

In The Court of Miss. N. M. Momin, Chief Judicial Magistrate,  
District: East Jaintia Hills District, Khliehriat.  
CR No. 34/2023

Meghalaya State Pollution Control Board.....Complainant

Versus

M/s MD Coke.....Accused

Date	Order	Signature
19.01.2024	<p>CR put up today.</p> <p>Counsel Smt. A. M. Nongtdu is present for the complainant.</p> <p>No report of summons issued to the accused.</p> <p>Seen application filed by the counsel for the complainant Smt. A. M. Nongtdu praying to keep this case in Status Quo.</p> <p>It is stated in the application that as per the letter dated 17/10/2023 vide no. MSPCB/LEGAL-349/2021/2023-2024/38, the Member Secretary has urged the court to keep the matter in status Quo since the matter is pending before the Higher court.</p> <p>It is further stated that as per law no person can be punished twice for the same offence and that the complainant prays that the matter may be kept in status quo until and unless an order may be passed from the higher court.</p> <p>Seen and perused the copy of the letter dated 17/10/2023 issued by the Member Secretary.</p> <p>Upon perusal of the said letter, it appears that instruction has been given to pray for status quo in matters 'specifically' pertaining to dismantling of the coke units by the District Authority in East Jaintia Hills till the final decision of the Hon'ble Supreme Court. However, this instant complaint case has been instituted against the accused u/s 43 of the Air (Prevention and Control of Pollution) Act 1981 and u/s 49 of the Water (Prevention and Control of pollution) Act 1974 and this complaint case is not relating to dismantling of the Coke units but for the offence committed under the said Acts mentioned above.</p> <p>From the application it appears that the counsel for the complainant is aware that the matter under appeal is for dismantling of the coke units and the matter pending before this Court is for the offence committed under the Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of pollution) Act 1974. The application also shows that it is in the knowledge of the counsel for the complainant that the matter under appeal is civil in nature and the matter pending before this court has been filed as a complaint case which is criminal in nature.</p>	

It is pertinent to note that there is "no order to stay the proceedings" of this instant case from the Higher court.

In "M.S. Sheriff and P.C. Damodar Nair Vs. State of Madras", AIR 1954 SC 397, the Constitution Bench of the Hon'ble Supreme Court held that as between the civil and the criminal proceedings, the criminal matters should be given precedence, however, observing that no hard and fast rule can be laid down. It was further held that the possibility of conflicting decisions in the civil and criminal courts was not a relevant consideration but, the only relevant consideration was the likelihood of embarrassment. Another factor, which weighed was that a civil suit often drags for years and it was undesirable that a criminal prosecution should wait till everybody had forgotten about the crime. The public interest demanded that the criminal justice should be swift and sure. The guilty should be punished while the events are still fresh in the public mind and the innocent should be absolved as early as is consistent with a fair and impartial trial. It would be undesirable to let things slide till memories have grown too dim to trust. It was also held that special considerations obtaining in a particular case may make some other course, more expedient, and just. An example was given that the civil case or the other criminal proceeding may be so near to its end, as to make it inexpedient to stay it, in order to give precedence to the other proceeding.

In "Lal Muni Devi (Smt.) Vs. State of Bihar, (2001) 2 SCC 17", the Hon'ble Supreme Court held that there could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. **However, it was also held that it is also settled law that facts may give rise to a civil claim and also amount to an offence and merely because a civil claim is maintainable that does not mean that the criminal complaint cannot be maintained.**

**In Syed Askari Hadi Ali Augustine Imam &Anr -vs- State (Delhi Admn.) & Anr AIR 2009 SUPREME COURT 3232, 2009 AIR SCW 3251, it has been so held in paragraphs nos.9 and 10, which are reproduced as under:-**

*"9. Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case.*

*10. It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long*

*time and in the interest of justice the former should be disposed of as expeditiously as possible. The law in this behalf has been **laid down** in a large number of decisions. We may notice a few of them.*

*In **M.S. Sheriff & anr. vs. State of Madras & Ors. [AIR 1954 SC 397]**, a Constitution Bench of this Court was seized of a question as to whether a civil suit or a criminal case should be stayed in the event both are pending; it was opined that the criminal matter should be given precedence.*

*In regard to the possibility of conflict in decisions, it was held that 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 certain limited purposes, such as sentence or damages. It was held that the only relevant consideration was the likelihood of embarrassment."*

Hence, in the light of the above, I am of the considered view that the civil and criminal proceedings can go on simultaneously and the pendency of the other cases cannot be a bar to the proceedings of the criminal case and it was on a prima facie case being found against the accused that this Court has taken the cognizance of the offence and now, on the ground of the dispute being pending before the Higher Court, this criminal proceedings cannot be stayed. There exists no circumstance at this point of time to keep this criminal proceeding against the accused in abeyance. I also find no force in the assertion of the complainant that the accused person is being punished for the same offence twice since this is a complaint case instituted u/s 43 of the Air (Prevention and Control of Pollution) Act 1981 and u/s 49 of the Water (Prevention and Control of pollution) Act 1974 and the other being a civil matter. The purpose and the objective of both are different.

In *N. Gurucharnam vs. The State of Andhra Pradesh (2013 Cri.LJ 1061)* it was held that : " When there are both civil and criminal liabilities in respect of an issue against a person, he is liable to be prosecuted both on the criminal side and on the civil side."

Hence, in view of the above, and on coming to the conclusion that the Civil proceedings and the criminal proceedings can proceed simultaneously, the application filed by the Counsel for the complainant cannot be entertained and as such, the application is rejected. Keeping the matter in abeyance will only lead to unnecessary delay in disposal of this instant case.

Counsel for the complainant to take necessary steps to issue summons to the accused.

Fix1/03/2024 for appearance and service report.

Sd/-  
Miss. N. M. Momin  
Chief Judicial Magistrate  
East Jaintia Hills District,  
Khliehriat