

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CrI.M.C. 2417/2016

Date of Decision: October 19<sup>th</sup>, 2016

ARVIND KEJRIWAL

..... Petitioner

Through: Mr. Ram Jethmalani, Senior Advocate  
with Ms.Nitya Ramakrishnan, Adv.,  
Mr. S. Farasat, Adv., Mr.Ashwath  
Sitaraman, Adv., Mr.Chirag Madan,  
Adv., Mr.Anirudh, Adv. & Mr.Ahmed  
Said, Adv.

versus

ARUN JAITLEY & ORS

..... Respondents

Through: Mr.Harish N. Salve, Senior Adv. with  
Mr. Siddharth Luthra, Sr. Adv.,  
Mr. Manik Dogra, Adv., Mr. Manoj  
Taneja, Adv., Mr. Poonam Prasad,  
Adv. for respondent No. 1.

**CORAM:**  
**HON'BLE MR. JUSTICE P.S.TEJI**

**P.S.TEJI, J.**

1. The present petition has been filed by the petitioner, under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as Cr.P.C.) read with Article 227 of the Constitution of India for setting aside and quashing of order dated

19.05.2016 passed by the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi and for stay of the criminal proceedings in Criminal Complaint No.210/2016 until the final decision of Civil Suit bearing CS(OS) No.3457/2015 pending before this Court.

2. The petitioner is a member and convenor of Aam Aadmi Party, member of the Legislative Assembly of Delhi and is the current Chief Minister of the NCT of Delhi. The respondent no.1 was the President of Delhi District and Cricket Association (DDCA) until 2013 and is a member of Bhartiya Janta Party, Member of Parliament and Union Cabinet Minister. On 21.12.2015, a complaint of criminal defamation was filed by the respondent no.1 against the petitioner and respondent nos.2 to 6 with allegations under Sections 499, 500, 501, 502 of the IPC read with Section 34 and 35 of the IPC. On the same date, respondent no.1 had also filed a civil defamation suit before this Court. Learned CMM took cognizance of the offences on 21.12.2015 and pre-summoning evidence was recorded. Vide order dated 09.03.2016, the petitioner and respondent nos.2 to 6 were

summoned and they appeared before the Court on 07.04.2016.

3. The matter was fixed for framing of the notice on 19.05.2016.

4. On 19.05.2016, an application under Section 309(2) of the Cr.P.C. was moved by the petitioner with the prayer to stay the hearing of the criminal complaint until the proceedings before this Court are decided. Vide order dated 19.05.2016, the learned CMM observed that no stay of the proceedings can be granted on account of pendency of civil suit before this Court. It was opined by the Court below that the civil suit and criminal defamation both stand on different footing and can be tried simultaneously. Operative part of the order reads as under :

“Now, to my mind, there are certain averments made in the application which warrant a reply before disposal of the same. However, in so far as prayer no.1 is concerned [as extracted hereinabove] i.e., as to stay of the proceedings, I may note that this court cannot stay the proceedings on its own/merely on account of pendency of civil suit before Hon’ble Court of Delhi.

In my opinion the civil suit for damages on account of defamation and criminal defamation case both stands on different footing and can be tried simultaneously and there is no impediment

qua proceedings further in the case in hand. The accused persons have been summoned in the present case and as on date, there is no stay whatsoever from any Court of law.”

5. The present petition came up for hearing on 13.07.2016. On 21.07.2016, reply to the petition was filed by the respondent no.1. The learned Senior Counsel for the parties had agreed that the question formulated below may be decided by this Court :

***“Whether the criminal proceedings could continue or are required to be stayed during the pendency of the CS(OS) No.3457/2015?”***

Arguments were advanced by the learned Senior Counsel for the parties.

6. Feeling aggrieved by the observations made in the order dated 19.05.2016, the present petition has been preferred by the petitioner mainly on the ground that the criminal proceedings are ought to be stayed as the civil suit has been filed on the basis of same facts and allegations. Further ground taken is that there are similarities in both the proceedings initiated by the respondent no.1 such as the facts that the parties are same, events are same, date of filing is same, cause of action is same and both the proceedings are private in character.

