

Present:
Mr. Justice Soumendra Sarker
and
Mr. Justice Md. Ruhul Quddus

Criminal Misc. Case No. 3734 of 1998

Sirajuddin Sarkar
... Petitioner

-Versus-

Md. Fazlul Haque and others
... Opposite Parties

No one appears for either of the parties

Judgment on 2.4.2012

Md. Ruhul Quddus, J:

This Rule at the instance of a complainant was issued on an application under section 561A of the Code of Criminal Procedure challenging the judgment and order dated 26.2.1998 passed by the Additional Sessions Judge, Second Court, Dhaka in Criminal Revision No.343 of 1997 allowing the same and thereby staying all further proceedings in C. R. Case No.2958 of 1994 under sections 482 and 483 of the Penal Code pending in the Court of Chief Metropolitan Magistrate, Dhaka.

Complainant Sirajuddin Sarkar filed a petition of complaint on 1.11.1994 in the Court of Chief Metropolitan Magistrate, Dhaka against the opposite parties alleging, *inter alia*, that he was the Managing Partner of M/S Maanco Casting Industries, a registered partnership firm. It was carrying on its business of production and trade of cast iron, sanitary pipes, fittings etc. since 1955-56 with goodwill and reputation. It

had also registered the trade marks %Maanco+ and %Manco+ in its name and obtained exclusive right to use the trade marks on its products. The accused persons (herein opposite parties) incorporated a company named %Manco Casting Industries Ltd.+ in 1987 deceptively similar with the petitioner's firm. As they used the trade marks registered by the petitioner's firm on their products, the petitioner's firm and its partners instituted Title Suit No.26 of 1988 in the Court of District Judge, Dhaka for perpetual injunction restraining the accused from using the word %Maanco+ or %Manco+ on their products. The accused entered appearance and filed a written statement therein, but ultimately did not contest the suit. As a result, it was decreed exparte on 12.9.1990. They also instituted another civil suit in the Fourth Court of Subordinate Judge, Dhaka and got a decree against the accused. Despite the said decrees were in force, the accused continued infringing the trade mark right of the petitioner's firm, for which he filed Execution Case No.1 of 1991 in the Fourth Court of Additional District Judge, Dhaka. The Executing Court found the accused guilty and awarded suitable punishment upon them. The said order of punishment was under challenge before the High Court Division in Civil Revision No.3491 of 1996. The petitioner came to learn that the accused had infringed the trade mark rights of his firm again on 29.10.1994 by manufacturing cast iron, sanitary pipes and fittings etc. in their factory at Tejgaon Industrial Area, Dhaka with the word %MANCO+ on those products to defraud the buyers, thus they committed offence under sections 482 and 483 of the Penal Code.

In the complaint, it was also contended that on an application filed by the complainant, the Magistrate issued search warrant and seized the said items from the custody of the accused, which they manufactured and stored in their factory.

The accused surrendered before the Magistrate and obtained bail. Thereafter, they filed an application for their discharge from the case under section 241 A of the Code of Criminal Procedure. The Magistrate rejected the application and framed charge against them under sections 482 and 483 of the Penal Code by order dated 25.4.1996. Subsequently the accused filed two other applications, one for their discharge on the self same ground and another for staying the proceedings on the ground of pendency of some civil cases on same subject matter. The Magistrate rejected the said applications by order dated 24.6.1997. The accused then moved Criminal Revision No.343 of 1997 before the Sessions Judge, Dhaka with a prayer for staying the proceedings till disposal of the civil cases. The complainant opposed the said application by filing a written objection. The Additional Sessions Judge, Second Court, Dhaka ultimately heard the criminal revision and allowed the same by the impugned judgment and order staying all further proceedings in the complaint case till disposal of the civil cases.

In this backdrop, the complainant moved in this Court with the present miscellaneous case under section 561 A of the Code of Criminal Procedure and obtained the Rule with an order of stay.

