REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3238 OF 2009
(Arising out of SLP (C) No. 10997 of 2008)

Sh. Vishnu Dutt Sharma … Appellant

Versus

Smt. Daya Sapra … Respondent

J U D G M E N T

S.B. SINHA, J.

1. Leave granted.

2. The effect of a judgment passed in a criminal proceeding on a pending civil proceeding is the question involved herein.

It arises in the following factual matrix.

Respondent borrowed a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) from the appellant herein on or about 10th August, 1999. On a demand having been made in that regard by the appellant, the respondent issued a cheque for the aforementioned sum on or about 20th

October, 1999. The said cheque was presented by the appellant to the Oriental Bank of Commerce, Shahdra, Delhi, but the cheque was received back by the appellant with remarks 'insufficient funds'.

3. A complaint petition was filed by the appellant against the respondent for alleged commission of offences under Section 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code on 29-01-2000. He also filed a suit for recovery of a sum of Rs. 2,04,000/- on 19-10-2002 in the Court of Senior Civil Judge at Delhi which was marked as Suit No. 253 of 2003.

Both in the criminal as also in the civil proceedings the defence raised by the respondent was that she had not taken any loan from the appellant as alleged or at all. It was furthermore asserted that the cheque issued by her was not in respect of repayment of any loan, since no such loan had been taken.

Respondent urged that the appellant had met her husband who was a property dealer in connection with some business who made a representation that pertaining to the same deal the police had to be bribed, whereafter on 10-08-1999 the appellant accompanied by one Ms. Malhotra, retired ACP

and his son came to the office of her husband and forcibly took the cheque in question from her husband since the cheque book was with him.

4. By reason of the Judgment dated 26-09-2003, the learned Sessions Judge recorded a judgment of acquittal in favour of the respondent holding that he had successfully proved that the cheque in question was not issued to the complainant by way of repayment of any loan.

5. Respondent thereafter during the pendency of the trial suit filed an application in the said civil suit purported to be under Order 7 Rule 11 (d) read with Section 151 of the Code of Civil Procedure for rejection of the plaint on the ground that the criminal complaint had already been dismissed.

The learned Civil Judge dismissed the said application inter alia opining that the findings of a criminal court in the proceeding under Section 138 of the Negotiable Instruments Act would not operate as 'res judicata' in the civil suit for recovery of money as the nature of proceeding in both the cases was different.

6. Respondent approached the High Court in a writ petition questioning the order of dismissal of the said application and praying inter alia for the following reliefs:

> "(a) To set aside and quash the impugned order dated 17.3.2007 passed by the Hon'ble Court of Shri Shailender Malik, Civil Judge, Delhi in Suit No. 356/06/02 titled as "Vishnu Dutt Sharma Vs. Daya Sapra; and
>
> (2) Pass such other further orders as this Hon'ble Court deems just and proper in the facts and circumstances of the matter."

7. By reason of the impugned Judgment the High Court allowed the said writ petition. The High Court in arriving at its finding applied the principles of res-judicata. It also opined that the suit filed by the appellant was nothing but an abuse of the process of law.

8. Mr. J.M. Kalia, learned counsel appearing on behalf of the appellant would contend that the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that the principle of res-judicata is not applicable in the facts and circumstances of the case.

9. The learned counsel appearing on behalf of the respondent, on the other hand, would urge that having regard to the fact that both in the civil as also in the criminal proceeding, the burden was on the defendant-accused and he having successfully discharged the same, the appellant could not have been allowed to continue the civil proceedings in view of the judgment

rendered by the criminal court. The plaint was, on the said premise, directed to be rejected.

10. Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 (for short, "Code") provides for rejection of a plaint inter alia on the premise the suit was barred by any statute. Such an embargo in the maintainability of the suit must be apparent from the averments made in the plaint.

11. There cannot be any doubt or dispute that a creditor can maintain a civil and criminal proceeding at the same time. Both the proceeding, thus, can run parallely. The fact required to be proved for obtaining a decree in the civil suit and a judgment of conviction in the criminal proceedings may be overlapping but the standard of proof in a criminal case vis-a-vis a civil suit, indisputably is different. Whereas in a criminal case the prosecution is bound to prove the commission of the offence on the part of the accused beyond any reasonable doubt; in a civil suit 'preponderance of probability' would serve the purpose for obtaining a decree.

12. Section 138 of the Negotiable Instruments Act provides that dishonour of a cheque subject to fulfillment of condition precedent as laid down in the proviso appended thereto is a cognizable offence.

13. The cause of action for institution of the civil suit was grant of loan whereas that of the criminal case was return of a cheque inter alia on the premise that the account of the accused was insufficient to honour it or that it exceeded the amount arranged to be paid from that account by an agreement with the bank.

