

## **Civil and criminal litigation proceeding simultaneously**

Ss. 497 & 155(2)---Penal Code (XLV of 1860), Ss. 420/468/471---Cheating and dishonestly inducing delivery of property, forgery for purpose of cheating, using as genuine a forged document---bail, refusal of---Accused charged with a combination of cognizable and non-cognizable offences---Permission to be obtained by the police from the Magistrate in circumstances---Civil and criminal litigation proceeding simultaneously---Scope---Right to bail for offences falling within prohibitory clause of S.497(1), Cr.P.C.---Scope---Accused owed a sum of money to the complainant in settlement of which he executed a sale deed qua a house in favour of the complainant promising to deliver the possession later on---Subsequently the accused allegedly attested a sale deed of the same house in favour of one of the co-accused, who in turn transferred the house in the name of his wife---Contentions of the accused were that date and time of alleged occurrence was unknown as was evident from the F.I.R.; that the property in question was the subject of pending civil litigation between the parties; that Ss.468 and 471, P.P.C. were bail able whereas section 468 was non-cognizable; that the co-accused, who was the principal accused of the case had already been granted bail, and that offences alleged did not fall within the prohibitory clause of S.497, Cr.P.C.---Validity---Circumstances of the case revealed that the accused kept both the complainant and the co-accused engaged simultaneously so as to leave each of them labouring under the impression that their part of the deal was legally perfect and their claim complete---Act of the accused was sheer fraud and forgery by which he swindled a huge amount from the complainant and probably also from the co-accused and his wife---Where there was blend of non-cognizable and cognizable offences, the police did not necessarily have to obtain permission from the Magistrate for conducting investigation---Prosecution, therefore, could not be blamed in the present case, if they had not gone for the invocation of S.155(2), Cr.P.C.---Accused had categorically admitted his liability to pay an amount to the complainant in the agreement that he had prepared, which directly corroborated the claim of the complainant as mentioned in the F.I.R.---Pendency of civil suits between the parties was no ground to hold that the criminal proceedings against the accused by way of present F.I.R. could not be taken to their legitimate end---**Civil and criminal proceedings could proceed side by side inter se**---Rule that accused had a right to bail where offences did not fall within the prohibitory clause of S.497(1), Cr.P.C., was not an inelastic rule---bail application of the accused was dismissed in circumstances. (2013 PCrLJ 252 LAHORE-HIGH-COURT-LAHORE)

## ***Civil and criminal cases could proceed side by side but ultimately preference was to be given to civil matters to avoid conflict of judgments***

Ss. 22-A, 22-B, 154, 195 & 476---Constitution of Pakistan, Art.199---Constitutional petition---prosecution for certain offences relating to documents given in evidence---Concurrent civil and criminal proceedings---Principles---Complainant (petitioner) filed an application before Justice of Peace alleging that her accused-brother (respondent), with the connivance of a stamp vendor prepared a forged memorandum of gift on behalf of their deceased father and in this manner deprived her from her sharai share in legacy of her father---Justice of Peace declined to allow such application of the complainant---Contention of complainant was that commission of cognizable offence was made out against the accused, therefore, Justice of Peace was not justified in declining issuance of the direction to the Station House Officer (SHO)---Validity---Civil suit concerning partition of property was pending between the

parties, and allegedly forged gift deed had been produced in the said suit---Allegedly fabricated memorandum of gift was under consideration of the civil court where its execution and other allied matters would be determined by the court after recording of evidence, therefore, it was not appropriate at present stage to set the criminal machinery into motion---Civil and criminal cases could proceed side by side but ultimately preference was to be given to civil matters to avoid conflict of judgments---Order of Justice of Peace did not call for any interference---Constitutional petition was dismissed, accordingly. ( 2012 PCrLJ 1610 LAHORE-HIGH-COURT-LAHORE)