7. Arguments advanced by Mr.Ram Jethmalani, learned Senior Counsel for the petitioner and by Mr.Harish Salve, learned Senior Counsel assisted by Mr.Sidharth Luthra, learned Senior Counsel for the respondent no.1 were heard.

8. Argument advanced by the learned Senior Counsel Mr.Ram Jethmalani for the petitioner is that the civil suit filed by the respondent no.1 and the criminal complaint in question are based on the same facts and allegations and thus the criminal proceedings for defamation may be stayed as per Section 309(2) of the Cr.P.C. by referring the judgments in the case of *M.S. Sheriff, P.C. Damodaran Nair v. State of Madras & Ors. AIR 1954 SC 397, P.Jayappan v. S.K. Perumal AIR 1984 SC 1693, Tula and Ors. v. Sadh and Ors. AIR 1962 HP 28, Radheshyam Kejriwal v. State of West Bengal and Anr. (2011) 3 SCC 581, Dhanrajmal Gobindram & Co. Pvt. Ltd. v. The State of Maharashtra & Anr. 1973 Cri.L.J. 1574, Bhagwandin v. Janak Lal & Anr. 1956 AWR 288, Mausam Mia v. Kashim Ali 1963 Cri.L.J. 129, Raj Kumari Debi and Anr. v. Bama Sundari Debi (1896) ILR 23 Cal 610, J.M. Lucas v. Official Assignee of Bengal AIR 1920 Cal 624, Kanhaiya Lal v.*

*Bhagwan Das AIR 1926 All 30, N.B. Chakkathimma Reddi and Anr. v. The State of Mysore AIR 1952 Mys 37, Nandu Babu v. Rajendra Kumar 1970 Cri.L.J. 1574, Satendra Kumar Gupta v. A.B. Shorewal 1979 ACR 21, Raminder Kaur Bedi v. Jatinder Singh Bedi 1989 (16) DRJ 154, Charanjiv Partap Ahluwalia and another v. State (Delhi Admn.) 1997 Cri.L.J. 333, Sunil Mehdiratta and ors. v. Union of India ILR (2001) 2 Del 554, Madhao Bhagwant Deshmukh v. Emperor AIR 1926 Nag 315 and Bhanu M. Vakil v. Chandra Oshiram Keswani & Anr. 1991 Cri.L.J. 2819.*

9. Learned Senior Counsel for the petitioner further argued that if both the proceedings are allowed to be continued simultaneously, it can cause harassment and embarrassment to the accused in the criminal proceedings. It is further submitted that this Court is a Court of Record and the findings recorded by this Court in the civil suit is binding on criminal court which in the present case is subordinate to this Court. It is further submitted that in criminal cases the burden of proof is beyond reasonable doubt and in case the respondent no.1 loses the civil case, it is

impossible that he will succeed in the criminal case. On this point, judgment in the case of *Radheshyam Kejriwal* (supra) has been relied upon in which it has been observed that standard of proof in a criminal case is much higher than that of the adjudication proceeding. It is further argued that the embarrassment to the petitioner is inherent in defending two proceedings simultaneously, one that imperils his liberty and the other that has serious financial liabilities.

10. During the course of arguments, learned Senior Counsel for the petitioner relied upon the judgment in the case of *M.S. Sheriff* (supra), it was observed that as between the civil and criminal proceedings, the criminal matters should be given precedence. No hard and fast rule can be laid down but the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court being binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration is the likelihood of embarrassment. A civil suit often

drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime.

11. In the case of *Mausam Mia* (supra), it was observed that it will amount to great embarrassment for the petitioners, if they are forced to stand a trial in the Criminal Court on this question first and again to have the same matter agitated in the Civil Court. There is also the likelihood of the Civil Court and the Criminal Court coming to conflicting decisions on the point which will greatly prejudice the accused in the case.

In the case of *Raj Kumari Debi* (supra), it was observed that if the parties to the two proceedings are substantially the same and the prosecution before the Magistrate is but a private prosecution, and the issues in the two Courts are substantially identical, that both the cases should go on at one and the same time; and that it is quite open to the Magistrate to consider whether it is not desirable that the proceedings in his Court should be stayed till the decision of the civil suit, or for a limited period of time.

