LAHORE HIGH COURT

B.N. Kashyap

Vs

Emperor

Abdur Rahman, J.

20.04.1944

JUDGMENT

Abdur Rahman, J.

1. The essential facts have been given by the Division Bench in its referring order and need not be re-stated. The real question which the Full Bench is called upon to answer relates to the relevancy of a judgment of a civil Court in a criminal Court or vice versa when the facts found by one Court are substantially the same as those which have to be subsequently alleged and proved in the other Court before the prosecution or the plaintiff, as the case may be, can hope to succeed. In other words, the short point to decide is whether the finding on certain facts by a civil Court is relevant before the criminal Court when it is called upon to give a finding on the same facts or vice versa? The Evidence Act being exhaustive, the answer to this question depends upon the correct interpretation of the relevant provisions contained in that Act regardless of the fact whether the conclusion at which one ultimately arrives is in accordance with what was characterized before us during the arguments at the Bar to be a commonsense view of things or not. In. construing a statute like the Evidence Act, where any fact intended to be established has to be in accordance with the scheme of the Act, found to be relevant under a provision contained in the Act before it can be allowed to be proved, any argument based on plausibility can have no effect. I must i therefore ignore any other consideration and I confine myself strictly to the provisions of the Act.

2. Judgments of Courts of justice are as such declared to be relevant by Sections 40 to 43, Evidence Act, and if they do not fall within the one or the other of these sections, they will have to be held irrelevant unless they can be brought under any other provisions of the Act. Under Section 40 of the Act, previous judgments are admissible in support of a plea of res judicata in civil cases or of autre fois acquit or autrefois convict in criminal oases. Judgments such as those whose relevancy we have been called upon to determine do not fall under this category. Nor can they fall under Section 41 of the Act which only makes a final judgment of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, conferring upon, taking away from or declaring any person to be entitled to any legal character or to be entitled to any specific thing absolutely, relevant when the existence of any such legal character or the title to any such thing is relevant. They do not also fall within the purview of Section 42 of the Act as they do not relate to matters of a public nature. Section 43 of the Act positively declares

judgments other than those mentioned in Sections 40, 41 and 42 to be irrelevant unless their existence is a fact in issue or is relevant under some other provision of the Act. It is quite clear that the mere existence of a judgment in the present case is not relevant. Learned Counsel for the petitioner saw this difficulty and wished to rely on Section 11 of the Act. But I cannot see how could that section have any application when the existence of that judgment as apart from any finding contained therein or even the finding itself could neither be inconsistent with any fact in issue or a relevant fact. Nor could such judgments either by themselves or in connexion with other facts make the existence or nonexistence of any fact in issue or relevant fact in any subsequent proceedings highly probable or improbable. This section only refers to certain facts which are either themselves inconsistent with, or make the existence or nonexistence of, the fact in issue or a relevant fact highly probable or improbable and has no reference to opinions of certain persons in regard to those facts. It does not make such opinions to be relevant and judgments after all of whatever authority are nothing but opinions as to the existence or non-existence of certain facts. These opinions cannot be regarded to be such facts as would fall within the meaning of Section 11 of the Act unless the existence of these opinions is a fact in issue or a relevant fact which is of course a different matter.

