

R.Murugesan vs Thiru.P.Chelladurai on 10 August, 2015

Author: S. Manikumar

Bench: S.Manikumar

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Contempt Petition Sr.No.4178 of 2015

R.Murugesan

... Petitioner

vs.

Thiru.P.Chelladurai,
Hon'ble Judicial Magistrate,
In the Court of District Munsif
cum Judicial Magistrate,
Mettupalayam 641 301.

... Respondents

Petition under Section 11 of the Contempt of Courts Act, 70/71 has been filed to

For Petitioner

: Mr.R.Murugesan (Party-in-Person)

ORDER

Mr.Murugesan, party-in-person, has filed the present Contempt Petition Sr.No.4178 of 2015, to punish the learned District Munsif-cum-Judicial Magistrate, Mettupalayam. In the supporting affidavit, he has submitted that CrI.R.C.No.1262 of 2012, filed in this Court, to set aside the order passed in CrI.M.P.No.4334 of 2012, dated 24.08.2012, on the file of the Judicial Magistrate, Mettupalayam, was allowed on 21.03.2013, directing the learned Judicial Magistrate, Mettupalayam, to prefer a complaint, against the respondent in the said revision petition and to act in accordance with Sections 195 and 340 Cr.P.C. After receiving the copy of the said order, dated 21.03.2013, the respondent herein has taken the case on file, and assigned number as C.C.No.138 of 2013.

2. According to the petitioner, he has orally represented before the learned District Munsif cum Judicial Magistrate, Mettupalayam that he would file a written complaint against her and to transfer the case in C.C.No.138 of 2013. He has further submitted that his wife/respondent in

Crl.R.C.No.1262 of 2012, has preferred SLP.No.26883 of 2013, against the order made in the said revision petition, before the Hon'ble Supreme Court and that the same was dismissed on 13.01.2014. He has filed a memo on 10.10.2014, informing the respondent herein, to prefer a complaint and to transfer C.C.No.138 of 2013, as per Section 195 and 340 Cr.P.C.

3. According to the petitioner, case in C.C.No.138 of 2013, on the file of the learned District Munsif cum Judicial Magistrate, Mettupalayam, does not contain any complaint, preferred by the learned Judicial Magistrate, under Section 195 and 340 Cr.P.C. However, after a long delay, ie., on 17.11.2014, the respondent herein, has transferred the case in C.C.No.138 of 2013 to the learned Judicial Magistrate No.IV, Coimbatore, which has been re-numbered as C.C.No.2 of 2015 on 20.01.2015. Alleging that the learned District Munsif cum Judicial Magistrate, Mettupalayam, did not carry out the directions, issued by this Court in Crl.R.C.No.1262 of 2012, dated 21.03.2013, the present Contempt Petition has been filed.

4. It is the contention of the petitioner that Section 16 of the Contempt of Courts Act, 1971, recognises contempt committed by the Court. He has further submitted that negligence in performance of judicial duty, in terms of the directions of this Court, would attract the provisions of the Contempt of Courts Act, 1971 and that therefore, the respondent is amenable to contempt of this Court. He has also submitted that immunity cannot be claimed, under the provisions of the Judicial Officers' Protection Act, 1850. In this context, he referred to the provisions of the Contempt of Courts Act, 1971 and also relied a decision of this Court in Boradkanta Mishra v. Bhimsen Dixit reported in AIR 1972 SC 2466.

5. It is the further contention of the petitioner that the learned Chief Judicial Magistrate, Coimbatore, ought not to have taken cognizance of the offence, punishable under Section 193 IPC., without a written complaint from the learned District Munsif cum Judicial Magistrate, Mettupalayam. He also referred to the provisions of the Criminal Procedure Code.

6. Considering the averments and submissions, stated supra, records were called for.

Heard the learned counsel for the petitioner and perused the materials available on record.

7. Perusal of the records shows that earlier, vide order, dated 24.08.2012, the learned District Munsif-cum-Judicial Magistrate, Mettupalayam, has dismissed a petition, filed by the party-in-person to take action against his wife, for giving false evidence, in the maintenance proceedings, as not maintainable. Being aggrieved by the same, he has preferred Crl.R.C.No.1262 of 2012. Facts as deduced from the order made in Crl.R.C.No.1262 of 2012, dated 21.03.2013, are as follows:

The following are the allegations contained in the Protest Petition filed by the petitioner:

The Court below has directed the Inspector of Police, Sirumugai Police Station, to investigate the private complaint filed by the petitioner. But the police did not file any

report even though the petitioner sent two letters dated 19.6.2012 and 26.07.2012 which were received on 26.6.2012 and 28.7.2012 alongwith the above said private complaint copy and marriage registration certificate of respondent. The respondent has re-married on 25.02.2010 but on 11.11.2011 during the cross examination she told that she has not remarried. Hence, the Court may be pleased to direct the police to re-open and re-investigagte the matter or direct the CBCID to investigate the complaint and file report.

