CRIMINAL REVISION.

1896
March 19.

Before Mr. Justice Ghose and Mr. Justice Rampini.

RAJ KUMARI DEBI AND ANOTHER (PETITIONERS) *v.* BAMA SUNDARI DEBI (OPPOSITE PARTY.)*

Criminal proceedings, Stay of, pending a civil suit—Power of the High Court in quashing proceedings before Magistrates—Judgment in a civil action—Admissibility of, in criminal prosecutions.

Per RAMPINI, J.—The High Court has no power to direct that criminal proceedings in the Court of a Magistrate should be stayed, until the disposal of a civil suit, in which the question at issue in the criminal proceedings shall have been decided. *In the matter of Ram Prosad Hazra* (1) followed.

It is very doubtful if the High Court has any power to pass an order *quashing* the proceedings before a Magistrate. No section of the Criminal Procedure Code expressly authorizes the High Court to quash pending proceedings.

A judgment in a civil action cannot be given in evidence in a criminal prosecution for establishing the truth of the facts upon which it is rendered. Whatever may be the nature of the decision of the Civil Court the Magistrate ought to decide the question of the accused's criminality by himself.

Per GHOSE, J.—A proceeding in a criminal Court should not, as a general rule, be stayed pending the decision of a civil suit in regard to the same subject-matter; but ordinarily it is not desirable, if the parties to the two proceedings are substantially the same and the prosecution is but a private prosecution, and the issues in the two Courts are substantially identical, that both the cases should go on at one and the same time. It is open to the Magistrate, having regard to the facts of the case before him, to consider whether it is not desirable that the proceedings in his Court should be stayed, till the decision of the civil suit, or for a limited period of time; and it is also open to him to put the defendant on terms as to appearance or otherwise, if he does stay proceedings.

The High Court has the power to order a Magistrate to stay proceedings in his Court, if a sufficient cause in that behalf is made out. But, inasmuch as the Legislature has given him the power to regulate the proceedings in his own Court, the discretion should ordinarily be left to him either to stay proceedings or not, as he in the circumstances of each case may think right and proper.

* Criminal Revision No. 63 of 1896, made against an order passed by the Honorary Presidency Magistrate of Calcutta.

(1) B. L. R., F. B., 426.

The decision in a civil suit would be admissible in evidence in a criminal case, if the parties are substantially the same and the issues in the two cases are identical.

ON the 8th of August 1895 Bama Sundari Debi lodged a complaint under section 499 of the Indian Penal Code for defamation against the petitioner Raj Kumari Debi in the Court of the Presidency Magistrate of Calcutta, alleging that she executed a deed of release which was duly registered by the Registrar of Assurances; but that in a petition subsequently presented by her to the Registrar and in oral statements made by her to various individuals she impugned without any justifiable cause the document as a forgery concocted by Bama Sundari. Nothing was done in the matter of the complaint up to the 21st of November 1895, when a suggestion was made by the Magistrate that a civil suit should be filed by Raj Kumari to have the deed of release declared null and void, on the ground of forgery or otherwise; and the case was adjourned for a fortnight for that purpose. On the 8th of December a civil suit was brought, and on the 6th of January 1896 a copy of the plaint, together with a petition on behalf of Bama Sundari, was filed before the Magistrate, praying that the proceedings in his Court might be stayed, until the decision of the civil suit. The Magistrate made no order on this petition, but made certain orders on subsequent dates, the effect of which was to continue the proceedings. A rule was thereupon obtained from the High Court to show cause why the proceedings against the petitioner before the Magistrate should not be *quashed*, upon the ground that on the facts disclosed in the complaint the case did not fall within section 499 of the Penal Code, or why the proceedings should not be stayed until the decision of the civil suit.

Mr. *P. L. Roy* for the petitioners.

Mr. *Woodroffe*, Mr. *Sinha* and Babu *Atul Krishna Ghose* for the opposite party.