14. Section 138 of the Act contains a non-obstante clause.

In terms of Section 139 of the Act, a presumption in favour of the holder of the cheque may be raised that he had received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

Section 118 occurring in Chapter XIII of the Act provides for special rules of evidence; clause (a) whereof reads as under:

> **"118. Presumptions as to negotiable instruments.-** Until the contrary is proved, the following presumptions shall be made:-
>
> "(a) **of consideration.—**that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration."

Proviso appended thereto reads as under:

> "Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor therof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

15. What would be the effect of a judgment passed in the criminal proceedings in relation to the subject matter for which a civil proceedings has also been initiated is the question.

16. In a criminal proceeding, although upon discharge of initial burden by the complainant, the burden of proof may shift on an accused, the court must apply the principles of 'presumption of innocence as a human right'. The statutory provisions containing the doctrine of reverse burden must therefore be construed strictly. Whereas a provision containing reverse burden on an accused would be construed strictly and subject to the strict proof of the foundational fact by the complainant, in a civil proceeding no such restriction can be imposed.

Application of Section 118(a) and 139 of the Negotiable Instruments Act on the touchstone of the principles of presumption of innocence fell for consideration before this Court in Krishna Janardhan Bhat Vs. Dattatraya G. Hegde reported in [2008 (1) SCALE 421] wherein it was categorically held :

"19. Indisputably, a mandatory presumption is required to be raised in terms of Section 118(b) and Section 139 of the Act. Section 13(1) of the Act defines 'negotiable instrument' to mean "a promissory note, bill of exchange or cheque payable either to order or to bearer".

Section 138 of the Act has three ingredients, viz.:

(i) that there is a legally enforceable debt;

(ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and

(iii) that the cheque so issued had been returned due to insufficiency of funds.

20. The proviso appended to the said section provides for compliance of legal requirements before a complaint petition can be acted upon by a court of law. Section 139 of the Act merely raises a presumption in regard to the second aspect of the matter. Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability.

21. The courts below, as noticed hereinbefore, proceeded on the basis that Section 139 raises a presumption in regard to existence of a debt also. The courts below, in our opinion, committed a serious error in proceeding on the basis that for proving the defence the accused is required to step into the witness box and unless he does so he would not be discharging his burden. Such an approach on the part of the courts, we feel, is not correct.

> 22. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on records. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different."

Noticing the decision of this Court in Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Payrelal reported in [(1999) 3 SCC 35], this Court held:-

> "24. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is 'preponderance of probabilities'. Inference of preponderance of probabilities can be drawn not only from the materials brought on records by the parties but also by reference to the circumstances upon which he relies.
>
> 25. A statutory presumption has an evidentiary value. The question as to whether the presumption whether stood rebutted or not, must, therefore, be determined keeping in view the other evidences on record. For the said purpose, stepping into the witness box by the appellant is not imperative. In a case of this nature, where the chances of false implication cannot be ruled out, the background fact and the conduct of the parties together with their legal requirements are required to be taken into consideration."

17. As regards the purpose of introduction of reverse burden in Section 139 of the Act, this court observed :

> "33. We are not oblivious of the fact that the said provision has been inserted to regulate the growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India. This, however, shall not mean that the courts shall put a blind eye to the ground realities. Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have rebutted. Other important principles of legal jurisprudence, namely presumption of innocence as human rights and the doctrine of reverse burden introduced by Section 139 should be delicately balanced. Such balancing acts, indisputably would largely depend upon the factual matrix of each case, the materials brought on record and having regard to legal principles governing the same."

18. The said dicta was followed by this Court in Noor Aga Vs. State of Punjab reported in [2008 (9) SCALE 68] wherein it was noticed:

> "58. In Glanville Williams, Textbook of Criminal Law (2nd Edn.) page 56, it is stated:
>
> Harking back to *Woolmington,* it will be remembered that Viscount Sankey said that "it is the duty of the prosecution to prove the prisoner's guilt, subject to the defence of insanity and subject also to any statutory exception".... Many statutes

> shift the persuasive burden. It has become a matter of routine for Parliament, in respect of the most trivial offences as well as some serious ones, to enact that the onus of proving a particular fact shall rest on the defendant, so that he can be convicted "unless he proves" it.
>
> 59. But then the decisions rendered in different jurisdictions are replete with cases where validity of the provisions raising a presumption against an accused, has been upheld."

Noticing the provisions of the Universal Declaration of Human Rights and European Convention for the Protection of Human Rights and Fundamental Freedoms as also International Convention on Civil and Political Rights and consequent change in the approach in some of the courts, it was opined that limited inroads on presumption would be justified. Noticing that even applicability of doctrine of res ipsa loquitur may not be applicable in a criminal proceeding, it was held that the trial must be fair and the accused must be provided with opportunities to effectively defend himself.

