S. Elango Vs. S. Ravindran

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Court : Chennai

Decided On : Aug-21-1997

Reported in : 1998CriLJ3095; I(1999)DMC594

Judge : R. Balasubramanian, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 182(2); Indian Penal Code (IPC), 1860 - Sections 494

Appeal No. : Cri. R.C. Nos. 509 and 540 of 1995

Appellant : S. Elango

Respondent : S. Ravindran

Advocate for Def. : V. Ramamurthy, Adv.

Advocate for Pet/Ap. : N. Jothi, Adv.

Judgement :
ORDER

1. Third accused in C.C. No. 162 of 1995 on the file of the Judicial Magistrate, Saidapet is the revision petitioner in Crl.R.C. Nos. 509 of 1995 and 540 of 1995. The respondent in each of the revisions is the complainant in that case before the lower Court. The parties in this revision are referred to in the rank in which they are described before the lower Court. The complainant filed a private complaint

against seven accused alleging offences under Sections 494 and 109 r/w. 34 of the Indian Penal Code. The gist of the complaint is that the complainant's sister was married to the first accused on 14-3-1980 at Rajeswari Kalyana Mandapam at Dr. Radhikrishnan Salai, Madras, according to the rites of Hindu Religion to which the marrying spouses belonged. Thereafter, the marriage was registered in the office of the Registrar of Marriage, Saidapet, Madras 35. After the marriage, the first accused resided with his wife for 1-1/2 years at No. 14, Balfour Road, Kellys, Madras 10. In 1981, the first accused went to England to prosecute his further studies and from there he went to Jamaica. The wife of the first accused also joined him at Jamaica, where she gave birth to a female child. During the year 1987, the complainant's brother, stated to be residing at Australia, sponsored the wife of the first accused and therefore, the first accused, his wife and the child went to Australia. In the year 1992, the first accused became intimate with a Malaysian woman and slowly the first accused started to show a dislike towards his wife. In July, 1992, the first accused deserted his wife and daughter and started to live with the Malaysian woman at Australia. On 7-11-1994, the first accused is stated to have married the second accused and that marriage was solemnized at Sri Pateeswaran Temple at Perur, Coimbatore Taluk. The marriage was also registered in the office of the Joint Registrar-I, Raja Street, Coimbatore. In the month of November, 1995, the first accused had come to Madras and stayed with his brother and mother, accused 3 and 4 respectively at No. 17, Ponnappa Road, Off. Damodara Murthy Road, Kilpauk, Madras, 10. The rest of the facts are not necessary for the purpose of deciding the revisions.

2. This complaint was taken on file and process was issued to the accused. The third accused filed Crl.M.P. No. 2252 of 1995 under Section 177 of the Code of Criminal Procedure stating that the learned Magistrate has no jurisdiction to try the case on the ground that the marriage has taken place at Coimbatore. According to him, there are no averments in the complaint to confer jurisdiction on the Magistrate. The third accused along with accused 4 to 7 filed another application in Crl.M.P. No. 2253 of 1995 under Section 245(2) of the Code of Criminal Procedure praying the Court to discharge them on the ground that there are no prima facie materials. In this petition, it is stated that the wife of the first accused had obtained the citizenship of Australia and that there are proceedings in the

Family Court at Australia regarding divorce between the first accused and his wife. The learned Magistrate after hearing both the applications passed two separate orders each dated 17-7-1995 in and by which he rejected both the petitions. Crl.R.C. No. 509 of 1995 is against the order in Crl.M.P. No. 2252 of 1995 (Jurisdiction issue) and Crl.R.C. 540 of 1995 is against the order in Crl.M.P. No. 2253 of 1995 (lack of prima lace material issue).

3. I heard Mr. N. Jothi, learned counsel appearing for the revision petitioner in both the cases and Mr. V. Ramamurthy, learned counsel appearing for the respondent in each of the cases.

4. After hearing both the counsel, I am of the opinion that the question of deciding Crl.R.C. No. 540 of 1995 on merits would depend upon the outcome of the result in Crl.R.C. No. 509 of 1995, since it goes into the jurisdiction issue. If it is found that the Judicial Magistrate had jurisdiction to take the complaint on his file, then, there will be need to go into the question raised in Crl.R.C. No. 540 of 1995. On the other hand, if it is found that the Judicial Magistrate has no jurisdiction to take the complaint on his file, then it will be futile to decide Crl.R.C. No. 540 of 1995 on merits. under these circumstances, I had taken up for consideration first, Crl.R.C. No. 509/95.