The following judgments were delivered by the High Court (GHOSE and RAMPINI, JJ.):—

1896

RAJ KUMARI DEBI v. BAMA SUNDARI DEBI.

RAMPINI, J.—This rule was issued to show cause (1) why the proceedings now pending against the petitioner Raj Kumari before the Magistrate should not be *quashed*, upon the ground that on the facts disclosed in the opposite party's complaint the case does not fall within section 499 of the Indian Penal Code, or (2) why the proceedings should not be stayed, until the decision of the suit now pending between the two parties in the Civil Court.

The first of these grounds clearly fails. The complaint of the opposite party Bama Sundari undoubtedly charges the petitioner with conduct, which *primâ facie* amounts to the offence of defamation. It charges the petitioner with having defamed the opposite party (1) by means of oral statements made to other persons; and (2) by having presented a petition to the District Registrar of Assurances, representing that a deed of release purporting to have been executed by her in favour of Bama Sundari was a forgery; and that Bama Sundari had at the time of its registration falsely caused some one to personate her, Raj Kumari, and to register the deed in her name. Whether these imputations are true or not, and whether or not they are protected by any of the exceptions to section 499 of the Penal Code, are questions which are, of course, to be decided by the Magistrate, when he comes to try the case.

As to the second ground on which this rule was granted, it is to be observed that the case against the petitioner was instituted before the Magistrate on the 8th July 1895. The civil suit, which the petitioner instituted against the opposite party, was brought on the 12th December 1895. It may have been brought at the suggestion of the Magistrate, but it would appear as if it were now being used by the petitioner as an answer to, and as a shield against, the criminal charge brought against her before the Magistrate. However this may be, the petitioner being the plaintiff, has the command of that civil suit. She can prolong the proceedings in it at her pleasure, and if the prosecution of the criminal proceedings against her are made dependent on the prosecution by her of the civil suit, it is scarcely to be expected, I think, that she will be expeditious in bringing this civil suit to an end. In *these circumstances I do not think it would be right* to postpone the criminal proceedings till after the termination of

the civil suit. *Secondly*, it has been held in a Full Bench decision of this Court that this Court has no power to direct that criminal proceedings should be stayed until the disposal of a civil appeal in which the question at issue in these criminal proceedings shall have been decided. [*In the matter of Ram Prosad Hazra* (2).] The Bombay High Court in the case of *Shri Nana Maharaj* (2) has laid down that criminal proceedings arising out of a civil litigation should not, as a rule, go on during the pendency of the litigation; but, on the other hand, in the case of *Devji Valad Bhavani* (3) they have apparently recanted and have said that it is not an invariable rule that criminal proceedings should in such circumstances be stayed. But whatever the rule of the Bombay High Court may be, there is no decision of this Court in any way weakening the force of the decision of the Full Bench of this Court referred to above.

Thirdly, it is a well known rule of evidence that a judgment in a criminal case cannot be received in a civil action to establish the truth of the facts upon which it is rendered, and that a judgment in a civil action cannot be given in evidence for such a purpose in a criminal prosecution. (Field's Evidence, 5th edition, p. 338, and the cases there cited; also Taylor on Evidence, 8th edition, 1693). Hence, even if the proceedings against the petitioner before the Magistrate were stayed until after the decision of the civil suit, the decision of the civil suit could not properly affect the action of the Magistrate. Whatever the nature of the decision of the Civil Court the Magistrate ought to decide the question of the petitioner's criminality for himself, and would not be bound blindly to follow the decision of the civil suit.

Fourthly, the case against the petitioner has been pending since the 8th July last. It seems manifestly inexpedient to allow any further delay in it. It ought, I think, to be taken up and decided one way or the other at once.

Finally, I would observe that it seems very doubtful if we have [illegible] to pass the order we are invited to pass, *viz.*, to *quash* the proceedings before the Magistrate. No section of the Criminal Procedure Code expressly authorises us to *quash*

(1) B. L. R., F. B., 426. (2) I. L. R., 16 Bom., 729.
(3) I. L. R., 18 Bom., 581.

