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**(2015) 10 MAD CK 0008**

**In the Madras High Court**

**Case No :** Criminal O.P. No. 23404 of 2015 and M.P. No. 1 of 2015

K.G. Muthuvenkateshwaran

APPELLANT

Vs

R. Divya

RESPONDENT

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**Date of Decision :** 16-10-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 309, 317, 70(2)  
Penal Code, 1860 (IPC) — Section 109, 34, 494, 498, 498(A)

**Citation :** (2015) 10 MAD CK 0008

**Hon'ble Judges :** P.N. Prakash, J.

**Bench :** Single Bench

**Advocate :** V. Lakshmi Narayanan for Guruprasath, for the Appellant; P.M. Duraiswamy, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

P.N. Prakash, J.—This petition has been filed to withdraw C.C. No. 21 of 2014 pending on the file of the Judicial Magistrate, Palladam and transfer the same to any other Magistrate Level Court in some other sessions division.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

3. For the sake of convenience, the parties will be referred to as complainant and accused.

4. It is the case of the complainant that she got married to K.G. Muthuvenkateshwaran [A1] on 08.06.2006 and within a brief period, their marriage ran into rough weather, resulting in the parties getting estranged. It is the allegation of the complainant that, her husband K.G. Muthuvenkateshwaran [A1] contracted second marriage with Preethi [A2] on 12.04.2010 during the subsistence of the first marriage. Hence, the complainant launched prosecution against K.G. Muthuvenkateshwaran [A1] and 11 others for offences under Sections 494 , 494 r/w 109 , 34 and 498 IPC in C.C. No. 21 of 2014 before the

learned Judicial Magistrate, Palladam.

5. On behalf of the complainant, some witnesses were examined for the purpose of framing of charges and ultimately, charges were framed on 22.07.2015 against the accused. At that juncture, K.G. Muthuvenkateshwaran [A1] has filed this application for transfer, making the following allegations against the Presiding Officer.

"5. I state that thereafter the complaint was taken on file in C.C. No. 21 of 2014 on the file of the learned Judicial Magistrate, Palladam and P.W. 1 to P.W. 4 witnesses were examined on the complainant side and on 22.07.2015 charges were framed against me and 11 other accused persons. I further submit that on that said day of hearing the learned Judicial Magistrate, Palladam in open court had made certain observation about me and my father who is no more. The learned Magistrate had made observation as

"Your father had two wives and you also want two wives."

I submit that our family is a reputed one in the society and my father Late Govindasamy Gounder had done much welfare in our locality. I submit that my father had donated landed properties to the Government for the construction of the Bus Stand in Kundadam.

6. I respectfully state that the learned Judicial Magistrate in open court stated that I should settle the matter otherwise I would face the consequences and adjourned the matter to 21.08.2015 for Cross Examination of the complainant side witnesses. I state that on 17.08.2015 I sent a complaint to the learned Chief Judicial Magistrate, Tiruppur and the Registrar General, High Court of Madras and the Hon"ble Portfolio Judge Justice D. Hariparanthaman, J.

7. I further submit that on 01.09.2015 a memorandum was sent by the Registry of the Hon"ble High Court, Madras in R.O.C. No. 12415/2015/B3 (complaint cell) to me. In the said communication, I was directed to file complaint in the form of affidavit. Accordingly I have filed my complaint in the form of affidavit in person on 14.09.2015 to the Registrar of this Honourable High Court.

8. I state that on 11.09.2015 the case has been posted for the Cross Examination and on that day, I and other accused persons filed petition under Section 317 of Cr.P.C. to condone our absence. Further another application was filed under Section 309 of Cr.P.C. seeking adjournment. I respectfully state that the learned Judicial Magistrate, Palladam shown the copy of my complaint dated 17.08.2015 in the open court and also handed over the same to the respondent counsel as well my counsel to read.

9. I state that the learned Judicial Magistrate, Palladam had dismissed both the petitions filed by us in C.M.P. No. 5304 of 2015 and C.M.P. No. 5305 of 2015 in C.C. No. 21 of 2014 on 11.09.2015 and issued Non-bailable Warrant and posted the case on 09.10.2015. I respectfully submit that on 12.09.2015 I and other accused persons filed petition in CMP No. 5311 of 2015 for advance hearing and

CMP No. 5312 of 2015 to recall the NBW issued on 11.09.2015 and the learned Magistrate ordered notice to the respondent in both the petitions and posted the case on 15.09.2015. I understand that immediately warrant was handed over to the Inspector of Police, Palladam."

