

2024 LiveLaw (SC) 80

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
VIKRAM NATH; J., AHSANUDDIN AMANULLAH; J.
JANUARY 31, 2024**

**CRIMINAL APPEAL NO.523 OF 2024 (@ SPECIAL LEAVE PETITION (CRL.) NO.6562 OF 2021)
BHARAT SHER SINGH KALSIA *versus* STATE OF BIHAR & ANR.**

Contract Law - If there is a repugnancy between the earlier and later clauses of a deed, whereby a later clause destroys altogether the obligation created by the earlier clause, then the later clause is to be rejected as repugnant to the earlier clause and the earlier clause prevails. (Para 30)

(Arising out of impugned final judgment and order dated 12-03-2021 in CRLM No. 42776/2013 passed by the High Court of Judicature at Patna)

For Petitioner(s) Mr. Maninder Singh, Sr. Adv. Ms. Shirin Khajuria, AOR

For Respondent(s) Mr. Devashish Bharuka, AOR Mr. Siddhartha Dave, Sr. Adv. Mr. Santosh Krishnan, AOR Mr. Simon Benjamin, Adv. Ms. Deepshikha Sansanwal, Adv.

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Heard learned counsel for the parties.

2. Leave granted.

3. The present appeal arises out of the Final Judgment and Order dated 12.03.2021 (hereinafter referred to as the “Impugned Judgment”) passed in Criminal Miscellaneous No.42776 of 2013 by the High Court of Judicature at Patna (hereinafter referred to as the “High Court”) by which the prayer for quashing First Information Report No.87 of 2011 dated 19.03.2011 (hereinafter referred to as the “FIR”) registered at Dumraon Police Station, Buxar, Bihar under Sections 467, 468, 469 and 471 of the Indian Penal Code, 1860 (hereinafter referred to as the “IPC”), has been dismissed.

THE BRIEF FACTS:

4. The informant/respondent no.2 Maharaj Kumar Man Vijay Singh @ Man Vijay Singh gave a statement in writing to the Station House Officer, Dumraon Police Station alleging that Raj Kumar Karan Vijay Singh, s/o Group Captain Late Maharaj Kumar Ran Vijay Singh had sold off property belonging to 5 persons of the informant’s family, including the informant himself. It was alleged that the informant and his family members had earlier given a Power of Attorney (hereinafter referred to as the “PoA”) to Raj Kumar Karan Vijay Singh in respect of and as owners of property bearing Khasras No.459G, 472, 474, 475, 476 and 478B and further Khasra No.459E situated in Village Karbari Grant, Tehsil Vikasnagar, Pargana Pachwain, District Dehradun. It was stated that the informant Maharaj Kumar Man Vijay Singh and his brother Kumar Chandra Vijay Singh, both sons of Maharaja Kamal Singh, Smt. Sangeeta Kumari, Indumati, Ran Vijay Singh, his father’s Sister, father, sisters and Aunt executed a PoA on 12.04.1994 for management and maintenance of their property. It was provided therein that the PoA holder shall pursue litigation, file plaint after obtaining signature of the land owners/principals of the PoA. It was alleged that some portion of the property of the informant and others was sold to the present appellant and on such knowledge, the informant sent a Legal Notice to the PoA-holder directing him to give the details of the sale made in conspiracy with the appellant and a Notice was also given to revoke the PoA but the agent did not give any

information/reply to the informant and others who had executed the PoA. In this backdrop, and as such, the criminal case was instituted. It was alleged that criminal acts were committed by the accused, including the appellant, by misusing the PoA and alleging that they had misappropriated the property, did not rendition the account(s) and that the Sale Deed was fraudulent as it was without obtaining the signatures of the land-owners/Principals of the PoA-holder. Upon investigation, the police had submitted final report finding a case under Sections 409, 467, 468, 471 and 420, IPC and the learned Chief Judicial Magistrate, Buxar thereupon took cognizance of the offences under Sections 409, 467, 468, 471 and 420, IPC on 18.11.2014 in GR No.515 of 2011.

5. During the pendency of Criminal Miscellaneous No.42776 of 2013 on the file of the High Court, originally filed for quashing the FIR, the appellant filed Interlocutory Application No.1261 of 2017 seeking amendment of the prayer to include quashing of the order dated 18.11.2014 mentioned above.

