

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-04-2007

CORAM

THE HONOURABLE MR.JUSTICE P.K. MISRA

AND

THE HONOURABLE MR. JUSTICE J.A.K. SAMPATH KUMAR

CRIMINAL REVISION CASE No: 115 of 2004

1. Mrs.Geetha
2. Mrs.P.Santhakumari
3. Mr.Sai Chander Sekar Singh
4. Mr.P.Balaji Lakshman Singh
5. P.Raghuram Singh
6. Mrs.Rajeswari
7. Tmt.Neelima
8. Mrs.Tulsi
9. Dr.Suresh

..Petitioners
[Accused 1 to 9]

Vs.

Arunakumari

..Respondent
[Complainant].

Criminal Revision Case is preferred against the order of the Prl.Sessions Judge, Chennai made in Transfer O.P.No.7098 of 2003 dated 9.1.2004 transferring the case C.C.No.6063 of 2003 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai to the file of Mahila Court, Chennai.

For petitioners : Mr.R. Rajasekaran
For Respondent : Mr.C.Chinnavairan

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ORDER

P.K. MISRA, J

This Criminal Revision Case has been filed by the accused person against the order passed by the Principal Sessions Judge, Chennai in transferring the case C.C.No.6063 of 2003 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai to the file of Mahila Court, Chennai.

2. While considering the matter, a contention has been raised before the learned single Judge to the effect that a Sessions Judge was posted as Mahila Court after such Mahila Court was established by the Government. However, the power of a Metropolitan Magistrate could not have been conferred on such Mahila Court or the Sessions Judge without a specific notification by the State Government establishing such court of Metropolitan Magistrate and, therefore, the proceedings pending before Addl. Chief Metropolitan Magistrate should not have been transferred to such Mahila Court.

3. Since such question raised a question of law of importance and also relating to jurisdiction and constitution of Court, learned single Judge thought it appropriate to place the matter before a Division Bench and that is how the matter is now placed before the Division Bench.

4. The State Government had issued Ms.No.556 dated 28.6.2002 sanctioning the Constitution of two Magalir Neethimandram (Mahila Courts), one at Chennai and the other at Coimbatore to be headed by District and Sessions Judges for speedy trial and disposal of cases of offences committed against women and also cases under other social laws enacted by the Central and State Government for the protection of women. Thereafter, the High Court issued Notification No.95 of 2002 dated 16.7.2002, which is extracted in extenso :-

"In exercise of the powers conferred under Section 9(2) of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) the High Court hereby appoints the Judicial Officers mentioned in Column (1) below to be the Sessions Judges to preside over the Court of Sessions in the Sessions Division and Head Quarters noted against their names in Column (2) below with effect from the date on which they took charge:

1	Tmt.S.Vimala	to be the Sessions Judge in the Sessions Division comprising the Metropolitan Area of Chennai
2	Tmt.S.Kalavathy	to be the Sessions judge in Coimbatore Sessions division with Head Quarters at Coimbatore

In exercise of the powers conferred under Section 11(2) of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the High Court, Madras, hereby confers on Tmt.S.Kalavathy the powers of Judicial Magistrate of First Class in the Coimbatore District with Head Quarters at Coimbatore with effect from the date on which she took charge. She shall exercise all the powers of Judicial Magistrate First Class under the said Code.

In exercise of the powers conferred under Section 16(2) of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the High Court, Madras, hereby appoints Tmt.S.Vimala, to be the Metropolitan Magistrate in the Metropolitan area of Chennai from the date on which she took charge. She shall exercise all the powers of the Metropolitan Magistrate under the said Code. "

5. In the present case, the learned counsel appearing for the petitioner has submitted that the High Court had no jurisdiction to appoint Smt.S. Vimala to be the Metropolitan Magistrate in the Metropolitan area of Chennai in the absence of creation of such a post by the State Government. Incidentally the learned counsel has also questioned the wisdom and legality of the notification of the High Court conferring the power of Judicial Magistrate of the First Class on Smt.S. Kalavathy, who as a Sessions Judge was appointed as Mahila Court for Coimbatore District.