In the case of *Raminder Kaur Bedi* (supra), it was observed



by the learned Single Judge of this Court that the criminal trial was bound to prejudice the case filed by the respondent seeking divorce from the petitioner on the ground of adultery. It was further observed that in case the respondent is to succeed in proving his allegations made by him in his divorce case then the same would furnish him good defence against the charge of defamation in view of the provisions contained in Section 499 IPC. The learned Single Judge stayed the criminal case till disposal of the divorce case.

In the case of *Charanjiv Partap Ahluwalia* (supra), the proceedings before the criminal court were stayed till the disposal of the civil suit on the ground that the decision in the civil suit would have great bearing on the criminal case as the facts were intimately connected and were not different from those alleged or pleaded in the civil suit.

In *Sunil Mehdiratta's* case (supra), it was observed that the question whether the adjudication proceedings have any relevance or bearing has to be judged by the trial Court dealing with the application under Section 309 of the Code.

In the case of *P. Jayappan* (supra) it was observed that the

criminal court may adjourn or postpone the hearing of a criminal case in exercise of its discretionary power under Section 309 of the Cr.P.C. if the disposal of any proceeding under the Act which has a bearing on the proceedings before it is imminent so that it may take also into consideration the order to be passed therein. There is no rigid rule which makes it necessary for a criminal court to adjourn or postpone the hearing of a case before it indefinitely or for an unduly long period only because some proceeding which may have some bearing on it is pending elsewhere.

In the case of *J.M. Lucas* (supra) in which it was observed that though no invariable rule can be laid down, it is ordinarily undesirable to institute criminal proceedings until determination of civil proceedings in which the same issues are involved. It is too well known to need elaboration that criminal proceedings lend themselves to the unscrupulous application of improper pressure with a view to influencing the course of the civil proceedings; and beyond that there is the mischief, illustrated by this case of criminal proceedings being instituted with an imperfect appreciation of the facts where they have not been ascertained in

the more searching investigation of a Civil Court.

12. Per contra, learned Senior Counsel Mr. Harish Salve for the respondent no.1 has argued that the right of reputation is part of the right of personal liberty protected by Article 21 of the Constitution of India. He categorically submitted, “*in today’s world, the words used are more powerful than a sword*”.

13. Learned Senior Counsel for the respondent no.1 referred to the judgments to the effect that the law relating to contemporaneous civil and criminal actions has already been settled. While relying upon the judgment in the case of *M.S. Sheriff* (supra), the Hon’ble Apex Court subsequently clarified the law. It was submitted by the learned Senior Counsel that the submission made on behalf of the petitioner that criminal and civil proceedings ought not to be permitted to run simultaneously was rejected in the case of *K.G. Premshanker v. Inspector of Police (2002) 8 SCC 87*. In the said case, it was observed that 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. It was further observed that after

remand of the matter, civil proceedings as well as criminal proceedings are required to be decided on the basis of evidence. It was further argued that the principle in *K.G. Premshanker's* case (supra) has been followed in various cases. Further judgments relied upon are in the case of *Kishan Singh v. Gurpal Singh* (2010) 8 SCC 775, *Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.)* (2009) 5 SCC 528, *P. Swaroopa Rani v. M.Hari Narayana* (2008) 5 SCC 765, *Guru Granth Sthan Meerghat Vanaras v. Ved Prakash* (2013) 7 SCC 622, *Gnanasigamani Nadar v. Vedamuthu Nadar* AIR 1927 Mad 308, *B.N. Kashyap v. Emperor* AIR 1945 Lah 23, *Subal Kumar Dey v. Public Prosecutor, West Tripura, Agartala and others* 2009 CriLJ 4338, *Yelchuri Ranganayakalu Chetty v. Gopala Chetty* 1953 MWN Cr 19, *Emperor v. Dinalshah Rajanshah and others* AIR 1933 Sind 358, *Padmanabhani Ramanamma alias Bullemma v. Golusu Appalanarasayya* AIR 1932 Mad 254, *K.L. Dhall v. D.P. Dutta* 1985 (8) DRJ 286, *Thomas Dana v. State of Punjab* AIR 1959 SC 375, *U Tha Zan v. U Pyant* AIR 1935 Rangoon 487, *Aran Bimavad v. Anshul Jain* AIR 2016 MP 63, *Iqbal Singh Marwah*

