

# **Case Comment On Prem Raj v. Poonamma Menon & Anr.: An Analyse Of Impact Of Previous Civil Proceedings On Subsequent Criminal Proceeding On The Same Subject Matter**

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## **Introduction**

Edward Jenks in his paper<sup>1</sup>, 'The function of law in Society', explains that the term law that we use now is not an exclusively intrinsic term of legal discourse rather the term law is commonly used in other domains such as science, maths, physics, etc.. Therefore according to Edward Jenks, the term law is not a proprietary concern of either the lawyers or the judges<sup>2</sup>. He further explains that initially in English jurisprudence the closest word used in place of law was 'rights' rather than law itself and it was only after the Danish invasion that the word law acquired prominence, as violations of inviolable directions provided by the foreign Danish invaders resulted in sanctions<sup>3</sup>. Hence, the term law as it is used now signifies laws akin to those present in physics, maths, science, etc. which are strict and inviolable and non-derogable. However, the law in the present era does not only make individuals comply by imposing sanctions against undesirable behaviour in the society but the law also serves the purpose of facilitating and providing certainty in commercial transactions in the society.

Law emerged as a tool in the society to regulate behaviour of the individuals in the society<sup>4</sup> so that they can live together in harmony. The law serves various purposes like it gives a structure of functioning of state, sets benchmark for desirable behaviour of individuals, inspires confidence that contracts would be honoured, the law provides that justice will be

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<sup>1</sup> Edward Jenks, *The Function of Law in Society*, 5(4), JOURNAL OF COMPARATIVE LEGISLATION AND INTERNATIONAL LAW, 169, 169-175 (1923).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> JOHN LOCKE, TWO TREATISE OF GOVERNMENT (McMaster University 1823).

served in case of deviation from the benchmark behaviour, etc.. The origin of legal principles for the society can be found in the idea of social contract as propounded by John Locke<sup>5</sup>. Protection of life and personal property were perhaps the most important concerns that gave rise to the social contract<sup>6</sup>. Due to the social contract and legal order, people felt safe and secured that no one would harm them and no one would take away their property. Therefore, to make people feel secured and to prevent deviant behaviour in the society criminal law was developed. This gave certainty to people and allowed the society to pursue development and growth objectives. The growth and development resulted in more transactions between individuals. Therefore to assure certainty in business/trade/contractual transactions, etc. civil law principles were developed. Hence, civil law and criminal law are two different branches of law that operates in separate field and aims to achieve different objectives in the society. Where criminal law seeks to regulate behaviour of individuals that affects society at large, the civil law aims to regulate the behaviour of individuals in their dealings with one another. Therefore, generally civil law stipulates compensation/damages for infractions and sometimes it provides for imprisonment or both. The quantum of sentence imposed on accused is lower in cases of civil disputes. On the other hand, since, criminal law affects society at large it stipulates incarceration for infractions or fine or both. Also, the quantum of sentence that is imposed on the accused is more in criminal cases. It is also interesting to note that even the fundamental rights under Article 20 of the Indian Constitution seeks to provide protection to individual's fundamental right in regard to exercise of power by the state in relation to Criminal Law. This displays the far reaching effects that a criminal law statute can have over an individual's life, liberty and freedom.

The Article 20 (2)<sup>7</sup> of the Indian Constitution states that a person should not be punished for the same offence twice. This means that for an offence no one can be prosecuted and tried twice, however certain exceptions were provided under section 300 of Code of Criminal Procedure 1973<sup>8</sup>, which are now present in the parallel provision under Section 337 of the new Bharatiya Nagarik Suraksha Sanhita, 2023<sup>9</sup>. This law is further reinforced by the principle of res judicata. The principle of res judicata states that when a case is heard and decided by a court it should not be tried again. However, there are some situations where a particular act is punishable under both Criminal Law and Civil Law. For example, a breach of

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<sup>5</sup> Locke, *supra* note 5

<sup>6</sup> *Id.*

<sup>7</sup> INDIA CONST. art. 20, cl. 2.

<sup>8</sup> Code of Criminal Procedure, 1973, § 300, No. 2, Acts of Parliament, 1974.

