

Aramati Rama Devi Vs. Aramati Reddappa Reddi and ors.

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Court : Andhra Pradesh

Decided On : Jan-18-2005

Reported in : II(2005)DMC541

Judge : A. Gopal Reddy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 149, 494, 495, 496, 500 and 501;
Code of Criminal Procedure (CrPC) - Sections 2, 18, 125 and 198

Appeal No. : Criminal Revision Petition No. 516 of 2004

Appellant : Aramati Rama Devi

Respondent : Aramati Reddappa Reddi and ors.

Advocate for Def. : D. Kodandarami Reddy, Adv. for Respondent Nos. 1 to 6 and
Public Prosecutor for Respondent No. 7

Advocate for Pet/Ap. : G. Ramachandra Reddy, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

A. Gopal Reddy, J.

1. This revision case has been filed by the de facto- complainant challenging the acquittal of accused Nos. 1 to 6 in CrI. A. No. 42 of 2001 by the Additional Sessions Judge (Fast Track Court), Cuddapah, preferred against the conviction and sentence of imprisonment imposed by the Additional Judicial Magistrate of First Class, Rayachoti in C.C. No. 431 of 1996 dated 22.2.2001.

2. The facts in nutshell are as under:

The petitioner/de facto complainant filed a complaint before the police alleging that A-1 married her eight years prior to the date of occurrence and demanded for more dowry apart from filing petition under Section 125, Cr.P.C. for maintenance. She was granted maintenance of Rs. 350/- per month. While so, accused No. 1 without divorcing de facto complainant married A-2, daughter of A-3 at Tirumala on 5.6.1996 with the assistance of A-3 to A-12. On such complaint being filed police registered a case in Cr. No. 63 of 1996 under Section 494, I.P.C. and after completion of investigation, a charge-sheet has been laid against the accused for the offence punishable under Section 494, I.P.C. On appearance of the accused, the learned Magistrate framed charge under Section 494, I.P.C. against A-1, and Section 494 read with Section 149, I.P.C. against A-2 to A-12. The de facto complainant herself was examined as P.W. 1; her father was examined as P.W. 2. Sankarapu Vijayasekhar, who is the eyewitness to the incident, was examined as P.W. 3; the Inspector who investigated the crime was examined as P.W. 4; Purohit who performed the marriage of A-1 and A-2 was examined as P.W. 5 and the Superintendent of Purohit Sangam was examined as P.W. 6. The Lower Court after analyzing the oral and documentary evidence found that A-1 is guilty for the offence under Section 494, I.P.C., whereas A-2 to A-6 under Section 494 read with Section 149, I.P.C. and A-7 to A-12 are found not guilty of offence under Section 494 r/w Section 149, I.P.C. and they are accordingly acquitted. Aggrieved by the same accused Nos. 1 to 6 carried the matter in appeal. The lower Appellate Court by the impugned judgment allowed the appeal setting aside the conviction and sentence passed against them by the learned Additional Judicial Magistrate of First Class, Rayachoti upholding the contentions and held that in view of bar envisaged under Section 198, Cr.P.C. the Magistrate ought not to have taken cognizance of offence under Section 494, I.P.C., except upon a complaint made

by some person aggrieved by the offence. Hence, this revision.

3. After notice on condoning delay petition to the respondent/accused delay was condoned. With the consent of both sides the matter was taken up for final hearing. Head both sides.

4. It was vehemently argued by the learned Counsel for the petitioner that petitioner who is the wife of accused No. 1 lodged a complaint with the police, since she is the aggrieved party, on which police investigated into the matter and lodged a charge-sheet. In view of the same, lower Court is not justified in allowing the appeal.

5. On the other hand, learned Counsel for the respondents submits that Magistrate is not competent to take cognizance on the police report except on a complaint made by the person aggrieved. In spite of citing the judgments reported in *D. Vijayalakshmi v. D. Sanjeeva Reddy*, 2000(4) RCR (Cr.) 300 (A.P.) and *Darla Srinivas v. Darla Sri Devi*, 2001 (2) RCR (Cr.) 252 (A.P.), the learned Magistrate committed palpable error in coming to the conclusion that he can take cognizance of the offence. The conclusion arrived at by the lower Court that the said decisions have no application to the facts of the case was rightly set aside by the lower Appellate Court. It is convenient to consider the above submissions in the context of Section 198, Cr.P.C., which reads as under:

'No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence.'

(c) where the person aggrieved by an offence punishable under Section 494 or 495 of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister or, with the leave of the Court by any other person related to her by blood, marriage or adoption.