*v. Meenakshi Marwah (2005) 4 SCC 370, Lalmuni Devi v. Jagdish Tiwary AIR 2005 Pat 51, Narayanan v. Mathan Mathai AIR 1982 Ker 238, Seth Ramdayal Jat v. Laxmi Prasad (2009) 11 SCC 545, Devendra v. State of UP (2009) 7 SCC 495, Ravinder Singh v. State of Haryana (1975) 3 SCC 742 and State of Rajasthan v. Kalyan Sundaram Cement Industries Ltd. (1996) 3 SCC 87.*

14. It was further argued by the learned Senior Counsel for the respondent no.1 that the burden of proof and the consequences in a criminal case vis-a-vis a civil case being distinct. The criminal defamation proceeding examines criminal intent whereas in the civil proceedings, the act of defamation along with the nature and extent of damages is in issue. The present petition is a dilatory tactic with a view to delay the proceedings in the complaint case. It was further argued that the written statement has been filed in the civil suit, so no prejudice can be caused to the petitioner.

15. In the judgment relied upon by the learned Senior Counsel for the respondent no.1 in the case of *Kishan Singh* (supra), it was observed :

“Thus, in view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the relevance of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration.”

In the case of *Guru Granth Saheb Sthan Meerghat Vanras*

(supra) it was observed :

“In light of the above legal position, it may be immediately observed that the High Court was not at all justified in staying the proceedings in the civil suit till the decision of criminal case. Firstly, because even if there is possibility of conflicting decisions in the civil and criminal courts, such an eventuality cannot be taken as a relevant consideration. Secondly, in the facts of the present case there is no likelihood of any embarrassment to the defendants

(Respondents 1 to 4 herein) as they had already filed the written statement in the civil suit and based on the pleadings of the parties the issues have been framed. In this view of the matter, the outcome and/or findings that may be arrived at by the civil court will not at all prejudice the defence(s) of Respondents 1 to 4 in the criminal proceedings.”

In the case of *Gnanasigamani Nadar* (supra) it was observed:

“It may be highly undesirable but the question remains whether it is less undesirable to have the dispute fought out first in one Court and then in the other. That it must be fought out is inevitable and it must be fought out in both Courts. If the civil case is stayed pending the criminal case, it will have practically the same result as staying neither case: for ordinarily the criminal case will be finally concluded in 3 to 6 months, and the civil case in 3 to 6 years; so that delaying the civil case will have little effect and in my opinion will do no good. If the criminal case is stayed pending the civil case, then, as pointed out above, a person presumably innocent, is left for years with a criminal case hanging over him; and if ultimately proved to be guilty he will have successfully staved off his well merited punishment for an equal period. In either view the stay of the criminal proceeding is objectionable. Therefore, the least undesirable course is to adhere to the main principle and to let both cases proceed

with all possible dispatch.”

In the case of *K.L. Dhall* (supra) it was observed :

“...I am, however, unable to see as to how that itself operates as a bar for the respondent’s setting in motion the criminal law which is a separate and independent remedy available to an aggrieved person in such a situation. It was next submitted by Mr. Chawla that the learned Magistrate should have waited for the result of the civil litigation and he should not have summoned the petitioner till the civil suit was disposed of by the civil court. There is no merit in this submission. As mentioned by me already above, both the matters namely the civil suit as pending in the civil court and the complaint as filed by the respondent before the learned Magistrate are separate and independent proceedings and they can go on side by side. In my opinion there is no bar to the Magistrate taking cognizance of the offence which he may be of opinion to have been committed by a person whose matter is still pending in a civil court as is the situation in the present case. In the end the petition is dismissed.”