SUBMISSIONS BY THE APPELLANT:

6. Learned senior counsel for the appellant submitted that the appellant is merely the vendee of a portion of the land which was included in the PoA given to Raj Kumar Karan Vijay Singh on 12.04.1994.

7. He contended that the Sale deed dated 24.08.2000 was on the basis of the PoA given to Man Vijay Singh, s/o Kamal Singh by the landowners/principals. It was submitted that it was an internal matter between the land-owners/executors of the said PoA with regard to the terms, which obviously were binding, *inter se*, between the parties.

8. Learned senior counsel drew the attention of the Court to the contents of the PoA, especially Clause 3 thereof and submitted that the same entitled the PoA-holder to execute any type of Deed and to receive consideration on behalf of the land-owners/executors of the PoA and get such Deed registered. Thus, it was contended that the following was not in dispute: (a) the PoA was admittedly neither forged nor withdrawn; (b) the appellant was the vendee of a piece of land covered under the PoA, and (c) for such sale, valuable consideration had also been paid. In this view, it was submitted, the appellant could not be held liable for any misdeed, much less, any criminal act.

9. Learned senior counsel submitted that the Revisional Court was right that cognizance, as far as the appellant is concerned, was totally illegal as no offence was made out against the appellant. It was further contended that even on the jurisdictional issue, the Sale Deed in question was executed at Dehradun, Uttarakhand and the land is also situated in Dehradun. It was submitted that even the consideration was paid in Dehradun. It was contended that the informant also filed Original Suit No.27 of 2011 in the Court of the learned Additional District Judge, Vikas Nagar, Dehradun for setting aside the Sale Deed executed in favour of the appellant by the PoA holder and for rendition of accounts, which was dismissed and it was found that the PoA holder/agent was duly authorized thereunder to sell the property after receiving consideration amount on behalf of the land-owners/principals, who were also not entitled to rendition of accounts. Thus, it was submitted that in a civil proceeding wherein the right of the PoA-holder to sell the property in question had been upheld and the appellant having bought the property from such PoA holder of the land covered under the PoA, the present FIR itself is misuse and abuse of the process of law, as far as the appellant is concerned. Further, he submitted, that the cancellation of the PoA was only on 09.01.2011, i.e., after almost 10½ years after the execution of the sale deed on 24.08.2000.

10. Moreover, it was contended that the issue being purely of civil nature i.e., there being a dispute as to whether the PoA-holder has paid to the land -owners/principals money received for the land sold, at best, it may give rise to a cause of action to the principals on the civil side against the PoA-holder, but the appellant could not be dragged into any such controversy.

11. Learned senior counsel submitted that at the time of the sale, the PoA was valid and Clauses 3 and 11 read with 5 gave full authority to the PoA-holder to sell the property, get the Sale Deed registered and receive consideration. He submitted that Clause 15, on which the complainant has relied, was not applicable. Further, neither in the FIR nor in the order taking cognizance or even in the Legal Notice(s), is there any reference to the appellant, and the chargesheet merely states that the seller/PoA-holder did not have the right to sell. It was contended that while granting anticipatory bail to the appellant, the High Court by order dated 20.02.2014 in Criminal Miscellaneous No.44830 of 2013, which was heard and decided with Criminal Miscellaneous No.45146 of 2013 filed by the PoA-holder, the said PoA-holder had taken the stand that he was ready to give/return the sale proceed amounts to the informant, without admitting to the case of the informant and subject to such condition, he was also granted anticipatory bail.

12. On the civil nature of the dispute, it was submitted that the issue pertains to interpretation of various clauses of the PoA, which cannot be done in a criminal proceeding and rightly the Revisional Court had held it to be a civil dispute. It was also pointed out that the Buxar Courts would lack territorial jurisdiction.

13. It was submitted that the Original Suit No.27 of 2011, filed by the respondent no.2 and others, at Dehradun, was prior to filing of the FIR, which was dismissed by order dated 07.12.2017 holding that the PoA holder had the right to sell the land, receive the consideration and hence the Sale deed was valid. The contention that the respondent no.2 and others had no knowledge of the Sale Deed dated 24.08.2000 could not be believed and the suit was also held to be time-barred as the prayer was for setting aside the Sale Deed dated 24.08.2000.

14. Learned senior counsel relied upon the decision in **Mukul Agrawal v State of Uttar Pradesh, (2020) 3 SCC 402**, wherein at Paragraph 7¹, it has been held that the finding of the Civil Court that the agreement was not a forged document, makes the very substratum of the criminal complaint vanish.

