

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench - IV:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.2000-L of 2020

[Against the order of the Lahore High Court, Lahore,
dated 08.12.2020, passed by in Writ Petition No.64232 of 2020]

Salman Ashraf

... **Petitioner**

Versus

Additional District Judge, Lahore, etc.

... **Respondents**

For the Petitioner:

Mr. Hafeez Saeed Akhtar, ASC.

For Respondent No. 3:

Ch. Zulfiqar Ali, ASC.
(*via* video link from Lahore)
Syed Rifaqat Hussain Shah,
AOR.

Dates of Hearing:

25 and 26 May 2023

ORDER

Syed Mansoor Ali Shah, J:- The petitioner seeks leave to appeal against an order of the Lahore High Court, dated 08.12.2020, whereby the High Court has dismissed his writ petition and upheld the order of the revisional court, dated 20.11.2020. By its order, the revisional court had dismissed the revision petition of the petitioner filed against the order of the trial court, dated 27.10.2020, dismissing the application of the petitioner for rejection of the plaint in a suit filed by respondent No.3, Ch. Muhammad Ashiq, ("**respondent**"). All three courts below have thus decided the matter against the petitioner.

2. Briefly, the factual background of the case is that on 2 June 2007, the petitioner filed a suit for recovery of the amount of Rs.174,406,250/- against the respondent. In his suit, the petitioner asserted that he and his late father paid the said amount to the respondent, vide agreements dated 06.08.2003, 26.05.2004 and 13.07.2004 and certain receipts, to purchase for them some land and plots in different phases of DHA, Lahore; but the respondent did not fulfil the commitment nor did he return the said amount. Meanwhile, the National Accountability Bureau ("**NAB**") also took cognizance of the alleged commission of the offence by the respondent, of defrauding the

members of the public and inducing them to deliver him a huge amount of money on the pretext of procuring plots for them in DHA, Lahore. The affectees of the alleged offence included the petitioner; therefore, in the trial of that offence the petitioner appeared as a witness and also tendered the said agreements and receipts allegedly executed by the respondent, in the prosecution evidence. While relying on the prosecution evidence, which included the testimony of the respondent as well as the said agreements and receipts, the Accountability Court convicted the respondent *vide* its judgment dated 27.11.2012. The respondent preferred an appeal against the judgment of the Accountability Court before the Lahore High Court, which is pending adjudication.

3. In addition to that appeal, the respondent also instituted a suit for declaration on 7 June 2013 against the petitioner, wherein he asserted that the agreements and receipts on the basis of which the petitioner had instituted the suit for recovery of the amount against him are forged, fabricated and fictitious. In the suit, he prayed that the said agreements and receipts may be declared to be so and thus ineffective against his rights. The trial court consolidated the proceedings of the suit of the respondent with the suit of the petitioner and framed consolidated issues. The respondent produced his evidence on the consolidated issues, and the hearing of the case was fixed for evidence of the petitioner when he filed on 2 September 2020 an application under Rule 11 of Order 7 of the Code of Civil Procedure 1908 ("**CPC**"), for rejection of the plaint in the suit of the respondent.

4. The application of the petitioner for rejection of the plaint was mainly based upon two grounds: (i) the suit of the respondent is time-barred, and (ii) the suit is not maintainable in view of the judgment of the Accountability Court, wherein the agreements and receipts have been relied upon for convicting the respondent. The trial court dismissed the application on 27 October 2020 by holding that in the circumstances of the case, the question of limitation could not be decided without recording evidence, and that the scope of the jurisdiction of a civil court and that of a criminal court in regard to the documents in question (agreements and receipts) was different. The revision petition filed by the petitioner was dismissed by the District Court on 20 November 2020. And by the impugned judgment passed on 8 December 2020 in the writ petition of the petitioner, the High Court upheld the orders of the courts

below. The High Court observed that in the present case, the question of limitation was a mixed one of law and facts, which was not to be decided summarily but rather after recording evidence of the parties, and that the civil and criminal proceedings regarding the veracity of the documents could be conducted simultaneously.

5. Before us, the learned counsel for the petitioner pressed only the second ground and contended that once a matter (validity of the agreements and receipts) is decided by a criminal court, the same cannot be re-agitated in a suit before a civil court. Such a suit, he contended, is barred by law. In support of his contention, he placed reliance on three judgments: *Olas Khan v. Chairman NAB* (PLD 2018 SC 40), *Zahida Sattar v. Federation of Pakistan* (PLD 2002 SC 408), and *Hunter v. Chief Constable of West Midlands* ([1981] 3 All ER 727).

