jps/-