15. Reliance was also placed on the decision of **K G Premshankar v Inspector of Police, (2002) 8 SCC 87**, where at Paragraphs 15, 16, 30-32², Sections 40-43, of the

¹ '7. In view of the conclusive opinion of the appellate court that the agreement dated 30-3-1988 was not a forged document, the very substratum of the criminal complaint vanishes. In the circumstances to allow the appellants to be prosecuted will only be a complete abuse of the process of law. The proceedings in Complaint Case No. 2705 of 2003 are therefore quashed and the appeal is allowed.'

² '15. Learned Additional Solicitor-General Shri Altaf Ahmed appearing for the respondents submitted that the observation made by this Court in V.M. Shah case [(1995) 5 SCC 767 : 1995 SCC (Cri) 1077] that

"the finding recorded by the criminal court, stands superseded by the finding recorded by the civil court and thereby the finding of the civil court gets precedence over the finding recorded by the criminal court"

(SCC p. 770, para 11)

is against the law laid down by this Court in various decisions. For this, he rightly referred to the provisions of Sections 41, 42 and 43 of the Evidence Act and submitted that under the Evidence Act to what extent judgments given in the previous proceedings are relevant is provided and therefore it would be against the law if it is held that as soon as the judgment and decree is passed in a civil suit the criminal proceedings are required to be dropped if the suit is decided against the plaintiff who is the complainant in the criminal proceedings.

Indian Evidence Act, 1872 have been interpreted with regard to the relevance of decision of a Civil Court on criminal proceedings against the same person(s) pertaining to the same cause. As far as territorial jurisdiction is concerned, it was the stand of the learned senior counsel that the only link in the chain is that the PoA was executed at Buxar, but in the present case, there is no dispute with regard to execution of the PoA and the dispute relates only to execution of the Sale Deed which occurred in Dehradun where the land lies. Thus, the submission was that the Courts at Buxar would not have any jurisdiction in the present matter.

16. Learned senior counsel summed up his arguments by contending that all points raised before us had been taken before the High Court but have not been dealt with in the Impugned Judgment.

SUBMISSIONS BY THE RESPONDENT NO.2:

17. *Per contra*, learned senior counsel appearing for respondent no.2 submitted that the case before the High Court was confined to the question of territorial jurisdiction and it was observed that the same depends upon evidence. Thus, it was submitted that territorial jurisdiction does not go to the root of the matter, but is merely for administrative convenience. Reliance was placed on the decision in **Smt. Raj Kumari Vijn v Dev Raj Vijn, (1977) 2 SCC 190**, the relevant being at Paragraph 7³.

16. *In our view, the submission of learned Additional Solicitor-General requires to be accepted. Sections 40 to 43 of the Evidence Act provide which judgments of courts of justice are relevant and to what extent. Section 40 provides for previous judgment, order or a decree which by law prevents any court while taking cognizance of a suit or holding a trial, to be a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial. Section 40 is as under:*

“40. Previous judgments relevant to bar a second suit or trial.—The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial.”

xxx

30. *What emerges from the aforesaid discussion is — (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes 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; (4) if the criminal case and the 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 therein.*

31. *Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is — whether judgment, order or decree is relevant, if relevant — its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.*

32. *In the present case, the decision rendered by the Constitution Bench in M.S. Sheriff case [AIR 1954 SC 397 : 1954 Cri LJ 1019] would be binding, wherein it has been specifically held that no hard-and-fast rule can be laid down and that possibility of conflicting decision in civil and criminal courts is not a relevant consideration. The law envisages*

“such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for limited purpose such as sentence or damages”.

³ 7. Section 531 of the Code reads as follows:

18. It was submitted that the appellant has wilfully purchased the land of the complainant on the strength of the PoA, which itself required the assent of the land-owners/principals for sale of land, as would be clear from Clause 15 of the PoA.

19. Learned senior counsel, in the alternative took the stand that if relief was granted to the appellant with regard to quashing of the FIR, it may be confined to the appellant and not of the FIR as a whole, where the other co-accused has been charge-sheeted and summoned to face trial. It was urged that it may be left open to the Trial Court to summon the appellant if the evidence so warrants, under Section 319, Code of Criminal Procedure, 1973 (hereinafter referred to as the "CrPC").