6. This Court ordered notice to the respondent and also called for remarks from the learned Judicial Magistrate, Palladam. The report dated 08.10.2015 sent by the learned Judicial Magistrate, Palladam was shown to the learned counsel for the accused in the open Court and he was permitted to peruse it.

"3(a) I humbly submit that I have assumed the charge of this Court on 06.05.2015. That on 11.05.2015 this case was heard by me at very first time. The complainant alone appeared. But, all the accused were absent. Then I came to understand from the representation made by the learned counsel for the complainant as this case was at the stage of framing of charge against the accused.

3(b) I humbly submit that a petition to transfer this case from this court was filed and pending on the file of learned Chief Judicial Magistrate Court at Tiruppur in CrI.M.P. No. 250/2015. It was filed before I was posted there. Then, by an order dated 05.05.2015 the same was dismissed and the copy of the order was received by me on 09.06.2015. Then only I proceeded in this case further as per Law.

3(c) I humbly beg to submit that this case came to me on 12.06.2015 on which date the complainant, A1, A2 and A10 were presented and other accused were absent. On the day I instructed that all accused shall appeared on 03.07.2015 since this case is pending for framing of charge and adjourned this case to 03.07.2015 to proceed further.

3(d) I humbly beg to submit this case was called on 03.07.2015. The complainant, 7th and 8th accused were absent and other accused were present. Both side counsels were presented. Complainant counsel was also ready to argue the case for framing of charges. But the accused counsel prayed for adjournment. Then this case was adjourned to 04.07.2015, with condition that all the accused shall appear without failure on their part on, which date also 7th and 8th accused were absent. Complainant and other accused were presented. Then on petition filed u/s. 309 Cr.P.C. by the accused this case was again adjourned to 09.07.2015 with condition that all the accused shall appeared without failure on their part and imposed of Rs. 1,500/- towards costs since the complainant and her counsels presented and reported as ready but the accused side dragged on the proceedings unnecessarily without making appearance of all accused.

3(e) I humbly beg to submit that on 09.07.2015 both side argument were heard and adjourned the case to 20.07.2015 for framing of charges.

3(f) I humbly beg to submit that on 20.07.2015 by utilizing the service of only

Typist available in our court I examined 17 witnesses. So there was no sufficient time for framing charges and it was adjourned to 22.07.2015 on which date charges were framed u/s. 494 , 498(A) against A1 and u/s. 494 r/w. 109 , 498(A) r/w. 34 against A2 to A12 and charges were explained to all accused in Tamil. All accused have denied the charges and claimed to cross examine the witnesses that have already been examined. And so this case was posted for further cross examination of witnesses by the accused.

3(g) I humbly beg to submit that due to heavy works in the open court with the only Typist available in the court on 20.07.2015 the charges were not able to be framed against the accused. There is no mala fide intention to make them wait in the court.

3(h) I humbly beg to submit that I tried my level best to frame charges on the same day. But I could not to do so due to above said reasons. So in the post lunch sessions all the accused were called and informed them, and then this case was adjourn to 22.07.2015. I strictly denied the allegation that I have made them wait till 7.30 p.m.

4. I humbly beg to submit that the allegation found in para 3 of affidavit are strictly denied as false. I did not talk about the personal life of the father of A1. And also I did not speak anything about the Personal, Political and property of A1.

5. I humbly beg to submit that the allegations found in para 4 of affidavit are denied as false. I have never laughed at A1 in the open court. It is an utter-lie made by him to create ground for this petition. I always treated all the persons appeared before me in respectable manner. I submit that I have never instructed him to provide 40% of property to his first wife and also I never stated them as they are guilty persons who are to be suitably punished."

7. This petition deserves to be dismissed on the very short score that, out of 12 accused before the trial Court, K.G. Muthuvenkateshwaran [A1]/petitioner has impleaded only R. Divya (the complainant) as respondent and has not impleaded the other 11 accused as party to the proceedings. From the records it is seen that A1, A2 and A7 to A12 were represented by Mr. Eswaramurthy, Advocate till 25.08.2015; A3 and A4 were represented by Mr. Sivasubramaniam, Advocate; and A5 and A6 were represented by Mr. Sakthivel, Advocate till 25.08.2015. Both Mr. Eswaramoorthy, Advocate and Mr. Sakthivel, Advocate have filed identical affidavits before the learned Judicial Magistrate, Palladam, alleging that they have no faith in him and that they will not get justice in his Court, whereas, Mr. Sivasubramaniam, Advocate who is on record for A3 and A4, did not express any grievance against the Judicial Officer. Mr. Eswaramoorthy, Advocate and Mr. Sakthivel, Advocate recused themselves from trial and in their place, Mr. Rajagopal, Advocate started appearing for those accused. It is seen that Mr. Rajagopal, Advocate had attempted to bribe the Typist Mrs. Ruby on 11.09.2015 by offering her Rs. 1,000/- for procuring the orders passed by the Magistrate in the petition under Sections 317 and 309 Cr.P.C.

