

The State of Mysore Vs. Shankarappa Satteppa Indi and ors.

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Court : Karnataka

Decided On : Aug-02-1971

Reported in : 1971CriLJ1812

Judge : C. Honniah, J.

Appellant : The State of Mysore

Respondent : Shankarappa Satteppa Indi and ors.

Judgement :

ORDER

C. Honniah, J.

1. This is a reference made by the Sessions Judge, Bijapur recommending to quash the order passed by the Judicial Magistrate, First Class, Sindgi, in C. C, No. 560 of 1970 by which the Magistrate rescinded his earlier order issuing summons to the accused persons.

2. The facts relevant for the disposal of this reference briefly stated are these:

One Shankarappa Satteppa Indi filed a private complaint in the court of the Judicial Magistrate, First Class, Sindgi against Shivaraya, Gangabai and Rudraswamy alleging that Shivaraya and Gangabai celebrated the marriage of their daughter Shivarudrawa aged 4 years with one Ayyappa, aged about 17 years

and thereby committed offence punishable Under Sections 5 and 6 of the ' Child Marriage Restraint Act. 1929, (hereinafter referred to as the Act) read with Section 34 of the Indian Penal Code. The Magistrate recorded the sworn statement of Shankara Settappa Indi as provided Under Section 200 of the Code of Criminal procedure and directed the issue of summons against those 3 persons mentioned above. On 8-6-1970 those 3 persons against whom summons had been issued appeared before the court and on 23-6-1970 when the case came up for hearing they filed an application contending inter alia that the provisions of Section 10 of the Act were mandatory and the court could not entertain the complaint without holding a preliminary enquiry much less issue summons to them. Shankarappa Settappa took time to file objections but later submitted to the court that he had no objections. The Magistrate, thereafter, proceeded to hold the preliminary enquiry Under Section 10 of the Act read with Section 202 of the Code of Criminal procedure and recorded the statements of 4 witnesses including Shankarappa Settappa Indi. On the basis of the evidence, he came to the conclusion that no prima facie case against Shivaraya, Gangabai and Rudraswamy had been made out and in this view he dismissed the complaint.

3. Shankara Settappa Indi filed a revision petition (No. 23 of 1970) in the court of the Sessions Judge, Bijapur against the order passed by the Judicial Magistrate, First Class contending that the Magistrate having once ordered to issue summons against the said persons could not have gone behind his 'own order and held a preliminary enquiry and at any rate was wrong in dismissing the complaint holding that there was no evidence to come to the conclusion that there was a marriage as alleged by Shankara Settappa Indi and dismiss the complaint Under Section 203 of the Code of Criminal Procedure.

4. The learned Sessions Judge, Bijapur. was of the view that the learned Magistrate should not have gone behind his own order directing the issue of summons to the accused persons and was wrong in holding that there was no case made out. He was of the view that when once the evidence disclosed that there was a marriage a presumption arose that the marriage was solemnised according to law- For this reasons he has made the present reference to quash the order of the Magistrate.

5. The main question that arises In this case is whether the Magistrate was justified in rescinding his order or directing the issue of summons to the 3-accused persons when he had not followed the mandatory provisions of Section 10 of the Act and Section 202 of the Code of Criminal Procedure. The Magistrate formed an opinion that summons should be issued Under Section 204 of the Code of Criminal Procedure. By doing so, he took cognizance of the offence and issued summons to the accused. Under Section 10 of the Act read with Section 202 of the Code of Criminal Procedure, it is incumbent on the Magistrate to hold a preliminary enquiry if he wants to take cognisance of the offence under the Act. If the Magistrate had issued summons taking cognisance of the offence under the Act. The issue of summons Under Section 204 of the Code of Criminal Pro-1 cedure was not certainly a judgment to which the provisions of Section 369 of the Code of Criminal procedure could be made applicable. There is nothing in the Code which forbids the Magistrate to reconsider an order of this kind on sufficient grounds.

6. Another question that incidentally arises in this case is whether the Magistrate was right in dismissing the complaint holding that the complainant had not made out any prima facie case against the accused. Under Section 10 of the Act read with Section 202 of the Code of Criminal Procedure, a preliminary enquiry is contemplated to find out whether the allegations contained in the complaint are true on the basis of which cognisance can be taken against the accused persons and thereafter issue summons. For that purpose in order to come to the conclusion whether the allegations made in the complaint are true or not. he must necessarily resort to the preliminary enquiry of examining the complainant and the witnesses produced by him. If upon consideration of the evidence led at the preliminary enquiry the Magistrate comes to the conclusion that no prima facie case had been made out, he was well within his rights to dismiss the complaint Under Section 203 of the Code of Criminal Procedure.

7. In the present case, the Magistrate after having rescinded his order directed the issue of summons to the accused persons following the mandatory provisions contained Under Section 10 of the Act read with Section 202 of the Code of Criminal Procedure. 4 witnesses including the complainant were examined. Their evidence in substance was that there was a marriage between Shivarudrawa and

Ayyappa in which rice was thrown. Nothing else was stated by these witnesses to probabalise whether in fact there was a marriage according to the custom of the community to which the parties belonged. They did not even say that Tali (Mangala Sutra) was tied to the neck of the bride Shivarudrawa which is one of the essential conditions to hold that there was a marriage according to the customs of the community. The Magistrate considered the question whether the essential ceremonies had been followed 'and with reference to the evidence adduced in the case he came to the conclusion that the prosecution had neither established that the essential ceremonies which had to be performed for a valid marriage had been performed nor that the performance of the essential ceremonies had been abrogated by the customs governing the community to which' the parties belonged. The prosecution to succeed in persuading the court to issue summons against accused persons, who according to the prosecution had committed an offence punishable Under Sections 5 and 6 of the Act read with Section 34 of the Indian Penal Code, must prima facie establish that the marriage had duly been performed in accordance with the essential religious rites applicable to the form of marriage gone through by the parties and the said marriage must be valid one according to have applicable to the parties. At the preliminary stage, the complaint failed to prove the essential requisites of marriage and therefore the learned Magistrate was justified in taking the view that there was no substance in the complaint- In the present case, I think that the order passed by the learned Magistrate was a right and proper order and that it was not made without jurisdiction. I am unable to accept this reference. Let the papers of this case be sent to the court below.