

THE
INDIAN LAW REPORTS.
Bombay Series.

CRIMINAL REVISION.

Before Mr. Justice Heaton and Mr. Justice Shah.

IN re N. F. MARKUR.*

Evidence—Relevancy of judgment—Trial of accused for criminal breach of trust of certain amounts—Judgment in a civil case between the parties as to the amounts—Admissibility of the judgment into the criminal proceedings.

1914.

April 1.

The applicant was prosecuted for criminal breach of trust with reference to certain items. There was a civil suit between the complainant and the applicant regarding items which included the items involved in the criminal case. The civil suit was decided in applicant's favour. He thereupon applied to admit the judgment in evidence in the criminal case, and on the strength of it prayed for an order of discharge. The Magistrate having refused to admit it in evidence, the applicant applied to the High Court.

Held, that the judgment of the civil Court was admissible in evidence, inasmuch as it would be relevant and important to know what the rights of the parties were, as determined by the civil Court, with respect to the items charged against the applicant.

THIS was an application in revision against an order passed by M. N. Mehta, First Class Magistrate at Igatpuri.

The applicant was the Secretary of the Igatpuri Railway Co-operative Society till August 1912; and claimed to be a creditor of the Society to the extent of Rs. 10,000. He resigned the post; and filed a suit

* Criminal Application for Revision No. 358 of 1913.

1914.

MARKUR

In re :

against the Society, in the Bombay Court of Small Causes, to recover the amount due on a promissory note for Rs. 2,000.

Thereafter, the Society filed a suit against the applicant in the Court of the First Class Subordinate Judge at Nasik to recover a sum of Rs. 13,000 odd ; and in the statement of claim, items were mentioned which were alleged to have been misappropriated by the applicant by commission of criminal breach of trust.

The Bombay suit was transferred to the Nasik Court. Both suits were tried together. In the Society's suit, the Court found the Society's claim to items not proved ; but decreed the applicant's counterclaim to the extent of Rs. 7,515 odd. In the other suit also the applicant's claim was decreed in full.

During the pendency of civil proceedings, the Society filed criminal proceedings against the applicant in the Court of the First Class Magistrate at Igatpuri, charging him with the offence of criminal breach of trust with respect to certain items, which were already in issue between the parties in the civil suit.

As soon as the civil suits were decided, the applicant obtained a copy of the judgment, and applied to the Magistrate to admit it in evidence. He also prayed that in view of the judgment he should be discharged in the criminal case. The trying Magistrate, however, declined to admit the civil judgment in evidence, on the following grounds :—

Mr. Desai in support of his contention that the judgment of the civil Court was a bar to the present proceedings quoted the case of *Kunullah v. The Emperor* (6 C. L. J. 703) and the case of *Manjanali Devi and Ramdas Shome v. The Empress* (4 C. W. N. clxxvi) and relied upon section 40 of the Evidence Act. He argued that the items being the same the judgment of the civil Court was conclusive,

1914.

MARUR
In re

Mr. Koyajee argued that the cases cited by the other party were inapplicable and in support of his contention that the civil Court's judgment was inadmissible as being irrelevant, quoted several authorities the chief of which are : Taylor on Evidence, sections 1693 and 1880 ; 23 Cal. 610 ; 6 Cal. 247 ; 26 Bom. 785 and 35 Cal. 751 and also relied on sections 40 to 43 of the Indian Evidence Act. He further argued that the claim in the civil Court was one for accounts and not for misappropriation or breach of trust.

On a careful consideration of the matter I have no hesitation in coming to the conclusion that the judgment in the civil Court is irrelevant and, therefore, inadmissible and that therefore the accused is not entitled to a discharge as claimed by him merely on the ground that the civil Court has partially decided in his favour. The issues before the civil Court and this Court are not identically the same, nor are the parties technically the same. The one was a suit for accounts while the other is a question of misappropriation and breach of trust.

The applicant applied to the High Court.

Inverarity, with *R. R. Desai*, for the applicant.

K. N. Koyajee, for the complainants.

S. S. Patkar, Government Pleader, for the Crown.

SHAH, J. :—The learned Magistrate has based his order on the ground that the judgment of the civil Court is irrelevant. It also appears from his order that he was under the impression that the decision of the civil Court was in favour of the accused only partially, that is, with respect to certain items only. But it is admitted before us that all the items in dispute between the parties have been dealt with by the civil Court and that the contentions of the accused with reference to all of them have been found to be correct. Under the circumstances it appears to me that the judgment of the civil Court is admissible in evidence. The accused is charged with criminal breach of trust with reference to certain items. It would be certainly relevant and important to know what the rights of the parties (that is, the complainant and the accused) are with respect to those items. Where the civil liability is determined

1914.

MARKUR

In re

by a competent Court, the judgment of that Court would be the best evidence of the civil rights of the parties, and, in my opinion, it is relevant and ought to have been admitted in evidence. In this case the existence of the judgment in question is clearly a relevant fact.

It is next urged that the accused should be discharged on the strength of this judgment. It is not a matter, however, which we can properly deal with on this application. It will be for the Magistrate to consider the effect of the judgment on the case, and to deal with the accused's application to discharge him. We are informed, however, that the complainant has preferred an appeal to this Court against the decree of the First Class Subordinate Judge of Nasik; and it is suggested on behalf of the prosecution that the further proceedings on the pending complaint be stayed during the pendency of the civil appeal. The learned counsel for the accused accepts this suggestion. Under the circumstances it is quite clear that the complaint ought not to be proceeded with during the pendency of the civil proceedings by way of appeal. I, therefore, set aside the order of the lower Court, and direct that the proceedings be stayed during the pendency of the appeal filed by the complainant.

HEATON, J.:—I concur in the order proposed. I would just like to add a word or two on the very important matter of the admissibility of the judgment of the civil Court. I hold undoubtedly that it was admissible and for this reason. If we are to administer justice as a civilized country, if we are to avoid those conflicts between civil and criminal Courts which ordinarily must be fraught with evil and can produce no good, if, in short, we are to make the actual administration of justice in this country bear a proper relation to that which we profess it to be, then we cannot have

criminal Courts trying over again matters which have been thoroughly dealt with and finally decided by a civil Court of competent jurisdiction. It may be that to this principle there would be rare exceptions founded on, possibly, the discovery of new, cogent and important evidence. But ordinarily that principle must prevail, and if that principle must prevail, then it is a matter of the first importance, of the very highest relevancy to show to a criminal Court that the matter which the criminal Court is asked to adjudicate on has already been fully dealt with by a civil Court. That is all it was proposed to do in this case by the production of the judgment of the civil Court, and, I think, it was undoubtedly relevant and of the very highest importance. It was so, however, not for the purpose of proving or disproving facts in dispute in the case, but for the purpose of enabling the Magistrate to decide whether he should or should not exercise the discretion given him by clause (2) of section 253 of the Criminal Procedure Code.

1914.

MARKUR

*In re :**Order set aside.*

R. R.

 APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

IBRAHIM BHURA JAMNU (HEIR OF ORIGINAL PLAINTIFF), APPELLANT v.
ISA RASUL JAMNU AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1916.

August 4.

Construction of document—Sale of houses in consideration of Mehr—Consideration not necessary to support transaction—Limitation Act (IX of 1908), Schedule I, Articles 142, 144.

The plaintiff's husband sold to her two houses in 1898 by a registered document in consideration of her *Mehr* (dowry). One of the houses sold

*Second Appeal No. 542 of 1915.