5. The jurisdiction of the Courts is provided in Chapter XIII of the Code of Criminal Procedure. It contains Sections 177 to 189 of the Code of Criminal Procedure. Sections 177 and 178 of the Code are general in nature. The relevant section in that chapter so far as the present case is concerned is sub-section (2) of Section 182 of the Code which is extracted hereunder :

'Any offence punishable under Section 494 or Section 495 of the Indian Penal Code may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage, or the wife of the first marriage has taken up permanent residence after the commission of the offence.'

As held by His Lordship Mr. Justice M. M. Punchhi, (as His Lordship then was in Punjab and Haryana High Court) in Ravindar Kaur v. Gurmit Singh 1985 CLJ 601

the spirit of Section 182(2) of the Code is to throw open a convenient jurisdiction to the offended spouse. Therefore, with this broad object of the Section, I carefully analysed sub-section 2 of Section 182 of the Code to find out whether the Judicial Magistrate in this case will have jurisdiction to take the complaint on file. Sub-section 2 of Section 182 of the Code provides for jurisdiction to try the offence under Section 494 or 495 of the Indian Penal Code. This sub-section can be easily split up into three limbs so as to understand it easily and properly and they are so split up as follows :

'Tried by a Court within whose local jurisdiction :

(i) the offence was committed or

(ii) the offender last resided with his or her spouse of the first marriage; or

(iii) the wife of the first marriage taken up permanent residence after the commission of the offence.'

The word 'offence', the word 'offender' and the word 'commission of the offence' finds place in the first limb, second limb and the third limb of the section. Therefore, the question of jurisdiction is to be decided on the basis of the indications found in the three limbs of the section itself. In this case, according to the complaint, the offence was committed at Coimbatore. Therefore, applying the first limb the trial Court will have no jurisdiction. There is no allegation in the complaint that the wife of the first marriage has taken up permanent residence after the commission of the offence within the local jurisdiction of the present local Magistrate. Learned counsel for the petitioner drew my attention to the averment in the petition filed before the lower Court in the connected miscellaneous petition that the wife of the accused is an Australian citizen as on date. Learned counsel for the respondent is not able to dispute this statement and in fact, he would state that she would come from Australia as and when necessity arises. Therefore, there are no materials before the trial Court to bring the case within the last limb of sub-section (2) of Section 182 of the Code. Then, there remains the centre limb of sub-section (2) of Section 182 of the Code, which I have extracted above. Learned counsel for the respondent drew my attention to the averment contained in

paragraph 4 of the complaint which is extracted hereunder :

'After the marriage my sister and the said first accused were living for about 1-1 1/2 years at No. 14, Balfour Road, Kellys, Madras-10, with my late father (name omitted). During that time the first accused was not employed and did not have any income.'

6. Learned counsel for the respondent states that the above mentioned averment shows that the first accused was living with his wife at No. 14, Balfour Road, Kellys, Madras-10 and therefore, the trial Court would have jurisdiction. Learned counsel for the respondent in Crl.R.C. No. 509 of 1995 cited five decisions, viz., Jagir Kaur v. Jawant Singh, : [1964]2SCR73 , S. Saroja v. P. G. Emmanuel, AIR 1965 Mysore 12, A. J. Tulloch v. M. P. Tulloch, : AIR1975 Cal243 , Jeewanti v. Kishan Chandra, : [1982]1SCR1003 and Sardari Lal v. Kaushalya Devi, . The first judgment comes under the provision of Section 488 of the Code of Criminal Procedure. The second judgment is under Section 3 of the Divorce Act, 1869. The third judgment is also under Section 3 of the Divorce Act, 1869. Fourth judgmemt is under Sections 12 and 19(2) of the Hindu Marriage Act and the last judgment is again under Section 488 of the Code of Criminal Procedure, 1898. The facts in these cases are totally different from the facts available in this case and the sections which came up for consideration in these cases are also different. In the case on hand, Section 182(2) of the Code, 1974 is under consideration. Though, it is permissible to have the help of the decided cases while considering other enactments yet, unless it applies on all fours to the issue in question, it may not be possible to rely upon them. A careful reading of the judgments cited by the learned counsel for the respondent make it abundantly clear to my mind, that they do not throw any light at all on the question involved in the present case.

