

K.Gopalram Vs. A.Muthumari

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Court : Chennai

Decided On : Apr-08-2015

Judge : S.Nagamuthu

Appellant : K.Gopalram

Respondent : A.Muthumari

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

08. 04.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
Crl.A.(MD)NO.97 of 2015 K.Gopalram .. Appellant Vs. A.Muthumari .. Respondent
Prayer: Criminal Appeal filed under Section 341 of Cr.P.C. against the order dated
30.04.2014 passed in I.A.No.55 of 2014 in I.A.No.96 of 2010 on the file of the
Principal Subordinate Judge, Karur. !For Appellant :: Mr.K.Gopalram Party-in-
person ^For Respondent :: Mr.K.Gokul :

JUDGMENT

Challenging the order of the Principle Subordinate Judge, Karur, made in
I.A.No.55 of 2014 in I.A.No.96 of 2010 in HMOP No.131 of 2009, the appellant has
come up with this appeal. 2.The facts of the case in brief would be as follows: The
appellant has filed HMOP No.131 of 2009 before the learned Subordinate Judge,
Karur for divorce. One Mrs.A.Muthumari is the respondent in the HMOP. In that
petition, Mrs.Muthumari had filed I.A.No.96 of 2010 for interim alimony. During the

said proceedings, it is alleged that Mrs.Muthumari had suppressed certain vital facts, so as to get specific orders from the Court. This, according to the appellant, amounts to offence punishable under Section 195 of the Indian Penal Code. On these allegations, he filed I.A.No.55 of 2014 before the learned Principal Subordinate Judge, Karur requesting the Court to make a complaint under Section 340(1) of the Code of Criminal Procedure to the jurisdictional Magistrate against Mrs.Muthumari in respect of the above alleged offence committed by her. The learned Judicial Magistrate dismissed the said petition by order dated 30.04.2014. As against the same, the appellant has come up with this appeal.

3. This appeal has come up today for admission.

4. The appellant appeared in person. I have heard him and I have also heard Mr.K.Gokul, who has made appearance for the respondent.

5. I have also perused the records carefully.

6. At the outset, this Court raised a doubt about the maintainability of this appeal before this Court and invited the appellant as well as the learned counsel for the respondent to address argument on the said legal issue. The appellant is not in a position to explain to the Court as to how the appeal is maintainable before this Court. The learned counsel for the respondent would, however, submit that this appeal is not maintainable before this Court at all. This legal issue requires some more elaboration.

7. A right of appeal is a statutory right. So far as an order refusing to make the complaint under Section 340(1) of the Code of Criminal Procedure is concerned, such right of appeal has been given to the party aggrieved under Section 341 of the Code.

8. Section 341 Cr.P.C. reads as follows: ?341. Appeal ?. (1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) of sub- section (2) of Section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of

Section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former Court might have made under section 340, any if it makes such complaint, the provisions of that section shall apply accordingly.

2. An order under this section, and subject to any such order, an order under section 340, shall be final and shall not be subject to revision.?

9. A reading of the above provision would make it very clear that such appeal would lie only to the Court to which such former Court is subordinate within the meaning of Sub Section (4) of Section 195.

10. Section 195(4) of the Code of Criminal Procedure reads as follows: ?.(4) For the purposes of clause (b) of sub-section (1), a Court shall have deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Courts having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that - (a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate: (b) where appeals lie to a civil and also to a revenue Court, such Court shall be deemed to be subordinate to the civil or revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.?

11. A perusal of the above provision would go to show that so far as the civil Courts are concerned, appeal as against the order made under Section 340(1) Cr.P.C., will lie to the Civil Appellate Court to which an appeal shall lie against the decree of the Former Court. Here in this case, the decreetal order has been passed by the learned Subordinate Judge, against which, an appeal lies only to the District Judge. If the order under Section 340(1) Cr.P.C. is considered to be decreetal order, undoubtedly, appeal should lie as against the same under Section 341 of the Code of Criminal Procedure only to the District Judge. If any order has been passed by the same Judge in the capacity of the Assistant Sessions Judge, in which case also, appeal shall lie only to the Sessions Judge. At any rate, since

in both the capacities either as the Subordinate Judge or as an Assistant Sessions Judge, his immediate superior Court is either the District Court or the Sessions Court and therefore, the present appeal before this Court is not at all maintainable.

12. In view of the above, this appeal is dismissed as not maintainable. However, with liberty to the appellant to approach the appropriate Court for relief, if so advised. It is further directed that the period spent before this Court between 20.01.2015 till today shall be excluded, while considering the period of limitation as provided under Section 14 of the Limitation Act. 08.04.2015 Index :Yes/No Internet:Yes Note: The Registry shall return the original impugned order to the appellant to enable the appellant to work out his remedy elsewhere. RR To 1.The Principle Subordinate Judge, Karur. 2.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. S.NAGAMUTHU, J.

RR Crl.A.(MD)NO.97 of 2015 08.04.2015 340.Procedure in cases mentioned in Section 195- (1) When, upon an application to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section(1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, - (a) record a finding to that effect: (b)make a complaint thereof in writing: (c)send it to a Magistrate of the first class having jurisdiction: (d)take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and (e)bind over any person to appear and give evidence before such Magistrate.

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