2. Judicial Magistrate, recorded sworn statement of the petitioner and dismissed the petition stating that on going through the records and sworn statement, the only offence made out is under Section 193 IPC., that according to Section 195 Cr.P.C. this petitioner has no locus standi to file this complaint under Section 193 I.P.C. and hence the petition is not maintainable.

3. The petitioner/party-in-person would contend that inasmuch as the Court below has found that the respondent has committed offence u/s 193 I.P.C., even though it is of the view that the petitioner has no locus standi to lodge the complaint, there is no legal impediment for the Court below to prefer complaint against the respondent when adequate materials were available before the Court and without lodging complaint before the concerned Court, dismissing the petition is not sustainable.

4. Contending contra, the learned counsel appearing for the respondent Ms.Kavitha would submit that as per the finding rendered by the Court below, the petitioner has no locus standi to point out anything on the part of the respondent so as to make her accused, that by means of which he could not make any complaint and in this regard there is no legal infirmity found in the order passed by the Court below.

5. The petitioner says that the respondent wife was divorced and she re-married on 25.2.2010 in Arulmigu Subramaniaswamy Thirukkoil, Pachaimalai-Modachur, Erode District for which he has produced copy of the Marriage Certificate issued by the Executive Officer of the said Temple. He also adds that she is having a male child aged 1= years. Suppressing the fact, she is continuing the maintenance case. While she was examined in cross on 11.11.2011 in MC Case No.22/07 before the learned Judicial Magistrate, Mettupalayam, she has stated that she has not contacted second marriage. But when she was examined in the same court on 31.08.2012, she admitted that after divorce she contacted second marriage and her husband's name is Arjunan, that after the said marriage she is having a male child aged 1 year 3 months. If it is so, while she deposed earlier on 11.11.2011 her child should have been aged 5 months. It is consciously admitted by her that the child was born out of the second marriage. Hence, it is manifest that she has given a false statement on 11.11.2011 as to her marriage that she has not married for the second time.

6. Significantly it is to note that she has made false statements while she was examined before the same Court in M.C.No.22 of 2007, i.e., Judicial Magistrate,

Mettupalayam. Taking advantage of this situation, the petitioner has come forward with this claim. After considering the rival submissions, at Paragraphs 17 and 18, this Court in Crl.R.C.No.1262 of 2012, dated 21.03.2013, has ordered as follows:

7. From the evidence of the respondent it has come to light that before the same Court she has taken different stands as to her marriage and the finding of the Court below that only offence made out against the first respondent is under section 193 I.P.C.is appropriate. Hence, as per the dictum laid down by the Honourable Supreme Court in N.Natarajan's case it is incumbent upon the Magistrate to proceed with Section 340 Cr.P.C.as per the procedure laid down in the provision. In such a view of the matter, this Court is of the view that the learned Judicial Magistrate has to be directed to act in accordance with law as per Sections 195 and 340 Cr.P.C.

18. In fine, the revision is allowed directing the learned Judicial Magistrate, Mettupalayam to prefer complaint against the respondent and to act in accordance with Sections 195 and 340 Cr.P.C. The learned Judicial Magistrate is also directed to dispose of the Maintenance Case within one month from the date of receipt of copy of this Order. SLP preferred against the aboveaid order has been dismissed.

8. According to the petitioner, as per the directions in Crl.R.C.No.1262 of 2012, dated 21.03.2013, the learned Judicial Magistrate, Mettupalayam ought to have preferred a complaint against petitioner's wife and acted in accordance with Sections 195 and 340 Cr.P.C. From the records, it could be seen that the learned Judicial Magistrate, Mettupalayam, has taken cognizance of the offence, under Section 193 IPC., and framed a charge.

9. Section 193 IPC deals with punishment of false evidence and the said Section reads as follows:

93. Punishment for false evidence:-

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1: A trial before a Court-martial; is a judicial proceeding.

Explanation 2: An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Explanation 3: An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a state of a judicial proceeding, though that investigation may not take place before a Court of Justice.

10. Section 195 of the Criminal Procedure Code deals with Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence and the said Section is extracted hereunder:

(1) No Court shall take cognizance

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate (2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded (3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section (4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from 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 Court 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. Chapter XVII of the Criminal Procedure Code deals with Charge. Sections 211 to 213 of the said Code are extracted hereunder:

11. Contents of charge (1) Every charge under this Code shall state the offence with which the accused is charged (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only (3) If the law which creates the offence does not give it any specific name so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case (6) The charge shall be written in the language of the Court (7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact date and place of the previous, conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

212. Particulars as to time, place and person - (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged (2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other moveable property, it shall be sufficient to specify the gross sum or, as the case may be, described the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a

charge of one offence within the meaning of section 219:

Provided that the time included between the first and last of such dates shall not exceed one year.