7. I carefully applied my mind to the submission made by the counsel for the respondent relying on the averments made in para 4 of the complaint and analysed the Section once again and ultimately at the end, I find that I cannot agree with this submission. A reading of sub-section (2) of Section 182 of the Code as a whole indicates that to bring a case within the second limb of sub-section (2) of Section 182 of the Code, the offender must have last resided with his

spouse of the first marriage within the jurisdiction of the Court in which the complaint is filed. The word 'offender' is a general word and therefore, it must receive the general construction and meaning. The Legislature has carefully used the word 'offender' here and not the word 'husband'. A husband becomes an offender so far as the wife is concerned in the matrimonial matter when he marries another woman during the subsistence of the first marriage. The word 'offender' must be read, in my view, as offending husband. But for the commission of the second marriage, during the subsistence of the first marriage, either of the spouses would not become an offender. If the significance and importance for the word 'offender' as used in the Section, is given effect to, then, it can only mean that a complaint can be laid in a Court within whose jurisdiction the offender (husband), after the commission of the offence, last resided with his wife of the first marriage and otherwise not. The context in which the word 'offender' is used also gives help to understand this word. It is not the case of the respondent that the first accused (offender/offending husband) has resided with his spouse of the first marriage, after he contracted the second marriage. Their stay in Balfour Road from March, 1980 to June, 1981 is definitely not after the offence committed by the first accused. The stay of the first accused with his wife of the first marriage in Balfour Road between March, 1980 and June, 1981 cannot be equated to mean the offender having last resided there. It is needless to state that when the words in the Statute are clear and admits no ambiguity, the Courts have to read them as it is and give a general construction for it.

8. Under these circumstances, I am not able to agree with the submission of the learned counsel for the respondent that the stay in Balfour Road, Kellys, Madras, between March, 1980 and June, 1981 when the first accused had not even thought of marrying for the second time would bring him as the offender within the second limb of sub-section (2) of Section 182 of the Code. Therefore, I am of the opinion that the complaint presented before the lower Court do not contain any averment necessary to give the jurisdiction to the Judicial Magistrate, Saidapet to take the case on his file. There is total lack of jurisdiction on the part of the Magistrate in taking the complaint on his file.

9. Lastly, the learned counsel for the respondent made his submissions drawing my attention to Sections 460 and 461 of the Code of Criminal Procedure. He made particular reference to sub-section (e) of Section 460 of the Code to state that taking cognizance of an offence by a Court is a curable defect. He also relied on Section 462 of the Code to state that no finding, sentence or order of any criminal Court shall be set aside merely on the ground that enquiry, etc., took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned in failure of justice. A reading of Section 462 of the Code itself makes it clear that it gets attracted at post trial stage and not at pre-trial stage. The question of prejudice or no prejudice has no role to play in deciding the jurisdiction issue when it is taken at the earliest point of time. Under these circumstances, I find that the Judicial Magistrate, Saidapet, has no jurisdiction to take the complaint in CC. No. 162 of 1995 on his file. Accordingly, Crl.R.C. No. 509 of 1995 is allowed. The Judicial magistrate is directed to return the entire records and the complaint in C.C. No. 162 of 1995 to the complainant to be presented before the appropriate forum, if so advised.

10. In view of my decision in Crl.R.C. No. 509 of 1995, there is no need at all to decide Crl.R.C. No. 540 of 1995, since I have decided that the Judicial Magistrate, Saidapet has no jurisdiction at all to take the case on his file. The order passed by him on merit in Crl. M.P. No. 2253 of 1995 on the ground that there are prima facie materials to issue the process to the accused cannot survive and Crl. R.C. No. 540 of 1995 is disposed of as a consequential order to Crl. R.C. No. 509 of 1995. All the findings and reasons given by the learned trial Magistrate in Crl.M.P. No. 2253 of 1995 are vacated. The right of the parties on the issue raised by them in Crl.M.P. No. 2253 of 1995 is left open to be decided when any competent Court is called upon to decide it. I am aware that the other accused in the private complaint are not parties to Crl.R.C. No. 509 of 1995 relating to the question of jurisdiction. That revision has been filed by the third accused. Since, I have held in that revision that the trial Magistrate has no jurisdiction at all, then to deny the benefit of that finding to the other accused who are not parties to the present revision would be only hyper-technical. Under thee circumstances, I make it clear that my decision on the question of jurisdiction in Crl.R.C. No. 509 of 1995 would equally apply to all the other accused as well, though, they are not made parties to that

revision.

11. Order accordingly