6. The notification issued by the High Court has already been extracted in extenso. The second sub-paragraph of such notification relates to conferment of power of Judicial Magistrate of the First Class on the Sessions Judge, who had been appointed as the Mahila Court for Coimbatore district. The Notification specifically refer to Section 11(2) of the Code of Criminal procedure. Section 11 is extracted in extenso.

"11. Courts of Judicial Magistrates.- (1) In every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify:

Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more

Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established."

7. A perusal of the aforesaid section clearly indicates that the power to establish a court of Judicial Magistrate of First Class and of the second class is vested with the State Government and the State Government is required to exercise such power after consultation with the High Court. Once such court of Judicial Magistrate is established by the State Government by Notification, under Section 11(2) the Presiding Officer of such court is to be appointed by the High Court.

8. The notification issued by the State Government clearly indicates that Mahila Court is constituted to be headed by District and Sessions Judge. The Notification issued by the State Government does not purport to establish any court of the Judicial Magistrate of First Class. The power of the High Court to appoint Presiding Officer of such court of Judicial Magistrate of the First Class under sub section (2) of Section 11 can be exercised only when there is establishment of Judicial Magistrate of the First Class by the State Government. Therefore, apparently the notification issued by the High Court purporting to exercise power under Section 11(2) appears to be inappropriate. However, Section 11(3) of the Code empowers the High Court, whenever it appears to it to be expedient or necessary to confer the powers of a Judicial Magistrate of the First Class on any member of the Judicial Service functioning as a Judge in a Civil Court. Even the power under Section 11(3) could not have been exercised because, in the present case, Smt.S. Kalavathy has been posted to be the Sessions Judge in Coimbatore Sessions Division with Head Quarters at Coimbatore. Section 11(3) specifically contemplates the conferment of powers of Judicial Magistrate of First Class on any member of the Judicial Service functioning as a Judge in a Civil Court. It cannot be said that Smt.S. Kalavathy, who was posted as a Sessions Judge, was functioning as a Judge in a Civil Court. Therefore, such notification appears to be inappropriate.

9. Next comes the question relating to appointment of Smt.S. Vimala, to be the Sessions Judge in the Sessions Division in the Metropolitan area of Chennai. Notification is in apparent exercise of power under Section 16(2). The entire Section 16 of the Code is extracted hereunder:-

"16. Courts of Metropolitan Magistrates.- (1) In every metropolitan area, there shall be established as many Courts of Metropolitan Magistrates, and at such places, as the State Government may, after consultation with the High Court, by notification, specify.

(2) The presiding officers of such Courts shall be appointed by the High Court.

(3) The jurisdiction and powers of every Metropolitan Magistrate shall extend through the metropolitan area."

10. Section 16(1) is similar to Section 11(1). In other words, it is the State Government, which can establish a court of Metropolitan Magistrate after consultation with the High Court. In the present case, there is no dispute that even though a Mahila Court was established, no notification has been issued by the State Government establishing a court of Metropolitan Magistrate. Under Section 16(2), the Presiding Officer of such court shall be appointed by the High Court which is also in pari-materia with Section 11(2). In the present case, the High Court has purported to exercise power under Section 16(2) in appointing Smt.S. Vimala as the Metropolitan Magistrate, apparently against a non-existent post. It is also to be noticed that Section 16 does not contain the provision similar to Section 11(3). Moreover, even assuming that such a power was there, as already noticed, Smt.S. Vimala was appointed as a Sessions Judge in Mahila Court. The notification issued by the High Court, therefore, appears to be illegal.

11. In view of the above conclusion in the matter, it is obvious that the case, which was transferred to Mahila Court in the capacity of such a Court as Metropolitan Magistrate, was inappropriate and liable to be quashed.