8. The learned Magistrate has prepared a detailed proceedings dated 15.09.2015 with regard to the said allegation of bribery and has conducted enquiry. This Court commends the action of Mr. G. Krishnan, B.A., LLB., Judicial Magistrate, Palladam for taking head on such vicious attempts by members of noble profession to pollute the stream of justice. All these must have naturally irked the counsel for the accused and has prompted them to make such uncharitable allegations against the Presiding Officer. Of course, the proceedings dated 15.09.2015 was initiated after this transfer application was filed before this Court on 14.09.2015. Nevertheless, the action of the Magistrate only shows that, he is not a person who would be cowed down by filibustering acts. It is common knowledge that the members of the subordinate judiciary are today defenceless and they are not allowed to discharge their duties by disgruntled litigants.

9. Mr. V. Lakshminarayanan, learned Counsel appearing for the accused took exception to the averments made by the learned Judicial Magistrate in his report to this Court dated 8.10.2015:

"..... Since I have framed the charges against him and other accused after many hurdles, he developed an enmity against me and made such false allegation against me....."

and submitted that since the Magistrate has stated that the petitioner/accused has developed enmity, it will serve the interest of justice, if the case is transferred to any other Court.

10. I am unable to countenance the said argument as the said statement cannot be read in isolation. The learned Magistrate has clearly explained what all had transpired in the Court, and the methods adopted by the accused to protract the trial, and in that context he has made the aforesaid averment. If transfers are ordered at the drop of a hat on frivolous allegation of the accused, the very morale of the subordinate Judicial Officers will be under threat, and they will not be able to discharge their judicial functions without fear or favour. It is easy for a litigant to throw such calumny on Judicial Officers and threaten them by giving representations to the Registrar General and Portfolio Judge in order to strike fear in the minds of Judicial Officers.

11. The accused approached this Court challenging the order dated 15.09.2015 made in CMP No. 5312 of 2015 by filing Crl.O.P. No. 24016 of 2015 and this Court has passed the following order on 13.09.2015:

"5. I heard the counsel for both sides and perused the records. Having regard to the fact that the petitioners have filed C.M.P. No. 5312 of 2015 immediately to recall the warrant issued by the trial court and the petitioners are also ready and willing to cooperate with the trial proceedings, this Court feels that in the interest of justice, the order dated 15.09.2015 made in C.M.P. No. 5312 of 2015 in C.C. No. 21 of 2014 on the file of the learned Judicial Magistrate, Palladam is liable to be set aside.

6. Accordingly, the order dated 15.09.2015 passed in CMP No. 5312 of 2015 in CC No. 21 of 2014 on the file of the learned Judicial Magistrate, Palladam is set aside and this Criminal Original Petition is ordered subject to the condition that the petitioners shall appear before the learned Judicial Magistrate, Palladam on the next date of hearing namely 09.10.2015 and to file a petition under Section 70(2) of Criminal Procedure Code. In the event of filing such an application by the petitioners, the learned Judicial Magistrate, Palladam is directed to consider it and pass orders on merits and in accordance with law on the same day by imposing necessary conditions. As the petitioners are 10 in number, the learned Judicial Magistrate, Palladam shall consider their request to permit them to offer only six sureties for all the ten petitioners inasmuch as it would be difficult for the petitioners to execute 2 sureties each for 10 petitioners, totalling 20 sureties. The petitioners have undertaken to appear before the trial court on all dates of hearing regularly, till the conclusion of the trial, except on those days by filing petition under Sec. 317 of Cr.P.C. and the said undertaking is recorded. The learned Judicial Magistrate, Palladam is also directed to conduct the calendar case pending in C.C. No. 21 of 2014 as expeditiously as possible subject to the result of the Transfer Petition in CrI.O.P. No. 23404 of 2015 filed by the first petitioner, pending before this Court."

12. Thus this Court has given substantial relief to the accused and they need not fear any remand. However, this Court does not find merit in the present transfer application and therefore, this petition is dismissed with cost of Rs. 10,000/- payable to the Tamil Nadu Legal Services Authority. Consequently, connected miscellaneous petition is closed. The accused are directed to cooperate in the conduct of the trial, failing which it is open to the trial Court to remand them into custody under Section 309 Cr.P.C. as held by the Hon"ble Supreme in State of U.P. Vs. Shambhu Nath Singh and Others, .