1896

RAJ KUMARI DEBI v. BAMA SUNDARI DEBI.

pending proceedings. Section 439 read with section 423 authorizes us to interfere in the case (1) of an acquittal; (2) of a conviction; and (3) of an appeal from any other order. The learned Counsel has failed to point out to us any order of the Magistrate, the alteration or reversal of which would have the effect of *quashing* the proceedings. He invites us to *quash* the Magistrate's implied order, as he says "to go on with the proceedings." I do not, however, see how we can reverse or alter an implied order not to be found on the record. The provisions of section 15 of this Court's Charter of 1861 would also not seem to give us power to interfere in this case. *Section 28 of the Letters Patent of 1865 gives us power to* revise all such criminal cases tried by any officer or Court possessing criminal jurisdiction, as were formerly subject to revision by the High Court. But here, it appears to me, there is no case *tried* by any officer or Court possessing criminal jurisdiction for us to revise.

For all these reasons I would discharge the rule.

GHOSE, J.—I agree with my learned colleague in holding that this rule should be discharged; but I am bound to say at the same time that I am not prepared to accept some of the views that have been expressed by him so far as they bear upon the second branch of the rule.

My learned colleague seems to be of opinion that in a matter like this we have no authority to interfere with the proceedings of the Magistrate, so as to stay the proceedings till the decision of the civil suit, which has been instituted by the petitioner.

In the Full Bench decision of this Court in the matter of the petition of *Ram Prosad Hazra* (1) which is said to support that view, the question arose whether, when a Civil Court directs that criminal proceedings should be taken against a party to a suit before it for perjury or forgery, the High Court has power, on an appeal being preferred against the decision of that Court, to direct the proceedings in the Criminal Court to be stayed until the appeal shall have been heard and determined. The case was governed by the Criminal Procedure Code of 1861, and it was held that, as no appeal was given either by the Code of Criminal or Civil Procedure against orders which were left to the discretion of the Civil Court, either

(1) B. L. R., F. B., 426.

granting, or revoking, sanction to criminal prosecution under section 169 or section 170, or against an order sending a case for investigation before a Magistrate under section 171 of the Code of Criminal Procedure; and that, inasmuch as no special provision had been made by that Code for cases of *sanction under section* 169 or section 170, or in respect of orders for investigation under section 171, this Court had no authority, either in the exercise of civil or criminal jurisdiction, to entertain an appeal against any such sanction or order; and Sir Barnes Peacock further observed that "it cannot, as a Court of Revision, reverse such sanction or order upon the ground that it was not warranted by the facts, for as a Court of Revision it cannot reverse an order except for error in law;" and, further, "if the Court, as a Court of Appeal or as a Court of Revision, cannot reverse or alter such an order, I cannot see any inherent authority which it has to stay proceedings."

So far as the law, as it then stood, is concerned, it may be taken that an order for sanction for prosecution, or an order by a civil Court sending a case for investigation by a Magistrate cannot be interfered with, either by way of an appeal or by way of motion to this *Court:* and I might here point out that under section 405 of the Code of 1861 this Court could only interfere in revision, if the sentence or order complained against was contrary to law. The powers given to this Court by the Code of 1872 were very nearly the same. It could only interfere under the revisional section, if there had been a material error in a judicial proceeding; see section 297. The Code of 1882, however, has made a substantial change in the law in this respect. Section 195 of that Code, which authorizes a Court, civil or criminal, to give sanction for the prosecution of a person, provides that any sanction given, or refused, may be revoked or granted, by any authority to which the authority giving or refusing it is subordinate. Section 476 authorizes a Court, when it is of opinion that there is ground for enquiring into any offence referred to in section 195, to send the case for enquiry or trial to a Magistrate, and under section 439 this Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 195, 423, 426, 427 and 428. So that it appears to be quite clear that in matters falling either

1896

RAJ KUMARI DEBI v. BAMA SUNDARI DEBI.