213. When manner of committing offence must be stated - When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

12. Section 340 of the Criminal Procedure Code is dealing with Procedure in cases mentioned in section 195, reads as follows:

(1) When upon an application made 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 for 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.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court. (4) In this section, "Court" has the same meaning as in section 195.

13. Upon perusal of the trial Court records, this Court deems it fit to extract the following, O.N.Submitted. It is submitted that one petitioner, R.Murugesan, has filed the revision to forward the same. To the Sirumugai P.S., or for investigation and for registering the case. After recording the sworn statement, this Court has dismissed the above CrI.M.P.No.4434/2012, dated 24.08.2012. Against which, Criminal Revision Case No.1262 of 2012, was preferred before the High Court, Madras. The High Court, has passed an order on 21.03.2013 and directed this Court to act in accordance with Sections 195 and 340 Cr.P.C.

Submitted for Orders.

(06.05.2013) 06.05.2013 Record perused, as per the Hon'ble High Court direction in CrI.R.C.No.1262 of 2012, dated 21.03.2013. This Court go through the entire case records and it reveals that there is prima facie case made as against the respondent. These case Tof u/S. 193 IPC. a new C.C.No.138/13 on 31.05.2013 and also sent intimation to complainant also.

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khtl;l chpikapay; kw;Wk; ePjpp;Jiw eLth;.

nkl;Lg;ghisak; Mfpa ehd;.

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M/g/t/ vz;/138-13

ehs; 30/05/2014

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gjpy; Mk;/ F/tprhuiz bra;a ntz;Lk;/

31.05.2013

Both present. Copies furnished. PSE by 07.06.2013. 319 Cr.P.C., petition filed.

IN THE COURT OF THE HON'BLE JUDICIAL MAGISTRATE
METTUPALAYAM

R.Murugesan

.. Complainant

v.

B.Gokila

.. Accused

MEMO FILED BY THE COMPLAINANT

The above named complainant humbly submits that,

1. The Hon'ble High Court at Madras has directed this Hon'ble Court to prefer (file/lodge) a complaint against the respondent (ie., the accused in the instant case), in para 18 in the order, dated 21.03.2013, in CrI.R.C.No.1262 of 2012.
2. It is Criminal Law Procedure that if the offence punishable under Section 193 of IPC (i.e., giving false evidence) is committed before any Hon'ble Court other than jurisdiction Court, the complaint needs to be preferred (filed/lodged) as per the procedure contemplated under Section 340(1) of Cr.P.C.
3. But, in the instant case, the offence of Giving False Evidence punishable u/S.193 of IPC., is committed before the Hon'ble Jurisdiction Court, which is incidently this Hon'ble Court.
4. Hence, if this Hon'ble Court (ie., Jurisdiction Court) is of the opinion that the instant case is to be sent to some other Hon'ble Court, the complainant prefers to attend before the Hon'ble Judicial Magistrate Court, Avanashi, for the reasons given under:

(a) the complainant comes via Avanashi from his native place, Kothur (Namakkal District), which is about 110 Km, from his native place Kothur (Namakkal Dt.) for attending the instant case traveling about 160 KM (to and fro : 320 KM)

(b) the mother of the complainant is diabetic patient, aged and sick, and no one is there to take care of his mother.

Therefore, it is prayed that this Hon'ble Court may be pleased to receive, record this memo and thus render justice.

Signed/-

16.06.2014 (Complainant-in-Person) LIST OF DOCUMENTS FILED:

(1) The order of the Hon'ble High Court at Madras, dated 21.03.2013 passed in Crl.R.C.No.1262 of 2012.

***** IN THE COURT OF THE HON'BLE JUDICIAL MAGISTRATE METTUPALAYAM
R.Murugesan .. Complainant v.

B.Gokila

.. Accused

MEMO FILED BY THE COMPLAINANT

The above named complainant humbly submits that,

1. The Hon'ble High Court at Madras has directed this Hon'ble Court to prefer (file/lodge) a complaint against the respondent (ie., the accused in the instant case), in para 18 in the order, dated 21.03.2013, in Crl.R.C.No.1262 of 2012, which is already marked as Exhibit P17 on 16.05.2014 in C.C.No.138/2013.
2. It is Criminal Law Procedure that if the offence punishable under Section 193 of IPC (i.e., giving false evidence) is committed before any Hon'ble Court other than jurisdiction Court, the complaint needs to be preferred (filed/lodged) as per the procedure contemplated under Section 340(1) of Cr.P.C.
3. But, in the instant case, the offence of Giving False Evidence punishable u/S.193 of IPC., is committed before the jurisdiction Court, which is incidentally happens to be this Hon'ble Court.
4. Hence, if this Hon'ble Court (ie., Jurisdiction Court) is of the opinion that the instant case is to be sent to some other Hon'ble Court, the complainant prefers to attend before the Hon'ble Judicial Magistrate Court, Avanashi, as the complainant comes via Avanashi from his native place, Kothur (Namakkal District), which is about 110 Km, from his native place.