<sup>9</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, § 337, No. 46, Acts of Parliament, 2023.

contract can attract civil action of either seeking damages or an action for specific performance; however the same act of breach of contract can also amount to the offence of criminal misappropriation, cheating, etc., if the accused had guilty intention. Similarly, in case of defamation a victim can bring a civil action as well as a criminal action. Since, Article 20 (2) of the Indian Constitution and Section 300 of Code of Criminal Procedure 1973 or Section 337 of BNSS 2023 only talks about offences, therefore, it is clear that a person cannot be tried for the same offence twice. Offence as defined under the Bharatiya Nyaya Sanhita, 2023 means anything punishable under Bharatiya Nyaya Sanhita or any local law or any special law. Article 20 (2) and Section 300 CRPC or Section 337 of BNSS provides that no person should be punished for the same offence twice it does not refer to any civil action in regard to the same matter, therefore, in law there appears to be no bar on a person being tried for an offence under the criminal laws and for civil action under civil laws on the same subject matter. On the other hand, the principle of Res Judicata does not make a distinction between a criminal or civil act. Res Judicata as stated in the case *Lal Chand v. Radha Krishan*, simply means that when a matter is already adjudicated it shall reach finality in light of the principles of justice equity and good conscience<sup>10</sup>.

In *Satyadhyan Ghosal v. Deorijin Debi*<sup>11</sup> case, the Supreme Court held that “(w)hen a matter on question of facts and law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between same parties to canvass the matter again.”. Therefore, according to the principle of Res Judicata same parties cannot bring a case on the same fact and law once it is finally decided by a court of law. However, different law may apply to a fact and situation and it is possible that different remedy is sought by a person in regard to the same subject matter. Like in case of breach of a contract a person can bring civil action of either seeking damages or an action for specific performance; at the same time an action for the offence of criminal misappropriation, cheating, etc., can be brought if the accused had guilty intention. In both the situations the remedy sought by the victim is different. In civil action the victim is seeking damages from the accused for breach of contract. On the other hand, in case of criminal action the victim is seeking to punish the accused for the offence of cheating and therefore in both the situations different application of law is applicable to them and hence

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<sup>10</sup> Lal Chand v. Radha Krishan, (1977) 2 SCC 88, at Para 19.

<sup>11</sup> Satyadhyan Ghosal v. Deorijin Debi (1960) 3 SCR 590, at Para 7.

Res Judicata will not prohibit subsequent proceedings on the same subject matter in such cases.

The issue in such cases is in regard to the question of sentencing and fine. Can a person be awarded double fine or double punishment for a civil action and criminal action in regard to the same act? Moreover, would a civil/criminal court who subsequently decides a matter in regard to the same act which is already adjudicated and decided by a civil/criminal court be bound by the previous decision, if yes to what extent? The answers to these questions are provided in the following discussions regarding *Prem Raj v. Poonamma Menon & Anr.* case.

### **Facts of the case**

In the case of *Prem Raj v. Poonamma Menon & Anr.*<sup>12</sup> the appellant borrowed Rs. 2 Lakhs from K.P.B Menon and promised to repay the money whenever it was demanded. The money was demanded on 30<sup>th</sup> June 2002, and therefore the appellant issued a cheque for the said amount in the South India Bank. The cheque was subsequently dishonoured due to the insufficiency of funds and therefore, the complainant brought a case for dishonour of cheque. The appellant (the accused) filed a civil suit for declaration that the cheque was a mere security cheque and complainant should be asked to return the cheque. Moreover, an injunction was sought to refrain the appellant from encashing the cheque. The civil courts decreed in favour of the complainant. On the other hand, in trial case (criminal proceedings), it was found that the accused is guilty and therefore the accused was directed to pay a compensation of Rs.2 Lakhs and undergo simple imprisonment for a period of 1 year.