under section 195 or under section 476, this Court has the power to interfere with a sanction given under section 195, or an order for prosecution made under section 476. And I might here refer to the case of *Jankee Bullubh Sen* (1) also decided by a Full Bench of this Court, where, although this Court declined to interfere with the order of the Civil Court for the prosecution of a witness in a Criminal Court, they did not doubt their power to interfere under their general powers of superintendence over the lower Courts. That this Court has often interfered with the orders made under sections 195 and 476 will be seen from the case of *In the matter of Khepu Nath Shikdar* (2); and in the case of *Chowdhry Mahomed Izahul Huq* (3) it was held that under section 439 of the Code this Court has the power to interfere with the order of a Subordinate Court, whether made under section 195 or section 476 of the Criminal Procedure Code, and to determine whether the discretion conferred by those sections has, or has not, been properly exercised. In the first mentioned case of *Khepu Nath Shikdar* (2) it was also held that if this Court had the power to interfere with an order under section 476, it had equally the power to deal with the order that resulted from it, namely, the issue of warrants under that section.

I might here add that section 15 of the Charter Act gives the High Court powers of general superintendence over all Courts subject to their appellate jurisdiction, and section 28 of the Letters Patent declares that the High Court of Judicature at Fort William in Bengal shall be a Court of Reference and Revision from the Criminal Courts, subject to its appellate jurisdiction; and that it is empowered to revise all cases tried by any Officer or Court possessing criminal jurisdiction, subordinate to the High Court. Section 29 lays down that the High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any Officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other Officer or Court.

(1) B. L. R., F. B., 716. (2) I. L. R., 16 Calc., 730.
(3) I. L. R., 20 Calc., 349.

And I do not see why, if this Court is possessed of all these large powers, it has not the power to order a Magistrate to stay proceedings, if a sufficient cause in that behalf is made out. At the same time I feel bound to say that when the Legislature has given to a Magistrate the power to regulate the proceedings in his own Court, the discretion should ordinarily be left to the Magistrate either to stay proceedings or not, as he, in the circumstances of the case, may think it right and proper.

Turning now to the facts of the present case, so far as they may be gathered from the record now before us, it appears that the complainant, Bama Sundari Debi, insists that a deed of release, bearing date the 24th April 1895, was duly executed by the petitioner, Raj Kumari Debi, and was duly registered by the Registrar of Deeds, but that in a petition subsequently presented by her to the Registrar, and in oral statements made by her to various individuals, Raj Kumari Debi impugned without any justifiable cause the said document as a forgery concocted by Bama Sundari, the complainant. Upon this, a charge of defamation was laid by Bama Sundari against Raj Kumari on the 8th August 1895. But apparently nothing was done in the matter of the complaint by the complainant up to the 21st November last, when the case was adjourned for a fortnight, with a view to consult the lady defendant as to the propriety of filing a civil suit for having the document, namely, the release, declared null and void, on the ground of forgery or otherwise. The suggestion seems to have emanated from the Honorary Magistrate himself; and on the 8th December last a suit was brought to have it declared that the document in question was untrue and null and void. On the 6th January last, a copy of the plaint seems to have been produced before the Honorary Magistrate with a petition on behalf of the defendant, praying at the same time that proceedings in the Criminal Court might be stayed, until the decision of the civil suit then pending. The Magistrate does not seem to have made any order on this petition; but he passed certain orders upon subsequent dates, the effect whereof was to continue the proceedings. I might here say that, in my view of the matter, if this Court is entitled to interfere with the proceedings of the Magistrate, it is also empowered to set aside, or interfere with any one or all of the orders made subse-

1896

RAJ KUMARI DEBI v. BAMA SUNDARI DEBI.

quent to the 6th January last, when the defendant applied for the stay of proceedings.

It will be observed that the main issue which would have to be determined by the Magistrate, as also by the Civil Court, would be whether the document in question is true or untrue. If it is untrue, as the defendant's case seems to be, the prosecution, as I understand the matter, must fail.