Therefore, it is prayed that this Hon'ble Court may be pleased to receive, record this memo and thus render justice.

Signed/-

10.10.2014 (Complainant-in-Person) Received on 06th November, 2014 in the Court of Chief Judicial Magistrate, Mettupalayam.

IN THE COURT OF THE HON'BLE JUDICIAL MAGISTRATE
METTUPALAYAM

R.Murugesan .. Complainant

v.

B.Gokila .. Accused

PETITION UNDER SEC. 256 CR.P.C.

The petitioner abovenamed most humbly submits. The petitioner is unable to appear before this Honourable Court due to personal work and required to attend cases pending before Hon'ble High Court at Madras. His absence before this Honourable Court is neither wilful nor wanton but due to the reasons stated above.

It is prayed that this Hon'ble Court may be pleased to condone the absence of the complainant. It is also prayed that the personal attendance of the complainant may be dispensed with and the Counsel for the complainant be permitted to represent the complainant in this Case to-day.

Dated at Mettupalayam this the 22 day of August 2014 signed/-

(Petitioner/Party-in-Person) Received on 06th November, 2014 in the Court of Chief Judicial Magistrate, Mettupalayam.

IN THE COURT OF THE HON'BLE JUDICIAL MAGISTRATE
METTUPALAYAM

C.A.No. of 2014
in

R.Murugesan

.. Complainant

v.

B.Gokila

.. Accused

COPY APPLICATION FILED u/Rule 43
BY THE COMPLAINANT

The above named complainant humbly submits that the certified copy of the PW.1 Chief Examination, dated 16.05.2014 may be furnished to the complainant.

Therefore, it is prayed that this Hon'ble may be pleased to issue the above said Certified Copy to the complainant and thus render justice.

Signed/-

23.05.2014 (Complainant-in-Person) Encl:

1) Rs.1/- Court fee stamp affixed 6 Nos.

Green Sheet Received on 06th November, 2014 in the Court of Chief Judicial Magistrate, Mettupalayam.

IN THE COURT OF THE HON'BLE JUDICIAL MAGISTRATE
METTUPALAYAM

R.Murugesan

.. Complainant

v.

B.Gokila

.. Accused

PETITION UNDER SEC. 256 CR.P.C. BY THE COMPLAINANT

The petitioner abovenamed most humbly submits.

1. The above case C.C.No.138 of 2013 is posted on 07.03.2014 for filing of counter by the accused. It is a last chance for the accused to file a counter. I am ready to/agree to receive a duplicate copy in the next hearing.

2. My Aunt died on 24.02.2014 at Chennai. I have to attend 12th Day Death Ceremony at Chennai on 07.03.2014 which falls on the hearing date of C.M.P.No.138/2013.

3. Hence, I am not in a position to attend/appear before this Hon'ble Court on 07.03.2013 in C.M.P.No.138/2013 and case may be adjourned for 2 weeks or longer time.

Therefore, it is prayed that this Hon'ble Court may be pleased to condone the absence of the complainant on 07.03.2014 in C.M.P.No.138 of 2013 and thus render justice.

Signed/-

04.03.2014

(Complainant-in-Person)

From

To

Thiru.P.Chelladurai, B.Sc., B.L.,
District Munsif cum
Judicial Magistrate,
Mettupalayam.

The Chief Judicial Magistrate,
Coimbatore.

D.No.920/2014, dated 11.10.2014

Honoured Sir,

Sub:- Transfer the case in C.C.No.138/2012 on
the file of District Munsif cum Judicial
Magistrate, Mettupalayam to any other
Court Regarding.

Ref:- (1) High Court order in Crl.Revision
No.1262/12, dated 21.03.2013.

(2) Order of District Munsif cum Judicial
Magistrate, Mettupalayam in
C.M.P.No.4334 of 2012, dated 24.08.2012.

(3) C.C.No.138/2013 pending before
District Munsif cum Judicial Magistrate,
Mettupalayam.

(4) Petition given by complainant on
10.10.2014.

I humbly submit that one Murugesan who is a complainant in C.C.No.138 of 2013, has filed a private

complaint before this Court in C.M.P.No.4334 of 2012, as 2nd reference cited. The same was dismissed by District Munsif cum Judicial Magistrate, Mettupalayam, against which, he preferred a revision before Hon'ble High Court and it was allowed as 1st reference cited, in which, our Hon'ble High Court has held that District Munsif cum Judicial Magistrate, Mettupalayam, preferred a complaint and acted upon under Section 195 and 340 Cr.P.C.

