

Smt. Tara Vs. the State

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Court : Allahabad

Decided On : Oct-21-1963

Reported in : AIR1965All372; 1965CriLJ179

Judge : D.S. Mathur, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190(1); ;Superession of Immoral Traffic in Women and Girls Act, 1956 - Sections 13(1) and 173(1)

Appeal No. : Criminal Revn. No. 120 of 1963

Appellant : Smt. Tara

Respondent : The State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : A.B. Saran, Adv.

Disposition : Revision allowed

Judgement :

ORDER

D.S. Mathur, J.

1. This is an application in revision by Smt. Tara against the Magistrate's order proceeding with the trial under Section 5 of the Suppression or immoral Traffic in

Women and Girls Act (hereinafter referred to as the Act) and not quashing the charge sheet submitted by the police, which is a police report as contemplated by Section 173 (1), Cr. P. C. The police report was submitted by a police officer who was not a Special Police Officer appointed by or on behalf of the State Government under Section 13(1) of the Act for dealing with offences under the Act. The Magistrate took cognizance of the police report and when an objection was raised to his taking cognizance of the offence on such a police report, he proceeded with the trial on the ground that there was no legal bar to his taking cognizance of the offence on a report submitted by a police officer other than a Special Police Officer. The applicant went up in revision before the Sessions Judge, but he dismissed the revision summarily, as in his opinion, the Supreme Court decision in *Delhi Administration v. Ram Singh*, AIR 1962 SC 63 did not lay down that Magistrates could not take cognizance of the offence under other clauses of Section 190(1), Cr. P. C. The Sessions Judge placed reliance upon the observations of the Supreme Court in another case, *H. N. Rishbud v. State of Delhi*, (S) AIR 1955 SC 196.

2. The law as laid down by the Supreme Court has to be followed, though in suitable circumstances where facts are different it may be distinguished or held not applicable. Courts of law shall not be justified to disregard the decision of the highest court of the country on insufficient grounds.

3. What has been laid down in AIR 1962 SC 63 is that an offence under the Act can be investigated by Special Police Officers only in accordance with the Special Law, and not by any police officer under the provisions of the Code of Criminal Procedure, and that the Magistrate can decline to take cognizance of a report submitted under Section 173(1) Cr. P. C. by a police officer other than a Special Police Officer. There can thus be no controversy that the trial Magistrate could have refused to take cognizance of the present police report.

4. Section 190(1) Cr. P. C. lays down the modes in which a magistrate can take cognizance of an offence. The Magistrate can take cognizance of the offence upon receiving a complaint of facts which constitute such offence; upon a report in writing of such facts made by any police officer; upon information received from

any person other than a police officer, or upon his own knowledge or suspicion that such offence has been committed. See Clauses (a) to (c) of Section 190(1) Cr. P. C. The word 'complaint' has been defined in Clause (h) of Section 4(1), Cr. P. C. and it does not include the report of a police officer, in other words, a complaint contemplated by the code of Criminal Procedure cannot include a report under Section 173(1), Cr. P. C. by a police officer. The present was a report by a police officer though not by a Special Police Officer. Cognizance thereof could not be taken by the Magistrate under Clause (a) of Section 190(1), Cr. P. C.; nor could the cognizance be taken under the first part of Clause (c) of the sub-section. This part clearly excludes information received from a police officer. The Magistrate apparently had not acted on his own knowledge or suspicion. He had throughout acted on the information received from a police officer, Clause (c) of Section 190(1) was thus inapplicable and could not be availed of to exercise Jurisdiction in the present case. In other words, therefore, the Magistrate could have taken cognizance, if permissible under the law under Clause (b) of Section 190(1), Cr. P. C. only. If this clause did not confer any jurisdiction on him, he could not proceed with the trial, though he could later take cognizance of the offence on the report of a Special Police Officer.

5. It is now a settled law beyond controversy that a police officer other than a Special Police officer cannot investigate an offence under the Act and an ordinary police officer cannot, therefore, submit a report under Rule 173(1), Cr. P. C. When a police officer cannot submit such a report, Magistrate could not take cognizance of that report in order to proceed with the trial. The proceeding based on the report of a police officer other than a Special Police Officer had to be dropped though cognizance could be taken afresh upon receiving a complaint of facts from a private person, or on receipt of a report from the Special Police Officer, or if facts come to his Knowledge from a person not a police officer which suggest that an offence has been committed.

6. The case of (S) AIR 1955 SC 196 could be made applicable to only those cases which were not governed by the Act or by any other enactment which was similar to the Act. The present offence is one which is punishable under the Act and, consequently, the earlier Supreme Court decision could not be utilised to

distinguish a sub-sequent decision, which was not capable of more than one interpretation.

7. To sum up, the Magistrate could not take cognizance of the report of an ordinary police officer with regard to the commission of an offence under the Act and he had no option except to drop the proceeding when an objection to his jurisdiction was raised.

8. The revision is hereby allowed and the proceeding pending against the applicant, Smt. Tara, before the Magistrate based on the report of an ordinary police officer is quashed. It shall however be open to the Magistrate to take cognizance later if moved by the Special Police Officer or by a person other than a police officer or otherwise in accordance with the law.

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