

form, but he has not found whether the formal requirements of a Mahomedan marriage have been complied with; as pointed out in Wilson's Digest of Anglo-Mahomedan Law, 2nd edition, page 133, although neither writing nor any religious ceremony is necessary to the validity of a marriage contract, "Words of proposal and acceptance must be uttered by the contracting parties or their agents in each other's presence and hearing and in the presence and hearing of two male or one male and two female witnesses, who must be sane and adult Moslems, [857] and the whole transaction must be completed at one meeting:" see also Amir Ali's Mahomedan Law, Vol. II, page 283; *Badal Aurat v. Queen-Emprees* (1). As the learned Munsif points out, the evidence upon these points is extremely conflicting, and before it can be declared that the first defendant is the lawfully married wife of the plaintiff, we think it necessary that it should be determined upon the evidence, whether all the requirements of a valid marriage as required by Mahomedan Law have been complied with.

The result therefore is that this appeal must be allowed, the decree of the Subordinate Judge reversed and the case remitted to him, so that he may determine upon the evidence, whether all the requirements of a valid Mohamedan marriage have been established. The costs of this appeal will abide the result.

*Appeal allowed; Case remanded.*

31 C. 858 (=1 Cr. L. J. 852.)

[858] CRIMINAL REVISION.

*Before Mr. Justice Pratt and Mr. Justice Handley.*

DWARKA NATH RAI CHOWDHRY v. EMPEROR.\*  
[11th April and 17th May, 1904.]

*Criminal proceedings—Stay of—Pending civil suit.*

Upon an application in revision to stay criminal proceedings pending in a Magistrate's Court until the disposal of a civil suit in regard to the same subject-matter.

*Held* that the High Court ought not to interfere except on good cause shown.

That as this was not a private prosecution but one directed by the District Judge, in what he believed to be the interests of justice, and as the witnesses were related to the accused, it was desirable that the evidence should be recorded without delay and that the Magistrate should proceed forthwith to make the preliminary inquiry prior to commitment.

[Ref. 7 Bur. L. T. 73=15 Cr. L. J. 488=24 I. C. 576.]

RULE granted to the petitioners, Dwarka Nath Rai Chowdhry and others.

This was a Rule calling upon the District Magistrate of Faridpore to show cause why the case pending against the petitioners by an order of the District Judge, dated the 22nd March 1904, should not be stayed pending the disposal of the appeal in the probate case, which is now pending in the High Court.

\* Criminal Miscellaneous No. 63 of 1904 made against the order passed by L. Palit, Sessions Judge of Faridpore, dated the 22nd of March 1904.

(1) (1891) I. L. R. 19 Cal. 79, 81.

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31 C. 849=8  
C. W. N. 705.

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31 C.888-1  
Cr. L. J. 882.

The petitioner Dwarka Nath Rai Chowdhry applied to the District Judge of Faridpore for probate of the will of one Pyarimoni Chowdhurani. The application was opposed by Ramani Mohan Basu Rai Chowdhry and another. On the 11th February 1904 the District Judge pronounced the will to be a forgery and dismissed the application for probate. On the 16th February 1904 a notice was issued on the petitioners to show cause why they should not be prosecuted for having committed offences under ss. <sup>465, 471</sup>/<sub>109, 109</sub> and 193 of the Penal Code. They [889] showed cause, but the District Judge by his order, dated the 22nd March 1904, passed under s. 470 of the Criminal Procedure Code sent the case to the District Magistrate of Faridpore for trial. On the 13th April 1904 the petitioner Dwarka Nath Rai Chowdhry filed an appeal in the High Court against the order of the District Judge refusing probate.