### **Issues Raised**

One of the issues raised before the trial court was whether the trial court was bound by the decree passed by the civil court. The Supreme Court referred to a catena of judgments to explain the position. In *K.G. Premshanker v. Inspector of Police*<sup>13</sup> case it was highlighted by the court that there is no single straight rule to resolve conflicting decisions of civil and criminal courts. However, a previous civil/criminal proceeding would be relevant for the limited purpose of imposing sentence/fine and providing damages. The court also referred to *Vishnu Dutt Sharma v. Daya Sapra (Smt.)*<sup>14</sup> case, wherein the court overruled a previous

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<sup>12</sup> Prem Raj v. Poonamma Menon & Anr., 2024 INSC 260.

<sup>13</sup> K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87.

<sup>14</sup> Vishnu Dutt Sharma v. Daya Sapra (Smt.), (2009) 13 SCC 729.

precedent established in *M/s. Karam Chand Ganga Prasad & Anr. v. Union of India & Ors*<sup>15</sup>, which stated that only previous civil court decisions will be binding on criminal court and not vice versa. Therefore, the current position is that, if on the same subject matter there exists a prior civil or criminal decree then it would be relevant for the subsequent civil or criminal court in regard to the question of imposing of sentence/fine and for providing damages.

The court also referred to a constitution bench judgement, i.e. *Iqbal Singh Marwah v. Meenakshi Marwah*<sup>16</sup>, wherein the court emphasized that the procedure for criminal proceedings and civil proceedings is quite different. In a civil proceeding, preponderance of evidence is sufficient to prove a case; however, in a criminal proceeding the prosecution has to prove the case beyond reasonable doubt<sup>17</sup>. Therefore, according to the court, if there is a conflict between civil and criminal proceeding then more precedence is to be given to the criminal matters<sup>18</sup>. At the same time, the court emphasised that there is no hard and fast rule to resolve conflicting decisions of civil and criminal courts<sup>19</sup>. Lastly, the court also emphasized that, in limited issues of sentencing and damages the previous decree would be binding<sup>20</sup>.

On the basis of above mentioned cases the court in this case opined that previous decree of civil court would remain binding on the criminal court for the purposes of sentencing and damages. Since, according to the civil court decree the cheque was already returned by the bank and therefore the court held that in such circumstances no dishonour of cheque is possible and hence the Supreme Court asked the damages awarded by the criminal court to be returned to the appellant. Moreover, the court also quashed the imprisonment sentence in light of the decree awarded by the civil court.

## Conclusion

The case of *Prem Raj v. Poonamma Menon & Anr.*<sup>21</sup>, is a good case law to understand what happens in cases where there is an existing judgment by a civil or criminal court on a subject matter that is sub-judice in front of a subsequent civil or criminal court, as the case may be, on the same subject matter. The Supreme Court in this case clearly highlighted that when a

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<sup>15</sup> *M/s. Karam Chand Ganga Prasad & Anr. v. Union of India & Ors*, (1970) 3 SCC 694.

<sup>16</sup> *Iqbal Singh Marwah v. Meenakshi Marwah*, (2005) 4 SCC 370.

<sup>17</sup> *Iqbal Singh Marwah v. Meenakshi Marwah*, (2005) 4 SCC 370.

<sup>18</sup> *Iqbal Singh Marwah v. Meenakshi Marwah*, (2005) 4 SCC 370.

<sup>19</sup> *Iqbal Singh Marwah v. Meenakshi Marwah*, (2005) 4 SCC 370.

<sup>20</sup> *Iqbal Singh Marwah v. Meenakshi Marwah*, (2005) 4 SCC 370.

<sup>21</sup> *Prem Raj v. Poonamma Menon & Anr.*, 2024 INSC 260.

civil court had already given a judgment that the cheque in question was merely a cheque for security, then the criminal court where the case for dishonour of cheque was brought in upon the same subject matter would be bound by the previous civil court judgment. The Supreme Court in this case took into consideration the previous civil court judgment and found that when the cheque was declared by the civil court as a mere cheque for security then no question of dishonour of cheque arises and therefore no incarceration is possible. The case inter alia highlighted that there is no straight jacket formulae to determine how far a previous civil court or criminal court judgment is binding upon a subsequent court. However, the Supreme Court in this case clarified that the previous civil court or criminal court judgment would be binding on the subsequent court to determine the question of sentencing/fine and damages.