12. In this context one is also required to consider the fact that in view of the provisions contained in Section 193, any Court of Sessions shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code of Criminal Procedure. By no stretch of imagination the transfer effected can be considered to be a committal of a case. Moreover, even the alleged offence was not triable by a Court of Sessions, but triable by a court of Magistrate. In this context, the Supreme Court in 2004 SCC (Cri) 260 (VIDYADHARAN v. STATE OF KERALA), after noticing the decisions reported in 1994 SCC (Cri) 277 (A.R. ANTULAY v. RAMDAS SRINIWAS v. RAMDAS SRINIVAS NAYAK), 1994 SCC (Cri) 785 (DIRECTORATE OF ENFORCEMENT v. DEEPAK MAHAJAN) and 2000 SCC (Cri) 488 (GANGULA ASHOK v. STATE OF ANDHRA PRADESH), observed that unless it is positively and specifically provided differently, no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate.

13. A question may arise that in the meantime such Mahila Court at Coimbatore and Chennai and may be in other places must have dealt with the matters on the basis of transfer of cases to such Mahila Court in their capacity as Judicial Magistrate of First Class or Metropolitan Magistrate. A question may also arise whether the orders/judgments pronounced by those courts in the capacity of Judicial Magistrate of First Class or Metropolitan Magistrate are ipso facto illegal.

14. In view of the de facto doctrine, which has been recognised by the Supreme Court in the decision reported in AIR 1981 SC 1473 = (1981) 3 SCC 132 (GOKARAJU RANGARAJU v. STATE OF ANDHRA PRADESH), such judgments cannot be considered as illegal merely because of the defect in posting of judicial officers and the question of legality or otherwise of those judgments already rendered by such Mahila Courts exercising the function as Judicial Magistrate of the First Class or Metropolitan Magistrate are required to be decided on their own merit in accordance with law.

15. In view of the above conclusion, the transfer order is required to be quashed. The matter shall now be dealt with by the regular Metropolitan Magistrate.

16. In order to overcome the technical defects, which have been accepted by us, we recommend that appropriate communication may be sent to the Government to formally establish a Court of Judicial Magistrate of First Class and Metropolitan Magistrate in the places where Sessions Judges are being designated as Mahila Courts. Once such a course is adopted, there would not be any legal hurdle for the High Court to post a Sessions Judge in charge of Mahila Court as Magistrate.

17. In this context, the other contention raised by the learned counsel for the petitioner is to the effect that if a Sessions Judge is designated as a Judicial Magistrate of First Class or Metropolitan Magistrate to decide a matter triable by a Magistrate and not exclusively triable by a Court of Sessions, the accused person would lose a chance of filing appeal before the regular appellate court and thereafter filing a revision.

18. Technically speaking, if a Sessions Judge is also posted as a Magistrate, the appeal may be filed before the regular court i.e., it would come before another Sessions Judge. We do not think adoption of such a course be practicable nor it would be judicious. It is therefore suggested that apart from posting a Sessions Judge as a Mahila Court, possibility of creating a separate court of Judicial Magistrate of First Class and Metropolitan Magistrate can be considered and Judicial Officers at the level of Judicial Magistrate of First Class or Metropolitan Magistrate can be suitably posted. In other words, only cases exclusively triable by a Court of Sessions would be committed to the Sessions Judge holding the post of Mahila Court and other cases can be posted before the Judicial Magistrate of First Class or Metropolitan Magistrate which can be designated as Additional Mahila Court.

19. Subject to the above observations and recommendations, the Criminal Revision is allowed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

- To
1. The Prl. Sessions Judge, Chennai.
 2. The Addl. Chief Metropolitan Magistrate, Egmore, Chennai 8,
 3. -do- through The Chief Metropolitan Magistrate, Egmore, Chennai 8.
 4. The Presiding Officer, Mahila Court, Chennai.
 5. The Registrar General, High Court, Madras.
- + 1 CC To Mr. R.Rajasekaran, Advocate SR NO.29996
- + 1 CC To Mr. C.Chinnavyran, Advocate SR NO.29653

Crl.R.C.No.115/2004

bk[co]
Gp/23.5.

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