The Deputy Legal Remembrancer (Mr. Douglas White) for the Crown. The Courts in India have declined as a rule to postpone a criminal case, because a civil case connected with it is pending. Whether the criminal case should go on or not is entirely in the discretion of the trying Magistrate, and the High Court should not interfere, unless exceptional grounds are shown. In the case of *In re Shri Nana Maharaj* (1) the Bombay High Court held that criminal proceedings for perjury or forgery arising out of a civil litigation should not, as a rule, go on during the pendency of the litigation, but in *In re Devji Valad Bhavani* (2) the same Court came to a different conclusion and held that the mere fact that a regular suit was filed to establish the genuineness of a sale deed was not a sufficient ground for quashing a commitment on charges of forgery and perjury or for adjourning the trial pending the hearing of the civil suit. This High Court has held that it has power to interfere in a pending case, when it is of an exceptional nature, where there is some manifest or patent injustice apparent on the face of the proceedings. *Choa Lal Dass v. Anant Pershad Misser* (3); *Jagat Chandra Mozumdar v. Queen-Empress* (4). In *Raj Kumari Debi v. Bama Sundari Debi* (5) this High Court held that in cases of this kind the discretion should ordinarily be left to the Magistrate either to stay proceedings or not as he may think right and proper. The only ground in this case is that a civil appeal is pending, the Judge's order has in no way been attacked. This is an inquiry, and it may end in the discharge of the accused or his committal. If the accused are committed they can then apply to the Sessions Judge to stay proceedings for a reasonable time so that they may expedite the appeal.

[860] Mr. Jackson (Babu Jogesh Chandra Roy and Babu Girija Prassanna Roy Chowdhry with him) for the petitioners. On principle as well as on authority criminal proceedings should be stayed pending the result of a civil suit dealing with the same subject-matter. The case of *In re Shri Nana Maharaj* (1) is in my favour. In *In re Devji Valad Bhavani* (2), Candy, J., states that the Bombay Court had often acted on the principle that criminal proceedings should not go on during the pendency of civil litigation regarding the same subject-matter. In *Goberdhone Pramanick v. Iswar Chunder Pramanick* (6) this Court stayed criminal proceedings because a civil suit had been instituted. In that case the criminal proceedings had to stand over till

(1) (1892) I. L. R. 16 Bom. 729.

(2) (1893) I. L. R. 18 Bom. 581.

(3) (1897) I. L. R. 25 Cal. 288.

(4) (1899) I. L. R. 26 Cal. 786.

(5) (1896) I. L. R. 23 Cal. 610.

(6) (1900) 5 C. W. N. 44.

after the original case as well as the appeal had been disposed of. In this case it is only till the appeal is disposed of. *Jagat Chandra Mozumdar v. Queen-Empress* (1) is not against me. *Choa Lal Dass v. Anani Pershad Missar* (2) does not affect my case, as this is, I submit, a case of an exceptional nature. I agree with the principle laid down in *Raj Kumari Debi v. Bama Sundari Debi* (3) that ordinarily this point should be left to the discretion of the Magistrate, but not, I submit, in a case of this description. If the decision in this criminal case is once given that the will is a forgery the accused will be imprisoned. Then supposing the High Court in appeal holds that the will is genuine, what will be the result? That decision will not affect the finding in the criminal case, and the accused will have to remain in jail, whereas if the decision is given in the accused's favour by the High Court before the decision is come to in the criminal case, the accused will very probably be acquitted.

