RAVANAPPA REDDI, *In re.*

CURGENVEN J.

being a private one. The conviction was actually of abetment of forgery of a valuable security, under sections 467, 109, Indian Penal Code, but in *Perianna Muthirian* v. *Vengu Aiyar*(1) I have already given my reasons for holding that, this being only another way of dealing with what was in effect the same offence, fabricating false evidence, it is not open to a Court to permit the provisions of section 195, Code of Criminal Procedure, to be evaded in this manner. I agree therefore that upon this ground the conviction must be set aside, the proceedings being without jurisdiction.

K.N.G.

APPELLATE CRIMINAL.

Before Mr. Justice Waller and Mr. Justice Krishnan Pandalai.

1931, November 20.

PADMANABHANI RAMANAMMA *alias* BULLEMMA (COMPLAINANT), PETITIONER,

v.

GOLUSU APPALANARASAYYA (FIRST ACCUSED), RESPONDENT.*

Indian Evidence Act (I of 1872), ss. 40 to 43—Civil Court judgment—Admissibility of, in criminal proceeding in respect of same matter.

The judgment of a Civil Court dismissing a suit brought by *A* against *B* for damages for defamation is not admissible in evidence to prove the innocence of *B* in a criminal prosecution by *A* against *B* on the same facts. Sections 40 to 43 of the Indian Evidence Act deal with the admissibility of a judgment in evidence, and, if a judgment is not admissible under any of

(1) (1928) 56 M.L.J. 208.

*Criminal Revision Case No. 329 of 1931.

these sections, it must be left out of consideration altogether. The judgment of the Civil Court in question does not come under any one of those sections. RAMANAMMA v. APPALA-NARASAYYA.

Markur, In re (1914) I.L.R. 41 Bom. 1, dissented from.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of acquittal, in Criminal Appeal No. 2 of 1931 on the file of the Court of Session of the Vizagapatam Division preferred against the order of the Court of the Huzur Sheristadar First-class Magistrate of Vizagapatam in Calendar Case No. 1 of 1930.

V. Krishnamachari for petitioner.

Public Prosecutor (*L. H. Bewes*) for the Crown.

No one appeared for the respondent.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by

WALLER J.—This case has had a somewhat remarkable history. The petitioner charged the respondent, his wife and others with the offences of robbery and defamation. Ultimately the respondent alone was convicted of the latter offence and his conviction was upheld by the Sessions Judge in appeal. The petitioner then filed a suit for damages for defamation against the respondent and another person. A copy of the judgment confirming the conviction was produced, but the District Munsif held, quite rightly, that he was not bound to follow it and that he had to arrive at a decision independently on the evidence before him. In the result, he dismissed the suit. The next thing that happened was that this Court, in revision, set aside the conviction and ordered a re-trial. The case was re-tried and ended again in the conviction of the respondent. The latter tried to get admitted in evidence a copy of the judgment of the Civil Court, but the Magistrate WALLER J.

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rejected it, being of opinion that it was irrelevant for the purpose of the trial. An appeal was again preferred, which was on this occasion successful. The Sessions Judge set aside the conviction, holding that the Munsif's judgment was not merely relevant, but also conclusive proof of the respondent's innocence. To the material sections of the Evidence Act, which lay down the law as to the admissibility of judgments, he made no reference. It would be interesting to know how he would have dealt with the matter, if the judgment had been one awarding damages against the respondent. We venture to doubt whether he would have gone so far as to hold that it was conclusive proof of the respondent's guilt and that the Magistrate should at once have convicted him on it, without any further evidence. And yet, if a judgment one way might be conclusive proof of the respondent's innocence, it is not apparent why a judgment the other way should not be conclusive proof of his guilt.

What the Sessions Judge relied on was a judgment of the Bombay High Court, in *In re Markur*(1). Markur was prosecuted for breach of trust in regard to certain sums of money. He had already been sued civilly for the recovery of those sums, but the suit had been dismissed. A copy of the Civil Court's judgment was produced before the Magistrate, who declined to admit it in evidence, holding, with reference to sections 40 to 43 of the Evidence Act, that it was irrelevant and inadmissible. The matter was taken up to the High Court, which decided, without any reference to those sections, that the judgment should have been admitted. The Judges did not actually say, in so many words, that it was conclusive proof of Markur's innocence; indeed,

(1) (1914) I.L.R. 41 Bom. 1.

