

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 10TH JULY 2009 / 19TH ASHADHA 1931

Crl.MC.No. 463 of 2009()

CC.716/2008 of CHIEF JUDICIAL MAGISTRATE COURT, ALAPPUZHA

PETITIONERS/ACCUSED

1. KARUNAKARAN, S/O.RAMAN, PUTHENVELIYIL,
WARD NO.20,CHERTHALA NORTH VILLAGE,
CHERTHALA TALUK.
2. RAJESH KUMAR, CHANDRAVILASATH, KIDAKKURA
MURI, LICENSEE, K.S.A.NO.826.
3. VIJAYAN V.G., WARRIATH VELI, ERAMALLUR P.O.
4. DIVAKARAN, RAMANIVAS,CMC 22,CHERTHALA P.O

**BY ADV. MR.P.N.PURUSHOTHAMA KAIMAL
SMT.V.SHYLAJA
MR.ANILKUMAR.K.N.PILLAI
MR.P.JAYAKRISHNA KAIMAL**

RESPONDENTS/COMPLAINANT

1. STATE OF KERALA REP. BY THE DIRECTOR
PUBLIC PROSECUTION, HIGH COURT OF KERALA,ERNAKULAM
2. JOY MATHEW, S/O.LATE KURIAN MATHEW,
AGED 53 YEARS, THAYYIL HOUSE,
THATHAMPALLY, ALAPPUZHA.

**R1 BY PUBLIC PROSECUTOR MR.AMJAD ALI.
R2 BY ADV. MR.S.SREEKUMAR**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 10/07/2009, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

M.Sasidharan Nambiar, J.

Cr1.M.C.No.463 of 2009

ORDER

Petitioners are the accused in C.C.No.716/2008 on the file of Chief Judicial Magistrate's Court, Alappuzha. Learned Magistrate took cognizance for offences under Sections 465, 467, 511 of 468 and 471 read with Section 34 of Indian Penal Code on Annexure-A4 complaint filed by the second respondent. This petition is filed under Section 482 of Code of Criminal Procedure contending that in respect of the same dispute, O.S.No.98/2006 instituted by the first petitioner before Sub Court, Cherthala under Annexure-A3 is pending and the question whether Annexure-A1 is a forged document or is a genuine one is to be decided in O.S.No.98/2006 and Annexure-A4 complaint is filed to get over the decree to be passed in O.S.No. 98/2006 without any bona fides and it is only an abuse of process of the court and is to be quashed.

2. Learned counsel appearing for the petitioners and second respondent were heard.

3. Learned counsel appearing for the petitioners vehemently argued that the question to be decided in Annexure-A4 private complaint is whether Annexure-A1 promissory note is a fabricated and forged document created by petitioners as alleged by the second respondent or is a genuine one executed for consideration and that exactly is the case to be settled in O.S.No.98/2006 and when the civil court is deciding that question and judgment of the civil court is binding on the criminal court, criminal proceedings is to be quashed.

4. Learned counsel appearing for the second respondent, relying on the decision of the Apex Court in **K.G.Premshanker v. Inspector of Police** ((2002) 8 SCC 87) argued that it is not the law that judgment of the civil court is binding on the criminal court and unless judgment of the civil court comes within the ambit of Sections 40 to 43

of Evidence Act, judgment is not even relevant and it is not binding on the criminal court and therefore, civil court is also considering the same question is not a ground to quash the proceedings. Learned counsel pointed out that ingredients of an offence is made out in Annexure-A4 complaint and therefore, the complaint cannot be quashed.

5. If the allegations in Annexure-A4 complaint are to be accepted, then, it cannot be said that ingredients of an offence, taken cognizance of by the Magistrate, is not made out. If so, complaint cannot be quashed as sought for by the petitioners.

6. The question then is whether existence of a parallel civil proceedings is a ground to quash the criminal proceedings. If the finding of the civil court that will be rendered in O.S.No.98/2006 is binding on the criminal court, it could have been said that there is no necessity to proceed with the criminal proceedings, when the same matter is being decided by the civil court. As rightly pointed out

by the learned counsel appearing for the second respondent, the law is not as canvassed by the learned counsel appearing for the petitioners. Though in **V.M.Shah v. State of Maharashtra** ((1995) 5 SCC 767), Apex Court had earlier held that findings recorded by the criminal court stand superseded by the findings recorded by the civil court and in **Karam Chand Ganga Prasad v. Union of India** ((1970) 3 SCC 694), it was held that it is the well established principle of law that decisions of the civil courts are binding on the criminal courts. A three Judge Bench of the Apex Court in **Premshanker's case** (supra) held that observations made in **Shah's case** (supra) and **Karam Chand Ganga Prasad's case** (supra) are not the correct enunciation of law and previous judgment, which is final, can be relied upon only as provided under sections 40 to 43 of Evidence Act and in civil suits between the same parties, principles of res judicata may apply and in a criminal case

Section 300 of Code of Criminal Procedure makes the provision that once a person is convicted or acquitted, he may not be tried again for the same offence, if the conditions mentioned therein are satisfied. If the criminal case and civil proceedings are for the same cause, judgment of the civil court would be relevant, if conditions of any of Sections 40 to 43 are satisfied. But, it cannot be said that the same would be conclusive, except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated. The judgment to be passed in O.S.No. 98/2006 would not be a judgment as provided under Section 41. Therefore, it cannot be said that finding to be recorded by the civil court will be binding on the criminal court. Learned counsel appearing for the second respondent rightly pointed out that though a two Judge Bench of the Apex Court in **Shanti Kumar Panda v. Shakuntala Devi** ((2004) 1 SCC 438) had held otherwise, the three Judge Bench

decision was not considered therein and in the light of the three Judge Bench decision, criminal proceedings cannot be quashed.

In such circumstances, petition is dismissed.

10th July, 2009

(M.Sasidharan Nambiar, Judge)

tkv