In the case of *Thomas Dana* (supra) it was observed :

“It is true that the petitioners were dealt with by the Collector of Central Excise and Land Customs, for the “offence” of smuggling; were found “guilty”, and a deterrent “punishment” was imposed upon them, but as he had not been vested with the powers of



a Magistrate or a criminal court, his proceedings against the petitioners were in the nature of Revenue proceedings, with a view to detecting the infringement of the provisions of the Sea Customs Act, and imposing penalties when it was found that they had been guilty of those infringements. Those penalties, the Collector had been empowered to impose in order not only to prevent a recurrence of such infringements, but also to recoup the loss of revenue resulting from such infringements. A person may be guilty of certain acts which expose him to a criminal prosecution for a criminal offence, to a penalty under the law intended to collect the maximum revenue under the Taxing law, and/or, at the same time, make him liable to damages in torts. For example, an assessee under the Income-tax law, may have submitted a false return with a view to defrauding the Revenue. His fraud being detected, the Taxing Officer may realise from him an amount which may be some multiple of the amount of tax sought to be evaded. But the fact that he has been subjected to such a penalty by the Taxing Authorities, may not avail him against a criminal prosecution for the offence of having submitted a return containing false statements to his knowledge. Similarly, a person may use defamatory language against another person who may recover damages in tort against the maker of such a defamatory statement. But the fact that a decree for damages has been passed against him by the civil court, would not stand in the way of his being prosecuted for defamation. In such cases, the law does not allow him the plea of

double jeopardy.”

In the case of *Aran Bhimavad* (supra) it was observed :

“In the light of the above legal position, it may be immediately observed that the High Court was not at all justified in staying the proceedings in the civil suit till the decision of criminal case. Firstly, because even if there is possibility of conflicting decisions in the civil and criminal courts, such an eventuality cannot be taken as a relevant consideration. Secondly, in the facts of the present case there is no likelihood of any embarrassment to the defendants (respondent Nos.1 to 4 herein) as they had already filed the written statement in the civil suit and based on the pleadings of the parties, the issues have been framed. In this view of the matter, the outcome and/or findings that may be arrived at by the civil court will not at all prejudice the defence(s) of the respondent Nos.1 to 4 in the criminal proceedings.”

16. The main contention of the learned Senior Counsel for the petitioner is that since the civil suit is pending between the parties before this Court and the cause of action is also same, the criminal proceedings initiated by the respondent no.1 needs to be stayed until the decision in the civil suit as it may affect the criminal proceedings as the order delivered by this Court in civil suit would

be a matter of record and this Court being the Court of Record and thus the same shall tantamount to judgment in rem and would be binding on the subordinate courts under the High Court and furthermore, the trial court/Magistrate was competent to stay its proceedings under Section 309 Cr.P.C.

17. On the contrary, the argument advanced by the learned Senior Counsel for respondent no.1 is that there is no legal impediment on the proceedings on the civil side as well as on the criminal side for the defamation as petitioner is entitled to knock the door of the court of law on both sides simultaneously. He further submitted that there cannot be any prejudice to the petitioner as the proceedings pending in the civil side in the High Court are likely to take much time whereas the case before the Criminal court is presently at the stage of framing the notice.

18. The argument advanced by the counsel for the respondent no.1 is that the petitioner has not questioned the summoning order and that the matter is being proceeded in pursuance of the same and more the reason, petitioner has not initiated any such proceedings which could be prejudiced by the continuation of both

the proceedings, particularly when the issues have been framed on the civil side to which the evidence is to be led by the respondent no.1 and the criminal complaint case is fixed for framing of notice against the petitioner when the matter has been fixed for framing of the notice.

19. It would be relevant to quote Section 309(2) of the Cr.P.C. which reads as under :

“If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody.”

20. The first question before the court is whether the trial court is competent to stay the proceedings or not. Attention has been drawn to the judgment of High Court of Delhi where the Magistrate has stayed the proceedings and the same has been upheld by the High Court. (*Raminder Kaur Bedi v. Jatinder Singh Bedi 1989 (16) DRJ 154*).