The court held :

> "88. Placing persuasive burden on the accused persons must justify the loss of protection which will be suffered by the accused. Fairness and reasonableness of trial as also maintenance of the individual dignity of the accused must be uppermost in the court's mind."

19. Reverse burden or evidentiary burden on an accused, thus, would require strict interpretation and application. However, in a civil suit such strict compliance may not be insisted upon.

If that be so, it may not be correct to contend that a judgment rendered in criminal proceeding would make continuation of a civil proceeding an abuse of the process of court.

20. Any person may as of right have access to the courts of justice. Section 9 of the Code of Civil Procedure enables him to file a suit of civil nature excepting those, the cognizance whereof is expressly or by necessary implication barred.

21. Order 7 Rule 11(d) is one of such provision which provides for rejection of plaint, if it is barred by any law.

Order 7 Rule 11(d) of the Code being one of the exceptions, thus, must be strictly construed.

22. This leads us to another question namely whether the civil suit was barred on the day on which it was filed. Answer to the said question indisputably must be rendered in the negative. If as on the date of institution of the suit, the plaint could not be rejected in terms of Order 7 Rule 11(d) of

the Code of Civil Procedure; whether its continuation would attract the principles of abuse of processes of court only because the accused was acquitted in the criminal proceeding is the question.

23. Dismissal of a suit on the ground that it attracts the provisions of Section 12 of the Code, keeping in view of the content of provisions of Section 11 thereof may now be considered. The principle of res-judicata as contained in Section 11 of the Code is not attracted in this case. Even general principle of res-judicata would also not be attracted. A suit cannot be held to be barred only because the principle of estoppel subject to requisite pleading and proof may be applied. The said principle may not be held to be applicable only at a later stage of the suit.

It brings us to the question as to whether previous judgment of a criminal proceeding would be relevant in a suit.

24. Section 40 of the Evidence Act reads as under:

> "Previous judgments relevant to bar a second suit or trial. – The existence of any judgment, order or decree which by law prevents any Courts from taking Cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial."

This principle would, therefore, be applicable, inter alia, if the suit is found to be barred by the principle of res judicata or by reason of the provisions of any other statute.

25. It does not lay down that a judgment of the criminal court would be admissible in the civil court for its relevance is limited. {See Seth Ramdayal Jat v. Laxmi Prasad [2009 (5) SCALE 527}.

The judgment of a criminal court in a civil proceeding will only have limited application, viz., inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings.

26. Any finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding.

In M.S. Sheriff & Anr. vs. State of Madras & Ors. [AIR 1954 SC 397], a Constitution Bench of this Court was seized with a question as to whether a civil suit or a criminal case should be stayed in the event both are pending. It was opined that the criminal matter should be given precedence.

In regard to the possibility of conflict in decisions, it was held that 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. It was held that the only relevant consideration was the likelihood of embarrassment.

27. If a primacy is given to a criminal proceeding, indisputably, the civil suit must be determined on its own keeping in view the evidence which has been brought on record before it and not in terms of the evidence brought in the criminal proceeding.

The question came up for consideration in K.G. Premshanker vs. Inspector of Police and anr. [(2002) 8 SCC 87], wherein this Court inter alia held:

> **"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.

It is, however, significant to notice a decision of this Court in M/s Karam Chand Ganga Prasad & Anr. etc. vs. Union of India & Ors. [(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, stating:

> "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."

28. Sections 42 & 43 of the Evidence Act providing for the relevance of other decrees, order and judgment read as under:

> **"42. Relevancy and effect of judgment, order or decrees, other than those mentioned in Section 41. -** Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the inquiry; nut such judgments, orders or decrees are not conclusive proof of that which they state.
>
> **43. Judgments, etc., other than those mentioned in Sections 40, 41 and 42, when relevant -** Judgments, orders or decrees other then 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 provision of this Act."

29. If judgment of a civil court is not binding on a criminal court, it is incomprehensible that a judgment of a criminal court will be binding on a civil court. 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 in some other provisions of the Act, no other provisions of the Evidence Act or for that matter any other statute had been brought to our notice.

30. Another Constitution Bench of this Court had the occasion to consider the question in Iqbal Singh Marwah & Anr. vs. Meenakshi Marwah & Anr. [(2005) 4 SCC 370]. Relying on M.S. Sheriff (supra) as also various other decisions, it was categorically held:

> **"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."

31. The question yet again came up for consideration in P. Swaroopa Rani vs. M. Hari Narayana @ Hari Babu [AIR 2008 SC 1884], wherein it was categorically held:

> "13. 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."

32. In view of these authoritative pronouncements, we have no doubt in our mind that principles of res judicata are not applicable in the facts and circumstances of this case.

33. The impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of this case, there shall be no order as to costs.

……..……J.
[S.B. Sinha]

……..……J.
[Dr. Mukundakam Sharma]

New Delhi;
May 5, 2009