SUBMISSIONS ON BEHALF OF THE STATE:

20. A counter has been filed on behalf of the State of Bihar opposing the prayer made in the present appeal and justifying the prosecution of the appellant on the basis of the FIR.

ANALYSIS, REASONING AND CONCLUSION:

21. Having considered the facts and submissions by the learned counsel for the parties, this Court finds that a case for interference has been made out. The undisputed and admitted facts are that the PoA was executed by the land-owners/principals, including respondent no.2 and others on 12.04.1994, in favour of the person from whom the appellant purchased the land on 24.08.2000.

22. It is also a fact that the PoA-holder executed a Sale Deed and got it registered at Dehradun in favour of the appellant as also that the land is located in Dehradun. Much has been said with regard to a harmonious reading of the various clauses of the PoA viz. Clauses 3, 11 and 15 which read as under:

'3. To execute any type of deed and to receipt consideration, if any, on our behalf and to get the Registration done of the same.

xxx

11. To sell moveable or immoveable property including land, live stock, trees etc. and receive payment of such sales on our behalf.

xxx

15. To present for registration all the sale deeds or other documents signed by us and admit execution there of before the District Registrar or the Sub-Registrar or such other Officer as may have authority to register the said deeds and documents as the case may be and take back the same after registration.'

"531. No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice."

The section therefore relates to a defect of jurisdiction. As has been stated by this Court in Purushottamdas Dalmia v. State of West Bengal [(1962) 2 SCR 101 : AIR 1961 SC 1589 : (1961) 2 Cri LJ 728] there are two types of jurisdiction of a criminal court, namely, (1) the jurisdiction with respect to the power of the court to try particular kinds of offences, and (2) its territorial jurisdiction. While the former goes to the root of the matter and any transgression of it makes the entire trial void, the latter is not of a peremptory character and is curable under Section 531 of the Code. Territorial jurisdiction is provided "just as a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witnesses who have to appear before the Court". Sub-section (8) of Section 488 in fact provides that proceedings under the section "may be taken against any person in any district where he resides or is, or where he last resided with his wife or, as the case may be, the mother of the illegitimate child". This therefore is ordinarily the requirement as to the filing of an application under Section 488 within the limits of the jurisdiction of the Magistrate concerned.'

23. A mere perusal of the above indicates that as per Clause 3, the PoA-holder was authorised to execute any type of deed, to receive consideration in this behalf and to get the registration done thereof. Clause 11 of the PoA further makes it clear that the PoA-holder had the authority to sell movable or immovable property including land, livestock, trees etc. and receive payment of such sales on behalf of the land-owners/principals. However, Clause 15 of the PoA, which has been strenuously relied upon by the respondent no.2, while opposing the present appeal, states that the PoA-holder was authorized to present for registration the sale deed(s) or other documents signed by the landowners/principals and admit execution thereof before the District Registrar or the SubRegistrar or such other officer as may have authority to register the said deeds and documents, as the case may be, and take back the same after registration.

24. Thus, the Court is required to interpret harmoniously as also logically the effect of a combined reading of the afore-extracted clauses. As such, our endeavour would, in the first instance, necessarily require us to render all three effective and none otiose. In order to do so, this Court would test as to whether all the three clauses can independently be given effect to and still not be in conflict with the other clauses.

25. With this object, when the three clauses are read, it is obvious, at the cost of repetition, that Clause 3 pertains to execution of any type of deed and receiving consideration, if any, on behalf of the land-owners/principals and to get the registration thereof carried out. Basically, this would take care of any type of deed by which the PoA-holder was authorized to execute and also receive consideration and get registration done on behalf of the land-owners/principals.

26. Clause 11 of the PoA deals specifically with regard to sale of movable or immovable property including land and receiving payments of such sales on behalf of the land-owners/principals.

27. In this eventuate, Clauses 3 and 11 of the PoA together authorized the PoA-holder to execute deeds, including of/for sale, receive consideration in this regard and proceed to registration upon accepting consideration on behalf of the land-owners/principals.

28. Coming to Clause 15 of the PoA, which states that the PoA-holder was authorized to present for registration the sale deeds or other documents signed by the land-owners/principals and admit execution thereof, is, in our understanding in addition to Clauses 3 and 11 of the PoA and not in derogation thereof. The reason to so hold is that besides the contingencies where the PoAholder had been authorized to execute any type of deed and receive consideration and get registration done, which included sale of movable/immovable property on behalf of the landowners/principals, the land owners/principals had also retained the authority that if a Sale Deed was/had been signed by them, the very same PoAholder was also authorized to present it for registration and admit to execution before the authority concerned.