21. The next question is to the effect as to whether similar proceedings can continue in the civil suit as well as criminal proceedings for defamation. The Hon'ble Apex Court dealt with this aspect and it was observed that :

“We are surprised how could the High Court permit the husband to cast his covetous eyes on the absolute and personal property of his wife merely because it is kept in his custody, thereby reducing the custody to a legal farce. On the other hand, it seems to us that even if the personal property of the wife is jointly kept, it would be expressly or impliedly kept in the custody of the husband and if he dishonestly misappropriates or refuses to return the same, he is certainly guilty of criminal breach of trust, and there can be no escape from this legal consequence. The observations of the High Court at other places regarding the inapplicability of Section 406 do not appeal to us and are in fact not in consonance with the spirit and trend of the criminal law. There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property of the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrong doer in cases like

arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under Section 406 I.P.C. or render the ingredients of Section 405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law. One of the arguments addressed by the counsel for the respondent which had appealed to the Full Bench of the Punjab & Haryana High Court in Vinod Kumar's case (supra) as also to our learned Brother Varadarajan, J., is that after entering the matrimonial home the custody of the stridhan entrusted by the wife to her husband becomes a sort of a partnership firm and in this view of the matter the question of criminal breach of trust does not arise. In our opinion, it is neither appropriate nor apposite to import the concept of partnership in the relationship of husband and wife for the simple reason that the concept of partnership is entirely different from that of the husband's keeping the stridhan in his custody....”

**[Pratibha Rani v. Suraj Kumar and Anr. AIR 1985 SC 628]**

22. Nothing contrary to the ratio of the judgment has been

brought on record by the petitioner where the proceedings could have been stayed by the court other than the proceedings initiated by the accused had prejudiced.

23. The law regarding 'causing prejudice' to an accused in the criminal case is settled. It is well settled that where the proceedings against each other have been preferred by the complainant and accused, then the proceedings in the cross proceedings can cause prejudice to the accused in criminal proceedings. In the present case, it is not the case of the petitioner that any proceedings have been initiated by him. It is an admitted case of the parties that the civil suit has been filed by the respondent no.1 as well as the criminal defamation case at hand. It is not the case of the petitioner that he had preferred any proceedings either civil or criminal against the respondent no.1, pendency of which can cause prejudice to him. Thus, the judgments relied upon by the petitioner in the case of ***Radheshyam Kejriwal*** (supra), ***M.S. Sheriff*** (supra), ***Mausam Mia*** (supra), ***Raj Kumari Debi*** (supra), ***Raminder Kaur Bedi*** (supra), ***Charanjiv Partap Ahluwalia*** (supra), ***Sunil Mehdiratta's*** case (supra), ***P.***

*Jayappan* (supra) and *J.M. Lucas* (supra) are of no assistance to him.

24. The other contention of the petitioner that if the civil proceedings as well as criminal proceedings are allowed to be continued in the present case, then it would tantamount to double jeopardy inasmuch as the petitioner would be convicted for criminal defamation in case the respondent no.1 succeeds in the criminal proceedings and would also be liable to pay damages in case the respondent no.1 succeeds in the civil proceedings.

25. Section 10 of the Code of Civil Procedure (CPC) provides for staying of the suit. It reads :

**“Stay of suits-** No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.”

26. Section 300 Cr.P.C. provides that person once convicted or



acquitted cannot be tried again for the same offence. The contention of the petitioner is not tenable in view of the fact that the proceedings initiated by the respondent no.1 against him are entirely different. The matter in hand is the criminal defamation case and the other proceeding initiated by the respondent no.1 against the petitioner is the civil suit for damages. Though it is correct that the parties in both these cases are same, but the fact remains that both the cases are different in nature. While the civil proceedings have been initiated claiming damages for damaging the reputation of the respondent no.1, the case at hand is the criminal defamation. Pendency of both the cases cannot be said to be said to be amounting to double jeopardy.

27. Section 10 of the CPC provides for stay of the civil suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigation under the same title where such suit is pending in the same or any other Court in India. It is not the case of the petitioner that any civil proceedings have been initiated by him or by the respondent no.1

in which the issue is same. In the present matter, though the respondent no.1 initiated two proceedings i.e. one criminal and the other one civil, the fact remains that same are distinct and separate cases. Therefore, this Court is of the view that the petitioner cannot get the stay of the criminal defamation case at hand by claiming the benefit under Section 10 of the CPC.

