IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1436 OF 2009
[Arising out of SLP(Crl.) No. 1954/2007]

AJITKUMAR NAROTTAMDAS PANDYA ... APPELLANT(S)

:VERSUS:

STATE OF GUJARAT ... RESPONDENT(S)

O R D E R

1. Leave granted.

2. Interpretation of the provisions of Section 195(1)(d)(ii) of the Code of Criminal Procedure, 1973, (hereinafter called and referred to for the sake of brevity as 'the Code') falls for our consideration in this appeal. The said question arises in the following factual matrix:

3. The appellant and respondent No.2 are step brothers. Appellant's mother Maniben was the second wife of Narottamdas Pandya. Respondent No.2, admittedly, is his son through the first wife. Maniben allegedly executed a Will in favour of the

appellant herein. She died on 20.8.1995.

4. The appellant filed a suit against the second respondent and Gunuantray Narottamdas Pandya, Chandrakant Narottamdas Pandya, Kirti Kumar Narottamdas Pandya and Naljnchandra Narottamdas Pandya, inter alia for a declaration of the title relying on or on the basis of the said Will. In the plaint of the said suit it was contended that the defendants therein had been threatening the plaintiff that they would snatch away the possession and such threat was given by defendants No. 2 to 4 on 17.7.96.

5. The Will dated 10.7.1995 was filed along with the plaint together with as many as 28 other documents. The said Will finds place at Sl. No. 17 of the list of documents filed with the plaint. An interim injunction was granted. An application for vacating the said interim injunction was filed by the respondents – defendants.

6. By an order dated 20.9.2006 the learned Civil Court opining that the plaintiff had proved a prima facie case and furthermore the balance of convenience is in his favour and he being in exclusive possession of the property in question, an order of injunction was granted. It is, however, not in dispute that immediately thereafter, an attempt was made by respondent No.2 to lodge a first information report. A complaint petition, however, was filed before the Judicial Magistrate, Fist Class, Petlad on 21.9.1996 which was marked as Criminal Case No. 966/96 against the appellant herein and 3 others, for commission of alleged offences under Sections 467, 472, 474, 452, 420, 406 and 114 of the I.P.C.

7. Several proceedings were initiated by the appellant questioning the correctness or otherwise of the orders passed thereupon at different stages. We may, however, notice that the High Court of Gujarat by an order dated 3.12.1997 granted stay of the proceedings till disposal of the Criminal Case No. 966/96. It is furthermore not in dispute that an opinion of the handwriting expert was obtained and one Mrs. D.J. Shah, Assistant Examiner of Questioned Documents, Ahmedabad opined as under:

> **"The person who wrote the blue encircled natural signatures marked N1 to N13 did not writ the red encircled disputed signature marked D."**

8. It furthermore appears from the record that the appeal preferred by the appellant thereagainst has been dismissed.

9. Learned counsel appearing on behalf of the appellant would contend that as the said Will was filed on 22.9.1996, Section 195(1)(b)(ii) is squarely attracted. Section 195(1)(b)(ii) of the Code reads as under:

> **"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. -**
> **(1) No Court shall take cognizance**
>
> **(a) .....**
> **(b) (ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court."**

10. The contention raised by the learned counsel on behalf of the appellant does not necessitate a detailed consideration as the matter is squarely covered by a decision of

this Court in Sachida Nand Singh v. State of Bihar, 1998(2) SCC 493 and Mahadev Bapuji Mahajan (Dead) and Ors. v. State of Maharashtra, 1994 Supple. (3) SCC 748. The question now has been given a quietus by a Constitution Bench of this Court in Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr., 2005 (4) SCC 370, wherein it was categorically held as under:

> **"32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of old Code, the following observations made by a Constitution Bench in M.S. Sheriff vs. State of Madras AIR 1954 SC 397 give a complete answer to the problem posed :**
>
> **'(15) As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.**
>
> **(16) Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.**

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

11. However, in Iqbal Singh Marwah (supra), as the 'Will' was produced later on, Section 195(1)(b)(ii) was applicable.

12. In view of the aforementioned authoritative pronouncements of this Court, we are of the opinion that no case has been made out for our interference with the impugned order. The appeal is dismissed.

13. However, it goes without saying that we have not entered into the merit of the matter and all contentions of the parties in regard thereto, including the irregularity or illegality committed by the learned Magistrate in taking cognizance, shall remain open.

.....J
(S.B. SINHA)

.....J
(DEEPAK VERMA)

NEW DELHI,
AUGUST 6, 2009.