2. I further submit that, as per Hon'ble High Court direction case was taken on file under Section 193 IPC and numbered as C.C.No.138/2013 as 3rd reference cited and now pending before this Court. As per 340 Cr.P.C., the case shall be transferred to competent court, apart from that, complainant also given a petition to transfer the case from here to any other competent court as 4th reference cited.

3. Hence, Hon'ble Court may be pleased to transfer the case in C.C.No.138/2013 on the file of the District Munsif cum Judicial Magistrate, Mettupalayam to any other competent Court.

4. This is for favour of kind information.

Yours faithfully, Sd/-

District Munsif cum Judicial Magistrate, Mettupalayam.

Encl:

1.High Court's order in Crl. Revision Case No.1262/12, dt., 21.03.2013.

2.Petition given by the complainant, dated 10.10.2014.

***** 22.08.2014 Complainant absent. No representation. Advocate absent. PFA. Cross of PW.1 of 04.10.2014.

04.10.2014 Cross of PW.1. Dasara Holiday. Reposted to 07.10.2014.

07.10.2014 Complainant present. Advocate absent. PFA. At the request of Ad. Cross on 09.10.2014.

09.10.2014 Cross of PW.1. JM on leave. Reposted to 10.10.2014.

10.10.2014 Complainant present. Advocate absent. PFA. Complainant filed a memo, stating that case may be to Transfer Petition and Pg address to CJM. CBC to 31.10.2014.

31.10.2014 Complainant present. Advocate Absent. PF. Office is directed to sent this case bundle, as per CJM Court letter. C/o. 21.11.2014.

IN THE COURT OF THE HON'BLE IVth JUDICIAL MAGISTRATE
COIMBATORE

R.Murugesan

.. Petitioner

v.

B.Gokila

.. Respondent

MEMO FILED BY THE PETITIONER

The abovenamed petitioner humbly submits.

1. It is understood that C.C.No.138 of 2013 is transferred from Mettupalayam to this Hon'ble Court and it is re-numbered as C.C.No.2 of 2015.

2. The petitioner wants to file copy applications and want to initiate other proceedings.

Therefore, it is prayed that this Hon'ble Court may be pleased to permit the petitioner to peruse the case bundle today and thus render justice.

20.1.2015 sd/-

(Petitioner/Party-in-Person) ***** ePjpp;Jiw eLth; ePjpkd;wk; vz;/4. nfhak;g[j;J}h;

ehs; 21/01/2015 mwptpg;g[khtl;l chpikapay; kw;Wk; ePjpp;Jiw eLth; ePjpkd;wk; nkl;Lg;ghisak; ePjpkd;wj;jpd; Mz;Lg; gl;oif tHf;F vz;/138-2013 vd;w tHf;F. Kj;ik eLth; ePjpkd;wk;. nfhak;g[j;J}h; R.No.4661/14, dt. 07.11.14d; cj;jut[go khWjy; bra;ag;gl;L ,e;ePjpkd;wj;jpy; Mz;Lg;gl;oif tHf;F vz;/02-2015 ehs; 20/01/2015 md;W nfhg;gpy; vLf;fg;gl;lJ/ ,e;ePjpkd;wj;jpy; tUfpd;w 05/02/2015k; njjpad;W tha;jh nghlg;gl;Ls;sJ/ vdnt tha;jh njjpad;W eP';fnsh. CkJ rhh;gpy; tHf;fwp"nuh M\$uhf ntz;Lk; vd ,jd; K:yk; c';fSf;F bjhpag;gLj;jg;gLfpwJ/ BY ORDER Sd/-

Head Clerk, Judicial Magistrate Court No.IV Coimbatore.

bgWeh;

1) B.nfhfpyh.

7-5 F3, rf;jp bkapd; nuhL.

RpWKif.

nfhak;g[j;J}h;/

2) ikdh; vk;/fhp!;kh vjph;kDjhuh;fs;-tHf;fwp"h;

3) Mu;/V/fdfRe;juk;. M.Sc., B.L., 4-39. rf;jp bkapd; nuhL.

rpWKif. nkl;Lg;ghisak;.

nfhak;g[j;J}h; (Dt.) ***** The records received from District Munsif-cum-Judicial Magistrate, Mettupalayam, as per the Hon'ble Chief Judicial Magistrate, Coimbatore in R.No.4661/14, dated 07.11.2014 & case taken on file u/S.193 IPC., against the respondent.

Issue Notice to the respondent.

C/o. 05.02.2015 05.02.2015 Complainant called. No representation. Notice issued to the A1 returned with the endorsement that she is not residing in the address. Hence, issue F/N to A1 on filing process. C/o. 26.02.2015.

26.02.2015 Complainant called. No representation. Issue F/N., of A1 alone on filing process. C/o. 12.03.2015 12.03.2015 Both parties absent. No representation. Issue F/N., to A1..... call on 17.04.2015

14. Report was also called for from the learned Judicial Magistrate, Mettupalayam. Pursuant to the same, the learned Judicial Magistrate, Mettupalayam has submitted a report, dated 09.03.2015. Report, dated 09.03.2015, addressed to the Registrar General of this Court, is as follows:

From Thiru. P. Chelladurai, B.Sc, B.L., District Munsif Cum Judicial Magistrate, Mettupalayam.