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PRATT and HANDLEY, JJ. The petitioner Dwarka Nath Rai Chowdhry applied to the District Judge of Faridpore for probate of the will of one Pyarimoni Chowdhurani. The case was contested, and in the result the District Judge pronounced the will to be a forgery and directed the applicant for probate to be [861] prosecuted for forgery and for giving false evidence. He also directed the other four petitioners, who were witnesses to the will, to be similarly prosecuted. Subsequently on the 13th April last Dwarka Nath Rai Chowdhry filed an appeal in the High Court against the orders of the District Judge refusing probate. We are asked to make an order directing that the proceedings now pending against the petitioners in the Criminal Court should be stayed pending the disposal of the appeal in the probate case. In the case of *In re Devji Valad Bhavani* (4) it was held not to be an invariable rule that criminal proceedings should be stayed during the pendency of civil litigation regarding the same subject-matter. A different opinion seems to have previously prevailed in the Bombay High Court, as expressed in the case of *In re Sri Nana Maharaj* (5). The only reported cases of this Court, which are directly in point are those of *Raj Kumari Debi v. Bama Sundari Debi* (3), and *Goberdhone Pramanick v. Iswar Chunder Pramanick* (6). In the former case Ghose, J. while holding that the High Court has power to order a Magistrate to stay proceedings in his Court, if sufficient cause is made out, added: "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;" and further: "I am not myself prepared to say that as a general rule a proceeding in a Criminal Court should be stayed pending decision of a 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

(1) (1899) I. L. R. 26 Cal. 786.  
(2) (1897) I. L. R. 25 Cal. 233.  
(3) (1896) I. L. R. 23 Cal. 610.

(4) (1899) I. L. R. 18 Bom. 581.  
(5) (1892) I. L. R. 16 Bom. 729.  
(6) (1900) 5 C. W. N. 44.

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on at one and the same time," and he added that it was open to the Magistrate to put the accused on terms as to appearance or otherwise. In that case the learned Judges refused to make any order interfering with the Magistrate's discretion. In the [862] case of *Goberdhone Pramanick v. Iswar Chunder Pramanick* (1) the petitioner denied the execution of a mortgage bond, but the Special Sub-Registrar held that he had executed it and directed a prosecution under section 82 of the Indian Registration Act, upon which the petitioner sued for a declaration that the bond was a forgery. This Court observed that the proceedings in the civil suit are much more likely to result in a proper conclusion than the summary proceeding taken before the registration officers, and accordingly the criminal prosecution was stayed. Acting upon the authority of those cases, we think that we ought not to interfere with the Magistrate's discretion except upon good cause shown. Now in the present case the petitioner has not been able to show any special reason for our interference. On the contrary it would appear expedient that the Magistrate should proceed forthwith to make the preliminary inquiry prior to commitment. It is not a private prosecution, but one directed by the District Judge, in what he believes to be the interests of justice, and as the Magistrate states in explanation the witnesses are related to the accused persons and therefore it is desirable that their evidence should be recorded without undue delay. We may add that, if the Magistrate should find that a *prima facie* case under section 467 of the Indian Penal Code has been made out and should accordingly commit the accused for trial, it would be hardly possible that the case could come on before the July Sessions. In the meantime the appellant in the probate case ought to be able, if he exercises due diligence, to have the paper book prepared. If he satisfies the Sessions Judge that this has been done and that he has moved the Court to expedite the hearing of the appeal, there is little doubt that the Sessions Judge would accede to any prayer he may make for a reasonable postponement of the trial. We think, however, that the proceedings in the Magistrate's Court ought not to be stayed or postponed, and we accordingly discharge the Rule.

*Rule discharged.*

31 C. 863 (=8 C. W. N. 684)

[863] APPELLATE CIVIL.

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Brett, Mr. Justice Mitra, Mr. Justice Geidt and Mr. Justice Woodroffe.*

BIBIJAN BIBI v. SACHI BEWAH.\*

[30th May, and 17th June, 1904.]

*Mortgage—Sale of mortgaged property—Execution of decree—Transfer of Property Act (IV of 1882) ss. 86, 88, 89—Right to redeem—Order absolute for sale—Stoppage of sale by payment of mortgage debt—Civil Procedure Code (Act XIV of 1882) s. 291—High Court Circular Order No. 13 of 27th April 1892.*

\* Appeal from Order No. 278 of 1903, against the order of G. K. Deb, District Judge of Hooghly, dated the 11th July 1903, reversing the order of Purna Chunder De, Munsif at Howrah, dated the 16th May 1903.

(1) (1900) 5 C. W. N. 44.