29. Thus, in the instant case, had it been a situation where the land-owners/principals had executed a Sale Deed in favour of any third party prior to the Sale Deed executed and registered by the PoA-holder with regard to the property in question, and the PoA-holder had not presented the said Sale Deed and had gone ahead with himself executing and getting registered a different or a subsequent Sale Deed in favour of the appellant, the matter would be entirely different. Therefore, clearly, there is no contradiction between Clauses 3, 11 and 15 of the PoA. To restate, Clause 15 of the PoA is an additional provision retaining authority for sale with the land-owners/principals themselves and the process whereof would also entail presentation for registration and admission of its execution.

30. We are of the considered opinion that all three clauses are capable of being construed in such a manner that they operate in their own fields and are not rendered nugatory. That apart, we are mindful that even if we had perceived a conflict between Clauses 3 and 11, on the one hand, and Clause 15 on the other, we would have to conclude that Clauses 3 and 11 would prevail over Clause 15 as when the same cannot be reconciled, the earlier clause(s) would prevail over the later clause(s), when construing a Deed or a Contract. Reference for such proposition is traceable to **Forbes v Git, [1922] 1 AC 256⁴**, as approvingly taken note of by a 3-Judge Bench of this Court in **Radha Sundar Dutta v Mohd. Jahadur Rahim, AIR 1959 SC 24**. However, we have been able, as noted above, to reconcile the three clauses in the current scenario.

31. Another fact which cannot be lost sight of, is that it is apparent that the matter relates to a dispute among the co-sharers as the PoA-holder is the son of one of the co-sharers/principals namely Smt. Indumati R. V. Singh.

32. The PoA and its execution/registration not being in dispute, the only controversy relating to the Sale Deed executed by the PoA-holder in favour of the appellant in Dehradun for property located at Dehradun would thus, in the emerging factual matrix, clearly be an issue for the Courts at Dehradun to examine, much less give rise to any cause of action at Buxar.

33. We may add that this issue of jurisdiction is limited to the transaction of the execution of the Sale Deed in favour of the appellant, and not to any other controversy or dispute the landowners/principals may have, either *inter-se* or against the PoA-holder. Moreover, a suit filed by the land-owners/principals at Dehradun prior to the lodging of the FIR, for the same cause of action, has been dismissed in favour of the appellant, where a specific plea to cancel the Sale Deed stands rejected.

34. In sum, the dispute, if any, is between the land-owners/principals *inter-se* and/or between them and the PoA-holder. We think it would be improper to drag the appellant into criminal litigation, when he had no role either in the execution of the PoA nor any misdeed by the PoAholder *vis-à-vis* the land-owners/principals. Moreover, the entire consideration amount has been paid by the appellant to the PoA-holder.

35. On an overall circumspection of the entire facts and circumstances, we find that the Impugned Judgment needs to be and is hereby set aside. This Court has held that in the appropriate case, protection is to be accorded against unwanted criminal prosecution and from the prospect of unnecessary trial⁵. We quash FIR No.87 of 2011 dated 19.03.2011, Dumraon Police Station, Buxar, Bihar as also the order taking cognizance dated 18.11.2014 and all consequential acts emanating therefrom, insofar as they relate to the appellant.

36. Learned senior counsel for the respondent no.2 had submitted that the Trial Court be allowed to exercise power under Section 319, CrPC against the appellant, if warranted.

⁴ *'The principle of law to be applied may be stated in few words. If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant and the earlier clause prevails. In this case the two clauses cannot be reconciled and the earlier provision in the deed prevails over the later. Thus, if A covenants to pay 100 and the deed subsequently provides that he shall not be liable under his covenant, that later provision is to be rejected as repugnant and void, for it altogether destroys the covenant. But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole. ...'*

⁵ *Priyanka Mishra v State of Madhya Pradesh, 2023 SCC OnLine SC 978 and Vishnu Kumar Shukla v State of Uttar Pradesh, 2023 SCC OnLine SC 1582.*

Expressing no opinion thereon, we insert the caveat that the Trial Court will act in accordance with law.

37. The appeal is accordingly allowed, leaving the parties to bear their own costs.

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)