No doubt, even if the civil suit be decided in favour of Bama Sundari, that would not be conclusive so far as the prosecution in the Criminal Court is concerned. But it would appear that, though *theoretically*, the prosecution is on behalf of the Crown, it is in form and in *substance* (see the summons issued, and the proceedings) a prosecution by Bama Sundari, who is the defendant in the civil suit ; and I am not prepared to say that the decision in the civil suit would not be admissible in evidence in the criminal case, if, as I understand it to be, the main issue in both the cases is identically the same.

In two of the cases referred to by Mr. Field in his book on the Law of Evidence, 5th edition, at p. 338, as authorities for the proposition that the decision in a civil suit is not evidence in a criminal case, and that a judgment in a criminal case cannot be received in evidence in a civil action to establish the truth of the facts upon which it is rendered, namely, the case of *Nityanundo Sarma* v. *Kashinath*, and the case of *Bissonath* v. *Hara Gobind* (1), where a decision of the Criminal Court was sought to be used as evidence in the civil suit, what this Court held was that the decision in the Criminal Court was not conclusive ; so also in the case of *Ram Lal* v. *Tula Ram* (2). In the case of *Gagan Chander Ghose* v. *The Empress* (3), where a Sessions Judge in charging the jury referred to the judgment of the Civil Court as evidence against the prisoner, and where an appeal was made to this Court, it was contended that that judgment was improperly admitted in evidence. White, J., observed as follows :—

"There can be no doubt that the judgment was improperly received. Technically it was inadmissible, because it was not between the same parties ; the present parties technically being the Queen-Empress on the one hand and

(1) 5 W. R., 26 ; 5 W. R., 27. (2) I. L. R., 4 All., 97.
(3) I. L. R., 6 Calc., 247.

the prisoner on the other, and the respective parties in the civil suit being the prisoner and the three defendants. Furthermore, it was not admissible on the substantial ground that the issues in the civil and criminal suit were not identical, and that the burden of proof rested in each case on different shoulders."

No doubt, in a case where the issues in the Civil and Criminal Courts are not identically the same, and the prosecution in the Criminal Court is really the prosecution of the Crown, the judgment of the Civil Court would not be admissible in evidence. I observe, however, that in the case of *Brew* v. *Haren* (1) (which is a converse case) where the grantee of an estate brought an action for trespass on the adjacent seashore between high and low water mark, and for trover and conversion of ungathered drifted sea-weed thereon, he was allowed to prove at the trial convictions at petty Sessions for trespass on the *locus in quo*, and an award in his favour in a former action by him against an alleged trespasser; and it was held that the general words of the patent explained by user and enjoyment, passed the seashore adjoining the lands granted down to low water mark. (See also in this connection *Jones* v. *White* (2) and *Justice* v. *Gosling* (3).

In the present case, the prosecution in the Criminal Court is for defamation, which is altogether a private prosecution, and as Mr. Mayne observes in his Commentary on the Indian Penal Code, p. 410 (Ed. of 1884):—

"Such an offence (the offence of defamation) depends upon the injury to the individual affected by the calumny, and not, as in the English law, upon any supposed tendency of the act to bring about a breach of the peace."

No Court can take cognizance of an offence like this, except upon a complaint made by the person aggrieved thereby. (See section 198 of the Criminal Procedure Code); and such an offence is compoundable (section 345). In such a case, it seems to me rather undesirable that both the civil and criminal cases should go on simultaneously at one and the same time.

In the case of *Shri Nana Maharaj* (4) where a question, some-

(1) 11 Ir. R. C., L. 198—Ex. Ch. Fisher's Common Law Digest, Vol. VI., 1031.

(2) Strange Reports, 68.

(3) 12 C. B., 39.

(4) I. L. R., 16 Bom., 729.