To The Hon'ble Registrar General, Madras High Court Madras 600 104.

Through:

The Hon'ble Principal District Judge,

D.No.236/2015, Dated 09.03.2015

Honored Sir,

Sub: Contempt Petition D.No. 4178/15 filed against - District Munsif Cum Judicial Magistrate, Mettupalayam - Report called for- Submission of Regarding.

Ref: R.O.C. No. 730/15 (OS) Dated 03.03.2015 by Honorable High Court of Madras.

1. I humbly submit herewith my report called for by Honorable High Court in the reference cited above. I deny the allegation made in the affidavit, except those that

are admitted by me.

2. I humbly submit that the petitioner in this contempt petition has file a private complaint as against his wife namely Gokila in various section in Crl MP No.4334/2012, the same was dismissed by me (District Munsif Cum Judicial Magistrate, Mettupalayam) for reason stated in the order.

3. I further submit that, against the dismissal the petitioner prefer Crl.RC before Honorable High court in 1262/2012, the same was allowed on 21.03.2015, based on the Crl.R.C., this Court (District Munsif Cum Judicial Magistrate, Mettupalayam) on 06.05.2015 made a docket endorsement as follows:

Heard, Record perused, as per Hon'ble High Court direction in Crl.RC.No.1262/2012 Dated 21.03.2013. this court on go through the case record and it reveals that, there is a prima facie case made out against the respondent. Hence case taken on file u/s193 IPC. Issue summons to the Respondent on payment of process and office is directed to assign new CC number call on 31.05.2013 and also sent intimation to the complainant call on by then .

Hence, in obedience of the Hon'ble High Court in Crl RC No. 1262/2012, Dated 21.03.2013, I made an endorsement in the private complaint filed by the petitioner as stated above, and I taken on file the case, and numbered as CC 138/2013 on the file of District Munsif Cum Judicial Magistrate, Mettupalayam (Now pending JM NO, IV Coimbatore).

4. I further more submit that, after made endorsement and after taken on file as per Hon'ble High Court direction, the petitioner proceed the case further and the petitioner knowing well of the endorsement made in his complaint on 06.03.2013, he files this contempt petition with a view to tarnish my image after 1= years.

5. I submit that, the allegation leveled against me is that, I have not lodged a complaint U/s.195 and 340 Cr.P.C. Since the offense U/s. 193 IPC said have happened in my Court (District Munsif Cum Judicial Magistrate, Mettupalayam) and my court in a trial court, I made an endorsement in this regard as stated supra and myself taken on file under a bona fide belief, but as per Hon'ble High Court direction in Crl RC No. 1262/12 Dated 21.03.2013 I acted upon and taken on file.

6. I submit that according to U/s. 340 Crpc, if any offense committed out of jurisdiction, than the Magistrate record the finding and sent the case to the Magistrate who have jurisdiction, but in the instant case the offense was committed in my court and my court having jurisdiction to try this case, Hence I made an endorsement in this regard and based on the same I took cognizance of the case on 06.05.2013 but knowing the above fact the petitioner file this petition after 1 = of years.

7. I submit that, in the mean while the petitioner filed U/s.319 Crpc to implicate another accused in this case on 31.05.2013 in CMP No.3504/13 the same was dismissed on 14.05.2014.

8. I submit that on 10.10.2014 this petitioner file a memo stating that transfer the case from District Munsif Cum Judicial Magistrate, Mettupalayam to any other court. Hence I addressed to Chief Judicial Magistrate, Coimbatore along with his memo on 11.10.2014, based on the memo the learned Chief Judicial Magistrate transfered the case (CC 138/13) to Judicial Magistrate NO. IV, Coimbatore and the case is pending before Judicial Magistrate No.IV, Coimbatore.

9. I submit that in obedience of Hon'ble High court in CrI. RC No. 1260/2012 Dated 21.02.2013 I took cognizance, by made a written endorsement as stated. Supra and treated the endorsement as a complaint and Issue summons to the Accused.

10. I submit that during my tenure of having been as a Judicial Officer, since the date of Joining I have been doing my duty with conscious, and I never intent to disobey the Hon ble High court or any apex court order.

I therefore humbly beg to submit my report for favor of kind consideration of the Hon'ble High court.

15. As Paragraph 2 of the Memo, dated 10.10.2014, the petitioner himself has clearly stated that if the offence punishable under Section 193 of IPC (i.e., giving false evidence) is committed before any Court, other than the jurisdictional Court, a complaint needs to be preferred (filed/lodged), as per the procedure contemplated under Section 340(1) of Cr.P.C. At Paragraphs 3 and 4 of the said memo, he has also stated as follows:

. But, in the instant case, the offence of Giving False Evidence punishable u/S.193 of IPC., is committed before the jurisdiction Court, which is incidentally happens to be this Hon'ble Court.