6. On the other hand, the learned counsel for the respondent submitted that civil proceedings are distinct from criminal proceedings and can be conducted simultaneously, and that civil courts have plenary jurisdiction to decide upon all matters of civil nature unless it is shown that their jurisdiction is either expressly or impliedly barred. He relied upon *Jan Muhammad v. Nazir Ahmad* (2004 SCMR 612), *Province of Punjab v. Yaqoob Khan* (2007 SCMR 554), *Nazir Khan v. Ahmad* (2008 SCMR 539), *Hashmat Ullah v. State* (2019 SCMR 1730) and *SNGPL v. Noor CNG Filling Station* (2022 SCMR 1501).

7. We have considered the arguments of the learned counsel for the parties, read the cases cited by them and examined the record of the case.

8. It hardly needs reiteration that the object of a civil proceeding is to enforce civil rights and obligations while that of a criminal proceeding is to punish the offender for the commission of an offence. It is, therefore, a well-established legal position in our jurisdiction that both the civil proceeding and criminal proceeding relating to one and the same matter can be instituted and ordinarily proceeded with simultaneously.¹ Although there is no bar to the simultaneous institution of both proceedings, the trial in the criminal

¹ *Aslam Zaheer v. Shah Muhammad* 2003 SCMR 1691; *Rafique Bibi v. Muhammad Sharif* 2006 SCMR 512; *Khalid Saleem v. Muhammad Ashraf* 2006 SCMR 1192; *Seema Fareed v. State* 2008 SCMR 839; *Sikandar Ali v. SHO* 2021 SCMR 1486.

proceeding may be stopped in certain circumstances.² And the guiding principle in this regard is also well-defined. It is that where the criminal liability is dependent upon or intimately connected with the result of the civil proceeding and it is difficult to draw a line between a bona fide claim and the criminal act alleged, the trial in the criminal proceeding may be postponed till the conclusion of the civil proceeding.³ Thus, where either of these two conditions is not fulfilled, i.e., where the subject matter of civil proceeding and that of criminal proceeding are distinct, not intimately connected,⁴ or where the civil proceeding is instituted mala fide to delay the criminal prosecution, not bona fide,⁵ the criminal proceeding may not be stayed.

9. It is notable that the whole jurisprudence on the subject, as briefly stated above, has developed while dealing with the question of staying criminal proceeding till the conclusion of the connected civil proceeding. Not a single case is brought to our notice wherein the question of staying civil proceeding till the culmination of the criminal proceeding had been raised. The reason is not far to see. The decision of a civil court as to any right, title or status, which only that court can finally decide, may have a substantial bearing upon a constituent ingredient of the offence being tried by the criminal court.⁶ On the other hand, any finding of a criminal court on a fact constituting the offence tried by that court is irrelevant in a civil proceeding to decide the same fact in the course of adjudicating upon and enforcing civil rights and obligations.⁷ The petitioner has even gone a step farther than that. As he has not prayed that the civil proceeding may be stayed till a final decision in the criminal proceeding but rather for quashing the civil proceeding by rejecting the plaint therein, on the basis of some findings of facts recorded in the criminal proceeding by the criminal trial court.

10. Section 9, CPC, provides that the civil courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. And as per clause (d)

² Muhammad Akbar v. State PLD 1968 SC 281 (4-MB); Manak Ji v. Fakhar Iqbal 1969 PCrLJ 411 SC (4-MB); Muhammad Tufail v. State 1979 SCMR 437; Abdul Haleem v. State 1982 SCMR 988; Habib Ahmed v. M.K.G. Scott Christian PLD 1992 SC 353; Muhammad Anwar v. Badshah Begum 1999 SCMR 1475; Sheraz Ahmad v. Fayyaz-ud-Din 2005 SCMR 1599; Abdul Ahad v. Amjad Ali PLD 2006 SC 771; Zafar v. Umar Hayat 2010 SCMR 1816.

³ Muhammad Akbar v. State PLD 1968 SC 281 (4-MB); Muhammad Azam v. Muhammad Iqbal PLD 1984 SC 95 (5-MB).

⁴ Muhammad Aslam v. State 2017 SCMR 390.

⁵ Mohammad Ahmad v. State 1972 SCMR 85.

⁶ Muhammad Akbar v. State PLD 1968 SC 281 (4-MB); Muhammad Azam v. Muhammad Iqbal PLD 1984 SC 95 (5-MB).

⁷ D.I.G., Lahore v. Anis-ur-Rehman Khan P L D 1985 SC 134 (4-MB); Ghulam Rasool v. Muhammad Waris 1995 SCMR 500; Richard Benjamin v. Ismail 1980 PCrLJ 1172 Kar (DB); Aijaz v. Karachi Transport Corporation 2004 MLD 491.

of Rule 11 of Order 7, CPC, a plaint can be rejected where the suit appears to be barred by any law. Thus, to succeed in his plea for rejection of the plaint in the suit of the respondent, the petitioner is to show under which law the suit of the respondent is either expressly or impliedly barred. The petitioner has pointed out no such law.