3. Learned Counsel for the petitioner wished to rely on the decision in *In re N.F. Markur*[1] an observation by Sulaiman J. (as he then was) in *Kanhaiya Lal v. Bhagwan Das*[2] and a decision of the Punjab Chief Court *Emperor v. Bishen Das*[3] Cr. followed by Sir Shadi Lal C.J. in *Phuman Singh v. Emperor*[4] The observations by Sulaiman J. in *Kanhaiya Lal v. Bhagwan Das*[5], are merely in the nature of an obiter while Sir Shadi Lal C.J. had expressed no opinion at all except to the extent that it might be inferred from his acceptance of the report of the District Magistrate who had himself relied on the decision in *Emperor v. Bishen Das*[6] *Cr.* It is noteworthy, however, that in none of these cases was any reference made to the provisions of the Evidence Act. Led by what I regard to be general considerations, Shah J. expressed the view in *In re N.F. Markur A.I.R. 1916 Bom. 163(Supra)* that the prior judgment of a civil Court in regard to the same fact would be relevant. According to that learned Judge, where the civil liability is determined by a civil Court, the judgment of that Court would be best evidence of the civil rights of the parties. That may be so but that was not the question which the learned Judge was called upon to decide. The judgment is silent on the real question that awaited his decision as to how the finding of the civil Court would be relevant in a criminal Court. In that judgment, the sentence containing the reflection to the effect that the existence of the judgment of the civil Court was clearly a relevant fact, draws no distinction, if I may say so with great deference, between the opinion or finding contained in the judgment and the existence of the judgment. Heaton J. concurred with Shah J. but chose to put his decision on the ground that it would avoid a conflict of opinion between civil and criminal Courts. I do not, however, see what has the administration of justice in a civilized country got to do with the point of relevancy. In fact, the consideration of questions of relevancy can only arise in places where administration of justice bears a proper relation to civilization and in coming to this

[1] A.I.R. 1916 Bom. 163 [3](10) 33 P.R. 1910 [5] AIR 1926 All 30 : (1926) ILR 48 All 60
[2] A.I.R. 1926 All. 30 [4](27) 106 I.C. 463 [6](10) 33 P.R. 1910

decision Judges do not wish to place their reliance on any and every fact but only on those facts which are strictly relevant. I must admit that it would have been a good thing to avoid con diet of opinions between the two Courts if it wore legally possible so to do but in the absence of any provision to that effect in the Evidence Act, I cannot see how could this be avoided as long as it is possible for two independent Judges to come to two different findings on the same evidence.

As for the Chief Court decision, Rattigan J. assumed that in all cases of the kind with which he was dealing the proper tribunal to decide was a civil Court and that save for very exceptional reasons the decision of the civil Court should be accepted as conclusive between the parties.

4. There is no reason in my judgment as to why the decision of the civil Court particularly in an action in person am should be allowed to have that sanctity. There appears to be no sound reason for that view. To hold that when a party has been able to satisfy a civil Court as to the justice of his claim and has in the result succeeded in obtaining a decree which is final and binding upon the parties, it would not be open to criminal Courts to go behind the findings of the civil Court is to place the latter without any valid reason in a much higher position than what it actually occupies in the system of administration in this country and to make it master not only of cases which it is called upon to adjudicate but also of cases which it is not called upon to determine and over which it has really no control. The fact is that the issues in the two cases although based on the same; facts (and strictly speaking even parties in the two proceedings) are not identical and there appears to be no sufficient reason for delaying the proceedings in the criminal Court, which, unhampered by the civil Court, is fully competent to decide the questions that arise before it for its decision and where in the nature of things there must be a speedy disposal. This view has been consistently adopted by the Calcutta High Court, for which see *GogunChunder Ghose v. Emperor*[7] *Raj Kumari* ***v****. Bama Sundari*[8] *Tarapada Biswas v. Kalipada Ghose*[9]*, Trailokyanath Das v. Emperor*[10]*,* The same view has been taken by the Madras High Court in *Gnanasigamani Nadar v. Vedamuthu Nadar*[11] and *Pandmanabhani Ramanamma v. Appalanarasayya*[12] It is true that a learned single Judge of that Court made certain observations in an earlier case reported in *In re Velayudhan Chetti*[13] which are different but they were clearly obiter and were not followed by that Court subsequently. The Calcutta view was accepted by the Patna Court in *Raghunath Singh v. Emperor*[14] For the above reasons I have no hesitation in answering the question framed by the Division Bench in the negative. I must, however, say that in answering the question I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41, Evidence Act, will have to be carefully examined.

Beckett J.

[7](81) 6 Cal. 427 [9] AIR 1924 Cal 639 [11] A.I.R. 1927 Mad. 308
[8](96) 23 Cal. 610 [10] AIR 1932 Cal 293 : (1932) ILR 59 Cal 136 [12] A.I.R. 1932 Mad. 254
[13] A.I.R. 1924 Mad. 516
[14] A.I.R. 1936 Pat. 537

I agree.

Marten J.

I agree.

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