

IN THE COURT OF SENIOR CIVIL JUDGE- 1 AIZAWL DISTRICT: AIZAWL

Civil Misc Application No. 87 of 2012

[Arising out of Declaratory Suit No. 37 of 2009]

Petitioner/ Plaintiff:

Mr. C. Laltanpuia
S/o C. Thankhuma
Laipuitlang, Aizawl

Versus

Respondents/Defendants:

1. The Secretary to the Govt. of Mizoram
Land Revenue and Settlement Department
Mizoram- Aizawl
2. The Director
Land Revenue and Settlement Department
Govt. of Mizoram
Mizoram- Aizawl
3. The Assistant Settlement Officer- 1
Aizawl District: Aizawl
4. Mr. John Lalthangfala
S/o Rangkunga (L)
Maubawk, Kawnveng- Aizawl

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge-1
Aizawl District: Aizawl

For the Petitioner	: Mr. L.H. Lianhrima, Adv.
For the respondents 1-3	: 1. Mr. R. Lalremruata, AGA 2. Miss Bobita Lalhmingmawii, AGA
For the respondent no. 4	: 1.Mr. C. Lalramzauva, Sr. Adv. 2. Mr. A. Rinliana Malhotra, Adv. 3. Mr. Joseph Lalfakawma, Adv. 4. Mr. T.J. Lalnuntluanga, Adv. 5. Mr. K. Laldinliana, Adv. 6. Miss Penlui Vanlalchawii, Adv.

Date of hearing : 13-04-2012
 Date of Order : 13-04-2012

ORDER

BRIEF FACTS

The petitioner filed the instant application for referring Annexure 'A' of the written statement submitted by the defendant no. 4 for ascertaining the alleged signatures in that document or for filing an FIR to the concerned Police Station for commission of forgery by defendant no. 4 u/s 368 of Indian Penal Code.

At the time of hearing, it is admitted that the evidence of expert as per Indian Evidence Act, 1872 is only relevant not conclusive in nature. More so, the Annexure 'A' in the plaint viz. alleged deed of agreement in between the petitioner/plaintiff and the defendant no. 4 is neither registered under the Registration Act, 1908 nor paid requisite stamp duty as per the existing stamp Act. It will certainly be a futile protracted procedure to refer the Annexure- 'A' in the written statement of defendant no. 4 to the Forensic Science Laboratory. Meanwhile, the law is already settled that civil and criminal proceedings in the same cause of action can also be able to proceed together as evident by the observations in **P. Swaroopa Rani v. M. Hari Narayana @ Hari Babu** [AIR 2008 SC 1884], wherein the law was stated, thus:

“13. It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.”

Lastly in **Radheshyam Kejriwal vs State Of West Bengal & Anr.** decided on 18 February, 2011 in connection with Criminal Appeal No.1097 of 2003, the Supreme Court has held that-

“The ratio which can be culled out from these decisions can broadly be stated as follows :- (i) **Adjudication proceeding and criminal prosecution can be launched simultaneously;** (ii) Decision in adjudication proceeding is not necessary before initiating criminal prosecution; (iii) Adjudication proceeding and criminal proceeding are independent in nature to each other; (iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution; (v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the

provisions of Article 20 (2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue underlying principle being the higher standard of proof in criminal cases.

In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court.”

So is the well settled law, it is immaterial to grant permission to the petitioner for lodging FIR in the same cause of action with the instant Declaratory Suit No. 37 of 2009.

ORDER

So is the factual matrix and well settled law in **P. Swaroopa Rani v. M. Hari Narayana @ Hari Babu (supra.)** and in **Radheshyam Kejriwal vs State Of West Bengal & Anr. (supra.)**, I do not find any grounds to grant the application/petition. Thus, rejected the petition by leaving liberty to the petitioner for lodging FIR as per their wishes and for the sake of justice.

In the above terms, petition shall stand disposed of accordingly.

Give this order copy to all concerned.

Given under my hand and seal of this court on this 13th April, 2012 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 1

Aizawl District: Aizawl

Memo No. Misc A/87/2012, Sr. CJ (A)/

Dated Aizawl, the 13th April, 2012

Copy to:

1. Mr. C. Laltanpuia S/o C. Thankhuma, Laipuitlang- Aizawl through Mr. L.H. Lianhrima Adv.
2. The Secretary to the Govt. of Mizoram, Land Revenue & Settlement Department through Mr. R. Lalremruata, AGA
3. The Director, Land Revenue & Settlement Department- Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
4. The Assistant Settlement Officer- I, Aizawl District- Aizawl, Land Revenue & Settlement Department- Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
5. Mr. John Lalthangfala S/o Rangkunga (L), Maubawk, Kawn Veng- Aizawl through Mr. C. Lalramzauva Sr. Adv.
6. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District, Aizawl
7. Case record.

PESKAR