28. The other contention of the petitioner is that this Court is the Court of Record and any finding recorded by this Court is binding on the Court subordinate to it. It was argued that the Court of Magistrate who is conducting the trial of criminal defamation case is subordinate to this Court and any findings recorded by this Court while exercising its civil jurisdiction would be binding on the Magistrate.

29. The civil jurisdiction to this Court has been conferred by Delhi High Court (Original Side) Rules, 1967. It provides that in exercise of powers conferred by Sections 122 and 129 of the CPC and Section 7 of the Delhi High Court Act, 1966, this Court made the Delhi High Court (Original Side) Rules. As per Rule 1 of Chapter II, the jurisdiction to try and hear a civil suit has been

conferred upon the Single Judge of this Court. The original jurisdiction of this Court is governed by the statute and not by the Constitution. On the other hand, the jurisdiction vested in the Magistrate to try and decide the criminal cases is conferred by the Code of Criminal Procedure, 1973 that too by a separate statute. When two separate statutes provide for separate jurisdiction to try civil and criminal cases in two different Courts, the same cannot be said to be binding upon each other or the Court subordinate to it. This Court is having the pecuniary jurisdiction to a specified limit to try and entertain the civil suits. Earlier the civil suits instituted before this Court were transferred to the District & Sessions Judge, Delhi and then to the concerned Civil Judges.

30. A person may be guilty of certain acts which expose him to a criminal prosecution for a criminal offence. A person may use defamatory language against another person who may recover damages against the maker of such a defamatory statement. But the fact that a decree for damages has been passed against him by the civil court, would not stand in the way of him being prosecuted for defamation. There is no reason to see as to how that itself operates

as a bar for the respondent's setting in motion the criminal law which is a separate and independent remedy available to an aggrieved person in such a situation. As mentioned above, both the matters between the parties i.e. the civil suit as pending before this Court and the complaint filed by the respondent no.1 before the learned Magistrate are separate and independent proceedings and they can go on side by side. In my opinion, there is no bar to the Magistrate taking cognizance of the offence which he may be of opinion to have been committed by a person whose matter is still pending in a civil court as is the situation in the present case.

31. In view of the above discussion, this Court is of the considered opinion that :

*\*The Magistrate is empowered to adjourn the proceedings under Section 309 Cr.P.C.*

*\*There is no legal impediment to invoke the civil proceedings for defamation as well as initiating the criminal proceedings for defamation simultaneously and continuation of the same.*

*\*The proceedings initiated by the virtue of Delhi High Court (Original Side) Rules, 1967 to invoke the original jurisdiction in the High Court ipso facto does not debar the Court of Magistrate (under the Code of*

*Criminal Procedure, 1973) to proceed with the complaint.*

*\*Prejudice to the right of the accused is the prime consideration to stay the proceedings. No prejudice to the right of the accused has been demonstrated in the present case.*

32. Nothing has been brought before this Court to the effect that continuation of criminal proceedings is the abuse of the process of law before the learned Chief Metropolitan Magistrate and any order is required by this Court to secure the ends of justice. Thus, this Court is of the view that the order of the learned Chief Metropolitan Magistrate dated 19.05.2016 continuing with the proceedings is free from perversity, impropriety, illegality and non-sustainability which compelled this Court to exercise the inherent jurisdiction under Section 482 Cr.P.C.

33. Keeping in view the discussion made above, there is no illegality or un-sustainability in the law in continuation of the criminal proceedings before the learned Chief Metropolitan Magistrate empowered to continue with the same. Resultantly, the request of the petitioner to adjourn the proceedings before the learned Chief Metropolitan Magistrate is rejected being devoid of

merit and the same is culminated into dismissal of the present petition.

34. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the present petition. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

35. Application pending, if any, is also disposed of.

36. Copy of the order be given to both the parties under the signature of the Court Master.

**(P.S.TEJI)**  
**JUDGE**

**OCTOBER 19, 2016**

**dd**