

Emperor Vs. Bhawani Dat

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Court : Allahabad

Decided On : Jan-19-1916

Reported in : (1916)ILR38All276

Judge : George Knox, J.

Appellant : Emperor

Respondent : Bhawani Dat

Judgement :

George Knox, J.

1. The accused, Bhawani Dat, has been convicted of an offence under Section 498 of the Indian Penal Code. He presented an appeal from his conviction and sentence, but the appeal was rejected. He comes in revision to this Court. The grounds he puts in revision are (1) that, as the husband has never made any complaint, the courts, by reason of Sections 199 and 238(3) of the Criminal Procedure Code, were debarred from taking cognizance of an offence under Section 498, Indian Penal Code; (2) that the husband's petition, dated the 13th May, shows that the court proceedings initiated by the police, were continued in spite of his desire to the contrary; (3) that the circumstance that the husband appeared as a witness for the prosecution in the proceedings under Section 366, Indian Penal Code, cannot be regarded as amounting to the institution of a complaint of an offence under Section 498, Indian Penal Code, nor can his

deposition cure the initial omission to present a formal complaint having special reference to an offence under Section 498.

2. There was a further plea, but it was 'not argued. On looking to the record I find that the case brought before the courts was a case in which Bhawani Dat was charged with an offence under Section 366 of the Indian Penal Code. The husband was not a complainant; apparently the police took up the case; but the husband appeared as a witness. While the case was proceeding under Section 366 of the Indian Penal Code, he gave his evidence on the 6th of July, 1915. In the interim apparently he had asked that the proceedings under Section 366 should be dropped, but when examined on the 6th of July, he explained that his action in this matter was due to deception practised on him by one Ratti Ram. Both the courts below have believed him on this point and I agree with them in this view and hold that the application, whatever its value may be, was an application procured by fraud. Now on the 6th of July, Bahadur Singh in most emphatic terms says that he wishes to prosecute the accused. In cross-examination he repeats it and says he wishes that the accused should be punished. It is contended that this statement made in the deposition cannot be regarded as a complaint and that no case under Section 498 can be entertained unless and until there is a complaint made by the husband of the woman or in his absence by some person who had care of the woman on his behalf at the time when such offence was committed. On turning to Section 4(h) I find that 'complaint' includes 'the 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.' I consider that the words used by Bahadur Singh on the 6th of July fall within the definition of 'complaint' contained in the Code.

3. Authorities have been cited to me which take an opposite view. The case of In the matter of Ujjala Bewa (1878) 1 C.L.R. 523, is an authority in the contrary direction, and so to my mind is a case of this Court Queen-Empress v. Kangla (1900) I.L.R. 23 All. 82, in which the accused was charged with an offence under Section 457 with intent to commit theft. It was proved to the satisfaction of the Magistrate that the accused did enter the house of complainant in order to commit adultery with the wife of complainant and the conviction was a conviction of having

entered the complainant's house in order to commit adultery. The learned Judge of this Court refused to interfere.

4. The present case is one in which I think I ought not to interfere. I have not the least doubt that the husband did intend that the accused should be prosecuted for an offence under Section 498 and that he made an allegation before the Magistrate that the offence should be inquired into. I am not prepared to exercise my revisional powers and I dismiss the application.

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