HEATON J. conceded, that it could not be used to prove or disprove the facts in dispute in the case. But it is impossible not to agree in the Sessions Judge's observation that the whole tenor of their argument indicates that, in their opinion, it ought to have been treated as conclusive proof and that, on it, Markur should, at once, have been discharged by the Magistrate. If, however, it was not to be used to prove or disprove the charge, it is difficult to see on what ground the Magistrate could have acted on it, as if it were conclusive. With great respect, we cannot follow this decision. The matter, it seems to us, is governed by sections 40 to 43 of the Evidence Act and, if a judgment is not admissible under any of those sections, it must be left out of consideration altogether. The judgment in question was not one to which section 40 applied; for it was not a bar to the prosecution. Nor was it a judgment *in rem* under section 41. It did not relate to a matter of a public nature as required by section 42. Nor was its existence a fact in issue in the prosecution or relevant under any other section of the Act—section 43. HEATON J. puts his decision on a quite different ground —the ground of public policy. "We cannot" he said "have Criminal Courts trying over again matters which have been thoroughly dealt with and finally decided by a Civil Court of competent jurisdiction." It is not easy to see how such a rule is to be enforced, unless the judgment of the Civil Court is, in law, a bar to or conclusive against the prosecution. And what of cases in which the Criminal Court has decided the controversy first and convicted? Can we not have the Civil Court trying over again a matter which has been decided by a Court of competent jurisdiction and coming to a different conclusion? The truth is that, although the civil suit and the prosecution may be

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based on exactly the same cause of action, the parties are, strictly speaking, not the same, the burden of proof is differently placed and different considerations may come in. The result may therefore be a conflict in decision. For instance, *A* is tried for murdering *B* but acquitted, because a confessional statement by him is, in a criminal trial, inadmissible in evidence. *C*, *B*'s widow, sues him for damages for the murder and gets a decree, the confessional statement being admissible in a civil suit. In the matter of defamation, again, there is a good deal of difference between a suit for damages and a criminal prosecution. The prosecution is governed by the provisions of the Indian Penal Code, the suit by the English law of slander and libel. A defence which is open to the accused in the prosecution is not open to him as the defendant in the suit. The question of special damage may arise in the suit, but cannot arise in the prosecution.

It has often been said in this Court, that, where a civil suit and a criminal complaint have been filed, which raise the same issues between the same parties, the hearing of the complaint should be stayed until the suit has been decided. And this has been put on the ground that it will avoid a possible conflict in decision. Our brother JACKSON has pointed out in a judgment, in which we entirely concur, *Gnanasigamani Nadar* v. *Vedamuthu Nadar*(1), that the risk of such a conflict is one that is inherent in the division of causes into criminal and civil. The judgment of neither Court is binding on the other and each must decide the cause on the evidence before it. If they arrive at different conclusions it is regrettable but unavoidable. The ruling in *In re Markur*(2), was relied on in another case

(1) (1926) 52 M.L.J. 80. (2) (1914) I.L.R. 41 Bom. 1.

in this Court, *In re Velayutham Chetty*(1). The head-note states that the Bombay ruling was followed. The fact, however, remains that KRISHNAN J. disposed of the criminal revision petition on the merits and not on the decision in the civil proceeding. What he said was that, if he accepted the civil judgment as the basis of his judgment in the criminal case, he would have to find that the conviction was wrong. What he refrained from saying was that it could be accepted as the basis of his judgment. The head note therefore seems to be inaccurate. If he had been satisfied that the Bombay ruling was unimpeachably correct he could and would have allowed the revision petition without considering the evidence in the criminal case.

It is not, we think, necessary to refer to any other rulings. We are satisfied that the judgment relied on by the Sessions Judge was not admissible in evidence under any of the relevant sections of the Evidence Act. It is a judgment *in personam* and not *in rem* and is not conclusive proof, in the subsequent judicial proceeding, of anything material. The order of the Sessions Judge must be set aside. He will dispose of the criminal appeal on its merits.

K.N.G.

(1) (1922) 72 I.C. 172.