

CRIMINAL REVISION.

Before Mr. Justice Harington and Mr. Justice Teunon.

1910

July 14.

SHASHI BHUSHAN SEAL

v.

EMPEROR.*

Criminal proceedings, stay of—Pendency of civil suit—Letter alleged to be forged set up as a defence—Genuineness of letter a principal issue in the case—Subsequent institution of criminal proceedings for forgery in respect of the same.

Where after the institution of a civil suit on a promissory note the defendant was called upon to furnish security, and set up, as an answer, to the plaintiffs' claim, a letter which was alleged to bear a forged signature and in respect of which criminal proceedings under ss. 465 and 467 of the Penal Code were taken by one of the plaintiffs:—

Held, that inasmuch as the letter was a necessary part of the defendant's case and the question of its genuineness a principal issue in the suit, the criminal proceedings ought to be stayed pending the decision in the civil suit.

On 7th February, 1910, Debendra Nath Nandi and his two brothers, including Manik Lal Nandi, filed a suit in the Original Side of the High Court, being suit No. 123 of 1910, against the petitioner, Shashi Bhushan Seal, for the recovery of Rs. 8,000 and interest due on a promissory note executed by the petitioner originally in favor of the mother of the plaintiffs on the 29th May, 1903, but renewed from time to time till the 30th June, 1909, when a fresh note was executed by him in the names of the plaintiffs personally. The latter also obtained a Rule on him to show cause why he should not furnish security to satisfy any future decree, or, in default, why his properties should not be attached. In showing cause, the petitioner filed an affidavit in which he referred to a letter of the 30th June, alleged to have been signed by the plaintiffs, according to the terms of which the amount of the note was not to have been returned in cash, but to have been appropriated to the purchase and obtaining possession of certain

* Criminal Revision, No. 799 of 1910, against the order of D. Swinloe, Officiating Chief Presidency Magistrate, dated June 8, 1910.

properties in which the plaintiffs were to be allotted certain shares on payment of a moiety of the costs of getting possession of them. In reply the plaintiffs filed a counter affidavit alleging that the letter was signed only by two of them, Manik Lal being then absent from Calcutta, and that it had been obtained by false representations on the part of the petitioner, in consequence of the discovery of which Manik Lal had not subsequently signed it. The letter was not filed with the affidavit, but was alleged to have been produced in Court before Chitty, J., during the hearing of the Rule, through the petitioner's counsel. The Rule was discharged on the 21st February: whereupon Manik Lal filed a complaint, on the 2nd March, before the Chief Presidency Magistrate against the petitioner, charging him, under ss. 465 and 467 of the Penal Code, with the forgery of his name on the letter. The Magistrate directed the attendance of witnesses on the 18th, and issued a notice on the accused to produce the letter. In the meantime, on the 15th March, the petitioner filed his written statement in the High Court in the civil suit. On the 18th the case was made over for inquiry and report to an Honorary Magistrate. On the 7th June, Mr. J. Ghosal, an Honorary Magistrate, held an inquiry, and recommended proceedings against the petitioner under the sections above named, and the Chief Presidency Magistrate accordingly issued a summons on him the next day. The petitioner then moved the High Court and obtained the present Rule to stay the criminal trial during the pendency of the civil suit.

Mr. Monnier (with him *Babu Atul Krishna Roy*) shewing cause. It has very recently been held that it would be a dangerous doctrine to lay down any hard-and-fast rule that a criminal trial should necessarily be stayed pending a civil suit between the same parties and involving the same or some of the matters in issue: *Brojobashi Panda v. Emperor* (1). The mere fact of pendency of civil litigation in respect of the same subject-matter is not a sufficient reason for staying a

(1) (1908) 13 C. W. N. 398.

1910
 SHASHI
 BHUSHAN
 SEAL
 P.
 EMPEROR.

1910
 SHASHI
 BHUSHAN
 SEAL
 v.
 EMPEROR.

criminal trial, but some particular ground must be shown: *Dwarka Nath Rai Chowdhury v. Emperor* (1) followed in *Charu Chandra Bannerjee v. King-Emperor* (2). The same view was taken in *In re Devji* (3). There are no special reasons in this case. The fact of the civil suit being prior in time is not a good ground, as the discovery of the forgery was subsequent to its institution. The issues are not necessarily the same on the civil and criminal proceedings. The plaintiffs allege that the letter was due to false representations on the part of the petitioner. This would be an issue, and it is only in the event of its being decided against the plaintiffs that the question of forgery would arise: otherwise not. Then the decision in the civil suit would not be binding on the Magistrate: see s. 43 of the Evidence Act, and *Raj Kumari Debi v. Bama Sundari Debi*, per Rampini J. (4), *In re Bal Gangadhar Tilak* (5). At all events the Magistrate has jurisdiction to stay proceedings, and the High Court should ordinarily leave the matter to his discretion, as was actually done in *Rajkumari Debi v. Bama Sundari Debi* (4) and in *In re Shri Nana Maharaj* (6).

Babu Manmatha Nath Mukerjee, for the petitioner, was not called upon.

HARINGTON AND TEUNON, JJ. This is a Rule calling upon the Chief Presidency Magistrate to show cause why the prosecution in this petition complained of should not be stayed, on the ground that the genuineness of the document, which is the subject of the prosecution, is a question at issue in a civil suit, and, therefore, criminal proceedings ought not to be taken in respect of it until the determination of this civil suit.

What has happened is this. The prosecutor in the criminal case sued the defendant on a promissory note. In the course of the proceeding an affidavit was filed by the defendant, which disclosed a letter on which the defendant relied as showing that there was special arrangement with regard to the promissory note which would be an answer to the suit brought

(1) (1904) I. L. R. 31 Calc. 858.

(2) (1905) 9 C. W. N. cclxii.

(3) (1893) I. L. R. 18 Bom. 581.

(4) (1896) I. L. R. 23 Calc. 610.

(5) (1902) I.L.R. 26 Bom. 785, 791.

(6) (1892) I. L. R. 16 Bom. 729.

against him on that note by the prosecutor. The prosecutor says that the letter is a forgery. He at once took proceedings against the defendant in the Criminal Court for forgery.

On the hearing of this Rule, he strongly resisted the application that the criminal prosecution should be stayed until the civil suit is decided.

Now, it is perfectly true, as he says, that the fact standing alone that there is a civil suit would not in all cases be a sound reason for staying the criminal proceeding. But in this particular case the letter has been disclosed in the course of a civil proceeding, and is relied on by the defendant as his answer to the plaintiff's claim, and for the purpose of establishing his answer that letter is a necessary part of his case. And the question whether the letter is a genuine document or not, it appears to us, will be a principal issue in the suit brought against him by the prosecutor. Under the circumstances we think that the criminal proceedings ought to be stayed.

In this particular case there is even more reason for staying proceedings than there is in ordinary cases, because the civil suit has been brought by the same person who has instituted the criminal proceeding. The civil suit was brought by him first in point of time, and it lies in his hand to expedite the hearing of it.

The argument, therefore, which is often used that the criminal proceedings ought not to be allowed to hang indefinitely does not arise in this case, because it rests in the hand of the prosecutor to have the civil suit determined without delay, and then to take such criminal proceedings as he thinks proper.

Inasmuch as there is a serious allegation with reference to the letter, we do not think it right to allow that letter to go out of the Court's control. We direct that the letter be impounded and the criminal proceeding be stayed pending the hearing of the civil suit. The Rule, therefore, is made absolute.

E. H. M

Rule absolute.

1910
 SHASHI
 BHUSHAN
 SEAL
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