11. The reliance of the petitioner on the case of *Zahida Sattar* is misconceived. In that case, this Court upheld the order of the civil court rejecting the plaint by observing that Section 13 of the National Accountability Ordinance 1999 ("**NAB Ordinance**") conferred exclusive jurisdiction on the Accountability Court to adjudicate upon the matter that was agitated in the civil suit and the jurisdiction of the civil court to try that matter was impliedly barred. Section 13 of the NAB Ordinance has no application to the matter involved in the suit filed by the respondent.

12. Similarly, the reliance of the petitioner on the case of *Olas Khan* is misplaced. In that case, the Court was dealing with the question on the jurisdiction of the High Court to grant bail to an accused arrested for an offence under the NAB Ordinance. The question of any express or implied bar on the jurisdiction of the civil court to try a matter was neither raised nor decided therein. Nothing turns out of a passing remark made in that case, and referred to by the learned counsel for the petitioner, that the NAB Ordinance is a special statute hybrid in nature and is a fusion of criminal liability and civil obligations. The learned counsel for the petitioner did not pinpoint any provision of the NAB Ordinance, which confers exclusive jurisdiction on the Accountability Court to enforce civil obligations. He only referred to Section 33-E of the NAB Ordinance, which provides that any fine or other sum due under the Ordinance, or as determined to be due by a Court, shall be recoverable as arrears of land revenue. Similar provisions are contained in Section 544-A(2) of the Code of Criminal Procedure 1898 ("**CrPC**") for recovery of the compensation awarded under subsection (1) of that Section. It has never been urged that a criminal court enforces civil obligations by taking proceedings to recover the amount of compensation as an arrear of land revenue under Section 544-A. Rather, Section 546, CrPC envisages the institution of a civil suit relating to the same matter, despite the recovery of the compensation under Section 544-A.

13. The third case relied upon by the learned counsel for the petitioner is that of *Hunter* decided by the U.K. House of Lords. In *Hunter*, the House of Lords essentially held that a civil action by a person to prove that the confession on the basis of which he was convicted in the criminal trial had been procured by force, in the disguise of a claim for damages, is an abuse of the process of the court and such a civil action is liable to be struck out. The learned counsel for the petitioner, by taking an analogy from that case, argued that as a piece of evidence (confessional statement) found valid and relied upon in the criminal proceeding was not allowed to be challenged in a civil action in *Hunter*, the evidence of the agreements and receipts found valid and relied upon by the Accountability Court in the present case cannot be challenged in a civil suit by the respondent. We find the analogy to be in correct. While certain agreements and receipts, such as those involved in the present case, may give rise to civil rights and obligations, a confessional statement made in a criminal case does not. Therefore, the suit that challenges the validity of such agreements and receipts is a suit of a civil nature within the meaning and scope of Section 9, CPC, but the suit challenging the validity of such a confessional statement is not. Further, the bar on the jurisdiction of the civil court to try a suit of civil nature or on the maintainability of a suit envisaged by Section 9 or clause (d) of Rule 11 of Order 7, CPC is that which is created either expressly or impliedly by some statutory law enacted by the legislature. The courts in Pakistan, as held by this Court in *Akram v. Farman Bi*,⁸ cannot import an implied bar from another country's jurisprudence.

14. Needless to mention that the standard of proof required in civil and criminal proceedings is different. In the former, a mere preponderance of probability is sufficient to decide the disputed fact but in the latter, the guilt of the accused must be proved beyond any reasonable doubt.⁹ There are, therefore, chances of giving divergent judgments by the civil and criminal courts on the facts that give rise to both civil and criminal liabilities.¹⁰ The contention made in the present case by the petitioner appears surprising to us in that it has the potential of causing detriment to his claim. The judgment of the Accountability Court on which the petitioner is now relying is under judicial scrutiny of the first appellate court, i.e., the High Court, and any judgment passed

⁸ PLD 1990 SC 28.

⁹ *Zakaullah Khan v. Muhammad Aslam* 1991 SCMR 2126.

¹⁰ *Richard Benjamin v. Ismail* 1980 PCrLJ 1172 Kar (DB); *Aijaz v. Karachi Transport Corporation* 2004 MLD 491.

by the High Court may further be challenged in this Court. What if the High Court or this Court comes to a conclusion contrary to that of the trial court and acquits the respondent of the charge giving him the benefit of any reasonable doubt? Would the claim of the petitioner against the respondent for recovery of the amount come to an end? Not, in our view. The petitioner will still have the chance of success in his claim in the civil proceeding if the civil court finds that the preponderance of probability tilts in his favour.

15. For the above reasons, we find no legal error in the concurrent orders of the three courts below. This petition is found meritless. It is therefore dismissed and the leave to appeal is declined.

Judge

Islamabad
26 May 2023
Approved For Reporting
Sadaqat

Judge