

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.12.2016	Delivered on : 02.01.2017
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THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.799 of 2010

K.Bakkiyam

..Appellant/Complainant

vs.

1.M.Kumar
2.Rajeswari
3.Sivalingam
4.Manickam
5.Janaki
6.Kamaraj
7.Kanaga
8.Sivaraj
9.Lakshmi
10.Dharman
11.Mani

..Respondents/Accused 1 to 11

Criminal Appeal filed under Section 378(4) of Cr.P.C., against the order passed by the learned Judicial Magistrate, Krishnagiri, dated 30.11.2009 in C.C.No.70 of 2002.

For appellant : Mr.V.Rajamohan

For respondent : No appearance
for R1 and R2.

JUDGMENT

The appellant/complainant filed a private complaint against the respondents herein on the file of Judicial Magistrate, Krishnagiri, (now Judicial Magistrate NO.1, Krishnagiri), for offences under Section 494, 494 read with 109 and 498 (A) IPC on 20.02.2002 and the same was taken on file in C.C.No.70 of 2002. The said complaint was dismissed by the said court on 30.11.2009 due to non-appearance of the appellant/complainant herein. Aggrieved over the same, the complainant has come forward with this appeal, seeking to set aside the said order of the trial court and to restore C.C.No.70 of 2002 for disposal on merits.

2. The appellant/complainant states that she is the legally

wedded wife of the 1st respondent/accused herein and during subsistence of the marriage, her husband, the 1st accused/1st respondent herein married the 2nd accused/second respondent and the same took place with the assistance of the other accused. Aggrieved over the same, she preferred the above said complaint and the same was taken on file by the trial court in C.C.No.70 of 2002. The accused challenged the complaint by way of quash petition before this court in Crl.O.P.No.35097 of 2003. Even though no stay was granted in the said petition, the trial court has not proceeded with the case and the appellant herein being a lady residing at Dharmapuri, found it difficult to conduct the case in the court at Krishnagiri. Hence, she filed Crl.O.P.No.35503 of 2007, to transfer the said C.C.No.70 of 2002 from the file of Judicial Magistrate, Krishnagiri, to any court in Dharmapuri, and in that proceedings, interim stay was granted by this court in Crl.M.P.No.1 of 2007 on 19.11.2007. Subsequently, the said Crl.O.P.No.35503 of 2007 filed by the appellant/complainant herein seeking transfer of proceedings, was allowed by this court and the C.C.No.70 of 2002 was ordered to be transferred from the court of J.M.Krishnagiri to J.M.Dharmapuri, by order dated 11.01.2008. According to the appellant, the said order was dispatched from this court on 29.01.2008. The appellant states that due to the proceedings pending before this court and also the fact that the stay of the proceedings of the trial court was granted, there was no need for her to appear before the trial court. It is also stated that the quash petition filed by the accused in Crl.O.P.No.35097 of 2003 was dismissed by this court and the copy of the order was received by the trial court on 14.10.2009. Thereafter, the said C.C.No.70 of 2002 was called on 19.11.2009 and thereafter, adjourned to 30.11.2009 for appearance of the parties. Since the appellant/complainant was not aware of those things, she was not present before the trial court on 30.11.2009. Hence, C.C.No.70 of 2002 preferred by her was dismissed under Section 256 of Cr.P.C., by the trial court, due to non-appearance of herself. Aggrieved over the same, the complainant has come forward with this appeal and seeks to set aside the said order dismissing C.C.No.70 of 2002.

3. It is evident from the records that this court, as per order dated 11.01.2008, passed in Crl.M.P.No.35503 of 2007, ordered to transfer C.C.No.70 of 2002 from the file of Judicial Magistrate, Krishnagiri to Judicial Magistrate, Dharmapuri for disposal. Thus, from the said date i.e, 11.01.2008, Judicial Magistrate at Krishnagiri, has no jurisdiction to dispose of the matter as pointed out by the learned counsel appearing for the appellant. In such circumstances, the order of dismissal of C.C.No.70 of 2002 on 30.11.2009 passed nearly 2 years after the said proceedings was transferred from the court of Judicial Magistrate, Krishnagiri, to Judicial Magistrate, Dharmapuri, is unsustainable. As rightly contended by the appellant, the

Judicial Magistrate, Krishnagiri, has become functus officio and has no jurisdiction to pass the impugned order dated 30.11.2009. It is verified from the records that though the order was communicated to the Judicial Magistrate, Krishnagiri, on 30.01.2008 by this court, the trial court has proceeded with the proceedings and passed the impugned order, which is unfortunate.

4. Be that as it may, once the order has been passed by this court, transferring the matter to Judicial Magistrate, Dharmapuri, the court at Krishnagiri, lacks jurisdiction and in such circumstances, the order under challenge passed by the said court on 30.11.2009, is unsustainable and the same is liable to be set aside. In such circumstances, the plea of the appellant has to be entertained and the point is answered accordingly.

5. In the result, the Criminal appeal is allowed. The order passed by the Judicial Magistrate, Krishnagiri, dated 30.11.2009 in C.C.No.70 of 2002 is set aside. The Judicial Magistrate, Krishnagiri, is directed to restore to file C.C.No.70 of 2002 and transfer the matter to Judicial Magistrate No.1, Dharmapuri, as directed by this court, and pass or dated 11.01.2008, immediately after the receipt of a copy of this order. The Judicial Magistrate No.1, Dharmapuri, is directed to take up the case and dispose of the matter in C.C.No.70 of 2002, after following the due process of law and after issuing notice to the parties, within six months from the date of receipt of records.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

nvsri

To

- 1.The Judicial Magistrate, Krishnagiri.
 - 2.The Judicial Magistrate No.1, Dharmapuri.
 3. The Section Officer, Criminal Section, High Court,Madras.
- +1cc to Mr.V.Rajamohan, Advocate sr.5

Judgment in
Criminal Appeal No.799 of 2010

nrjk(co)
ss(25/01/2017)