1896

RAJ KUMARI DEBI v. BAMA SUNDARI DEBI.

what similar to that which has arisen before us, arose, Jardine, J., observed as follows :—

"It appears now that the civil litigation in which the Subordinate Judge's proceedings arose is not yet ended ; an appeal in the case is pending here. This Court has often acted on the principle that criminal proceedings should not go on during the pendency of civil litigation, following *The Queen* v. *Ingham* (1) and *Rex* v. *Ashburn* and *Rex* v. *Simmons* (2). In the first of these cases the Justices refused to hear an information for perjury on the ground that the suit was still pending. The Court of Queen's Bench refused to compel them. Mr. Justice Earle said : 'The real object of such an examination before Justices is that the party accused may be put upon such terms as will make it certain that he will be forthcoming for trial. But the Magistrates, when applied to, may see no danger that he will not then be forthcoming, and they may think that justice would be prejudiced by hearing the information.'

"These principles ought, we think, to guide the further action of the Subordinate Judge under section 476, and of any Magistrate to whom he may send the accused. Whether the accused will be forthcoming or not is a question this Court cannot deal with. We think it will be sufficient to communicate these remarks to the Subordinate Judge, and we decline to make any order interfering with his discretion."

In a subsequent case *In re Devji Valad Bhavani* (3), however, before the same High Court, the learned Judges thus expressed themselves :—

"No doubt this Court has often acted on the principle that criminal proceedings should not go on during the pendency of civil litigation regarding the same subject-matter. But we do not think that this is an invariable rule. Under the circumstances of the present case, as recited by the Subordinate Judge, there was no course open to him, but to make inquiries under Chapter XXXV of the Criminal Procedure Code, regarding the genuineness of the transaction put forward by the party, who applied to raise the attachment. The fact that a regular suit has now been filed to establish the genuineness of that transaction is not sufficient to enable this Court to quash the commitment regularly made by the Subordinate Judge to the Sessions Court, or to direct the trial to be adjourned pending the hearing of the civil suit, and possibly of an appeal and second appeal."

This no doubt is a modification of the principle upon which the Bombay High Court had been acting in previous cases, and I am not [illegible] that as a *general* rule a proceeding in a Criminal Court should be stayed pending the decision of a

(1) 14 Q. B., 396. (2) 8 C. and P., 50.
(3) I L. R., 18 Bom., 581.

civil suit in regard to the same subject-matter; but what I think I might properly say is that *ordinarily* it is not desirable, if the parties to the two proceedings are substantially the same and the prosecution before the Magistrate is but a private prosecution, and the issues in the two Courts are substantially identical, that both the cases should go on at one and the same time; and that it is quite open to the Magistrate, having regard to the facts of the case before him, to consider whether it is not desirable that the proceedings in his Court should be stayed till the decision of the civil suit, or for a limited period of time; and it is also quite open to him to put the defendant on terms as to appearance or otherwise, if he does stay proceedings.

1896

RAJ KUMARI DEBI v. BAMA SUNDARI DEBI.

In the present case, as I have already said, the parties in the two Courts are substantially the same, and the main issue to be determined by both the Courts is substantially identical; and it would appear that the Honorary Magistrate himself threw out the suggestion that a civil suit should be brought, and the defendant has evidently acted upon that suggestion.

With these remarks I would discharge the rule.

S. C. B. *Rule discharged.*

Before Sir W. Comer Petheram, Kt. Chief Justice, and Mr. Justice Beverley.

RAI ISRI PERSHAD (PETITIONER) *v.* QUEEN-EMPRESS (OPPOSITE PARTY.)*

1895 *September* 9.

Criminal Procedure Code (Act X of 1882), section 117—General repute, Evidence of—Rumours.

Evidence that there are rumours in a particular place that a man has committed acts of extortion on various occasions, that he has *badmashes* in his employ to assist him, and generally that he is a man of bad character is not evidence of general repute under section 117 of the Criminal Procedure Code.

Evidence of rumour is mere hearsay evidence of a particular fact. Evidence of repute is a different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of good character. On the other hand, if the state of things is that the body of his fellow-

* Criminal Revision No. 473 of 1895.