4. Hence, if this Hon'ble Court (ie., Jurisdiction Court) is of the opinion that the instant case is to be sent to some other Hon'ble Court, the complainant prefers to attend before the Hon'ble Judicial Magistrate Court, Avanashi, as the complainant comes via Avanashi from his native place, Kothur (Namakkal District), which is about 110 Km, from his native place.

16. Thus, the complainant/petitioner in person himself, is aware that the alleged offence has been committed in the same Court, in which, M.C.No.22 of 2007, was pending. In the case on hand, it is not on the basis of any application made before the learned District Munsif cum Judicial Magistrate, Mettupalayam, an enquiry was conducted, in support of any offence, referred to in Clause (b) of Sub-Section (1) of Section 195 of Cr.P.C., and that after a preliminary enquiry, the learned Magistrate has recorded any finding of commission of an offence and thereafter, made a complaint

in writing to a Magistrate of the First Class, having jurisdiction. Here is a case, though the offence, under Section 193 IPC., has been alleged to have been committed before the learned District Munsif cum Judicial Magistrate, Mettupalayam, in a proceeding in M.C.No.22 of 2007, on the file of the same Court, on the directions of this Court, the learned District Munsif cum Judicial Magistrate, Mettupalayam, who himself was a First Class Magistrate and having jurisdiction to try the offence, has taken cognizance of the offence, under Section 193 IPC., (punishment for giving false evidence).

17. All along, after the learned District Munsif cum Judicial Magistrate, Mettupalayam, has taken cognizance of the offence, under Section 193 IPC., examined PW.1 and when the matter was repeatedly posted for PW.1's cross-examination and when the petitioner himself has sought for transfer of the case in C.C.No.138 of 2013, to some other Court, which the learned Chief Judicial Magistrate, Coimbatore, vide proceedings in R.No.4661/14, dated 07.11.2014, has done, and when the case in C.C.No.138 of 2013, under Section 193 IPC., has been assigned a new number in C.C.No.2 of 2015, on the file of the learned Magistrate, Coimbatore, now after nearly two years, the party-in-person has chosen to file a contempt petition, against the learned District Munsif cum Judicial Magistrate, Mettupalayam, on the grounds of alleged disobedience of the order of this Court. The case in C.C.No.2 of 2015 (Earlier C.C.No.138 of 2013, on the file of the learned District Munsif cum Judicial Magistrate, Mettupalayam) has been posted on various dates for hearing and the party-in-person was absent. At the risk of repetition, record of proceedings is extracted, The records received from District Munsif-cum-Judicial Magistrate, Mettupalayam, as per the Hon'ble Chief Judicial Magistrate, Coimbatore in R.No.4661/14, dated 07.11.2014 & case taken on file u/S.193 IPC., against the respondent.

Issue Notice to the respondent.

C/o. 05.02.2015 05.02.2015 Complainant called. No representation. Notice issued to the A1 returned with the endorsement that she is not residing in the address. Hence, issue F/N to A1 on filing process. C/o. 26.02.2015.

26.02.2015 Complainant called. No representation. Issue F/N., of A1 alone on filing process. C/o. 12.03.2015 12.03.2015 Both parties absent. No representation. Issue F/N., to A1..... call on 17.04.2015

18. In the case on hand, making a complaint in writing by the learned District Munsif cum Judicial Magistrate, Mettupalayam, to himself, does not arise, as the alleged offence is triable by a First Class Magistrate, having jurisdiction and he has the jurisdiction to try the same.

19. However, from the reading of Section 340 Cr.P.C., it could be deduced that the intention of the Legislature is that the Officer, before whom, an offence is alleged to be committed, should not try the accused and that he should transfer to some other Court, having competent jurisdiction. Even if any irregularity is stated to have been committed by the Court, that would not have any effect on the jurisdiction of the learned Magistrate, to whom, the case has been subsequently sent, to proceed further.

20. Thus, when this Court in Crl.R.C.No.1262 of 2012, has observed that the offence, under Section 193 IPC., has been allegedly committed by the respondent therein, the learned District Munsif cum Judicial Magistrate, Mettupalayam, has taken cognizance of the offence and subsequently, transferred C.C.No.138 of 2013, on its file, under the orders of the learned Chief Judicial Magistrate, Coimbatore.

21. The word Court in Section 195 Cr.P.C., will have the same meaning, as is attributed to it, under Section 195. The section does not preclude an Officer from taking cognizance of an offence, to which, he has jurisdiction. Thus, having found that the Court has got jurisdiction to take cognizance of the offence, under Section 193 IPC., proceedings have been initiated. There is nothing on record to indicate that there was any willful, deliberate or intentional violation, committed by the learned District Munsif cum Judicial Magistrate, Mettupalayam. Useful reference can be made to the judgment of the Hon'ble Supreme Court in R.N.Dey v. Bhagyabati Pramanik reported in (2000) 4 SCC 400, wherein the Hon'ble Apex Court has held as follows:

.We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court.