The case has been appearing in the cause list since 23.3.2012 with the name of learned Advocate for petitioner. Today it is taken up for hearing, but no one appears for either of the parties. In view of its long pendency, we take it up for disposal.

It appears that the accused moved the application for their discharge on the grounds, *inter alia*, that accused Nos.2-6 though were share-holder directors of the company, were not involved in the alleged occurrence and that several civil cases on the same subject matter were pending before the civil Courts. The Magistrate, on hearing of the parties and perusal of documents, was satisfied that the point of controversy should be dissolved by holding trial, thus rejected the application and framed charge under sections 482 and 483 of the Penal Code against the accused by order dated 25.4.1996. The accused did not challenge the said order, but moved two other applications, one for their discharge on self same ground and another for staying the proceedings in the compliant case till disposal of the civil cases. The Magistrate also rejected the said applications by order dated 24.6.1997 on the reasons that earlier their application for discharge was rejected and there was no order of stay from the superior Court, and that the case was at the stage of evidence.

It further appears that the Additional Sessions Judge, Dhaka allowed the criminal revision and thereby stayed all further proceedings in C. R. Case No.2958 of 1994 on the reason of pendency of civil cases as it may create complication and contradictory decisions on same subject matter.

The petition of complaint shows that the petitioners firm got decrees in earlier civil suits. In execution of such a decree, the petitioner filed Execution Case No.1 of 1996, wherein the accused were awarded punishment. In one suit the accused being defendants had entered appearance and filed a written statement. It indicates that they were in knowledge of institution of the suit.

It has been stated in the revisional application that the accused had filed three cases, namely Miscellaneous Case No.4 of 1994, Miscellaneous Case No.2 of 1993 and Miscellaneous Case No.153 of 1994 in different civil Courts for setting aside the *exparte* decrees obtained earlier by the complainant-petitioner and his firm. Under the facts and circumstances of the present case, pendency of such type of miscellaneous cases cannot be considered to be reasonable cause as contemplated under section 344 the Code of Criminal Procedure. Moreover, no copies of the petitions in the said miscellaneous cases have been annexed herewith to show the nexus of those cases with the present case.

The revisional Court, by the impugned judgment and order, stayed the proceedings in the complainant case on 26.2.1998 i.e more than fourteen years back. It is not reported to this Court whether the civil cases are still pending and what happened to the complaint case after granting stay order from this Court at the time of issuance of the Rule.

There is no hard and fast rule that a criminal case should be stayed pending disposal of a civil suit in relation to same subject matter. Each case is to be decided on its own merit. It has been settled in number of cases that indefinite postponement of a criminal case is against the policy of law. When there is no time-limit for disposal of the miscellaneous cases, stay of the instant criminal case for uncertain period would definitely prejudice the criminal proceedings and on laps of unlimited time, it will be difficult to ascertain the truth. Indefinite postponement of a criminal case is thus undesirable (reliance placed on 6 BLD 315, 25 DLR 331, 22 DLR 502).

Even on same facts both civil and criminal cases can proceed simultaneously. This view lends support from Md. Monzur Alam Vs. The State and another, 11 BLT (AD) 156 and Shahidullah Patwary Vs. State, 35 DLR (AD) 281. When both civil and criminal case on same subject matter can proceed simultaneously, there is no justification to keep the criminal proceedings stayed for an indefinite period on the reason of pendency of civil cases.

Under the above facts and circumstances, we are of the view that the learned Additional Sessions Judge committed wrong in staying the proceedings for an indefinite period and as such the impugned judgment and order should not sustain in law.

In the result, the Rule is made absolute. The impugned judgment and order dated 26.2.1998 passed by the Additional Sessions Judge, Second Court, Dhaka in Criminal Revision No.343 of 1997 is hereby quashed. The Chief Metropolitan Magistrate, Dhaka is directed to proceed with C. R. Case No.2958 of 1994 under sections 482 and 483 of the Penal Code in accordance with law.

Communicate a copy of the judgment.

Soumendra Sarder, J:

I agree.