6. In *Darla Srinivas's* case this Court after considering the amendment in the First Schedule of Cr.P.C. held that police had power to investigate into the said crime,

but in the teeth of specific provision under Section 198, Cr.P.C. against taking of cognizance of offence by the Magistrate on the basis of anything other than the complaint filed by the wife or one of the relatives mentioned in Section 18, Cr.P.C., and in the absence of any amendment made to Section 198 to that of Sections 494, 495 and 496, taking cognizance of the offence by the Magistrate on the basis of charge-sheet is not in consonance with the provisions of Cr.P.C.

7. This Court in D. Vijayalakshmi's case (supra) after considering the bar under Section 198, Cr.P.C. for taking cognizance of the offence by the Magistrate on the charge-sheet filed by the police after investigation and convicting them which was acquitted by the Appellate Court held that in view of State Amendment, the investigating agency is entitled to investigate the allegations under Section 494, I.P.C. but there are some limitations for the Court to take cognizance; one such limitation enshrined under Section 198, Cr.P.C. for the Court is to take cognizance of the offence and hence initial cognizance taken by the Court basing upon the charge-sheet filed by the investigating agency, namely, the Sub-Inspector of police, itself is bad which vitiates the entire trial and the eventual conviction by the Trial Court. Though the same was brought to the notice of the Magistrate he tried to distinguish the same stating that aggrieved person herself filed the complaint and the said decision is not applicable to the facts of the case, which clearly indicated lack of understanding of law declared by this Court.

8. In G. Narasimhan v. T.V. Chokkappa, : 1973 CriLJ52 , complaint was filed against the editors and publishers of three daily newspapers i.e., Dhinami, Hindu and Indian Express under Sections 500 and 501 of the Penal Code by the member of D.M.K. Party which was taken cognizance by the Magistrate after recording the complainant's statement. The editors of the above newspapers who are unsuccessful in challenging the cognizance taken by the Magistrate before the High Court filed an appeal before the Supreme Court with special leave. On granting leave the Supreme Court considered who is the aggrieved person entitled to maintain the complaint within the meaning of Section 198, Cr.P.C. and held that Section 198 lay down an exception to the general rule that a complaint can be filed by any body whether he is an aggrieved person or not and modifies that rule by permitting only an aggrieved person to move a Magistrate in cases of defamation.

This section is mandatory, so that if a Magistrate were to take cognizance of the offence of defamation on a complaint made by one who is not an aggrieved person, the trial and conviction of accused in such a case by the Magistrate would be void and illegal.

9. Thus, it will be seen that throughout Section 198, Cr.P.C. the word 'complaint' is used as signifying that it is only a 'complaint' by aggrieved person that a Magistrate may take cognizance and in no other manner. 'Complaint' is defined under Section 2(d) of Cr.P.C. as under:

'Complaint' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.'

Thus, the terms 'complaint' and 'police report' are mutually exclusive. One cannot be the other and vice versa. Therefore, on an investigation by police, whether the police report was submitted in respect of the offence made under Section 494, I.P.C., the Court could not take cognizance at all.

10. Once it is seen that the accused cannot be convicted for any offence under the Code whether they can be convicted under Section 149, I.P.C. Section 149, I.P.C. provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that object, every person, who at the time of committing of that offence is a member of the same assembly, is guilty of that offence. Section 149 created a constructive or vicarious liability of the members of unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. The basis of the constructive guilt under Section 149 is mere membership of the unlawful assembly, with the requisite common object or knowledge. This section makes a member of the unlawful assembly responsible as a principal for the acts of each and all, merely because he is a member of an unlawful assembly. While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicarious criminal liability under Section 149. It is an inference to be deduced from the facts and circumstances of each case. When the

accused cannot be convicted by the Magistrate for any offence under the Code, namely, for the offence under Section 494 and no offence is made out, accused cannot be convicted for the offence under Section 149. There must be nexus between the common object and the offence committed under the Code and if it is found that the same was committed to accomplish the common object, then the every member of the assembly who has committed the offence can be charged for the offence under Section 149, I.P.C. But once the accused cannot be convicted for any of the offence under the Code and the Magistrate cannot take cognizance of the offence under Section 494, they cannot be convicted for the offence under Section 149, I.P.C.

11. Having regard to the fact that the learned Magistrate cannot take cognizance of the offence on a report filed by the police basing upon the charge-sheet filed by the investigating agency which vitiates the entire proceedings including the conviction by the Magistrate, the lower Appellate Court rightly allowed the appeal setting aside the conviction and sentence imposed by the Magistrate, which do not suffer from any legal infirmity requiring interference of this Court in exercise of revisional jurisdiction.

12. Criminal revision case is accordingly dismissed.