22. When the proceedings in C.C.No.2 of 2015, are pending before the learned Chief Judicial Magistrate, Coimbatore, the party-in-person has alleged contempt. As stated supra, he himself has averred that the learned District Munsif cum Judicial Magistrate, Mettupalayam, has jurisdiction to take the case on file. His only grievance is that a complaint has not been made, in terms of Section 340 Cr.P.C., and thus, the learned Magistrate has committed contempt, which is answered in the foregoing paragraphs.

23. Section 1 of the Judicial Officer's Protection Act, 1850, reads as follows:

. No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

24. Though the abovesaid Act, cannot be used as a shield in the proceedings, arising out of the Contempt of Courts Act, 1971, on the facts and circumstances of the case, stated supra, it cannot be

said that the learned District Munsif cum Judicial Magistrate, Mettupalayam, has committed any act of contempt. Decision relied in Boradkanta Mishra v. Bhimsen Dixit reported in AIR 1972 SC 2466, is inapposite to the facts of this case.

25. Reliance to the order, dated 09.01.2015, made in the proceedings of the 7th Metropolitan Magistrate, Chennai, would not lend any support to the case of the petitioner, for the reason that the petitioner has filed I.A.No.2363 of 2014 in I.A.No.21 of 2002 in O.P.No.291 of 2001, for making a complaint against the respondent, for the offence of giving false evidence, under Section 340(1) Cr.P.C., r/w. Section 193 IPC. The learned Principal VIIth Metropolitan Magistrate, Chennai, has recorded as follows:

Mr.R.Murugesan has filed a petition in I.A.No.2363 of 2014 in I.A.No.21 of 2002 in O.P.No.291 of 2001, making a complaint against the respondent for the offence of filing false affidavit punishable under Section 340(1) of Cr.P.C., read with Section 193 of IPC.

On perusal of the sworn affidavit, dated 20.12.2001 filed by the respondent before this Court, she has stated that she was not working. But the employment details of the respondent reveals that she joined duty as primary Teacher on 02.06.2001 till 30.08.2006 in Sree Saraswarthi Vidhyaah Mandheer School, Alangombu (Post), Mettupalayam 641 302 and she was drawing net salary of Rs.8,812/- per month and the same is very much in contradiction to the said evidence given by the respondent.

Principal Judge, Family Court, Chennai, while passing the orders, has further observed as follows:

It is expedient in the ends of justice on my part to file a written complaint against the respondent before Metropolitan Magistrate Court No.7, George Town, Chennai, having jurisdiction to take appropriate criminal action against the respondent for filing false affidavit, as it appears that the respondent has committed perjury to have a wrongful gain. No notice is required to be given to the respondent at this juncture, under the light of decision of the Hon'ble Apex Court reported in (2002) 1 SCC 253 cited on the side of the petitioner. This complaint is forwarded under Section 340 of Cr.P.C., r/w. Section 193 of CPC for taking cognizance against the respondent in accordance with law.

26. Reading of the proceedings of the 7th Metropolitan Magistrate, Chennai, makes it clear that the offence is alleged to have been committed in the proceedings before the Family Court and therefore, a Criminal complaint under Section 340 Cr.P.C., r/w. Section 193 IPC., to the Court of competent Criminal jurisdiction has been made. Needless to state that the Family Court does not have the jurisdiction to try an offence and that the same has to be tried by a Court of Criminal Jurisdiction. Thus, the matter has been forwarded to a Criminal Court, on a complaint. Having appeared before the learned District Munsif cum Judicial Magistrate, Mettupalayam, filed several memos, reiterating that the said Court has jurisdiction to try the offence, under Section 193 IPC and also sought for a

transfer, party-in-person has alleged contempt against the said Judicial Officer.

27. Before parting with the case, this Court deems it fit to record that, for adducing false evidence, he desires to punish his wife, for which, proceedings have been taken and now after participating in the said proceedings, wants to punish the Judicial Officer, alleging contempt. Going through the materials on record, this Court is of the view that the contempt petition is not maintainable. Even taking it for granted that it is maintainable, on merits also, it is liable to be dismissed. Accordingly, Contempt Petition is dismissed in the SR stage itself.

10.08.2015 Index: Yes Internet: Yes skm To

1. Judicial Magistrate, In the Court of District Munsif cum Judicial Magistrate, Mettupalayam 641 301.

S. MANIKUMAR, J.

skm

2. Chief Judicial Magistrate, Coimbatore.

Contempt Petition Sr.No.4178 of 2015 10.08.2015