

**Tej Singh Vs. State**

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**Court :** Allahabad

**Decided On :** Feb-04-1964

**Reported in :** AIR1965All508; 1965CriLJ455

**Judge :** T. Ramabhadran and ;S.D. Khare, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4, 4(1), 199, 238(3);  
Indian Penal Code (IPC) - Sections 366, 376 and 497

**Appeal No. :** Criminal Appeal No. 1684 of 1962

**Appellant :** Tej Singh

**Respondent :** State

**Advocate for Def. :** Addl. Govt. Adv.

**Advocate for Pet/Ap. :** B.C. Saxena and ;C.S. Saran, Adv.

**Judgement :**

**S.D. Khare, J.**

1. This appeal has come before us on a reference made by a learned single Judge because he was of the opinion that there was some conflict in the earlier decisions of this Court, all of which were by single Judges.

2. The facts of this appeal, briefly stated, are that Tej Singh (appellant) and seven others were sent up to stand their trial under Sections 366, 368, 378, 147 and 323/149, Penal Code, on a police report, which in its turn was based on a report made by Chandra-sen, husband of Sm. Bhagwati. The husband had mentioned in his report that on 25th August, 1961, while he and his wife were returning from village Manpur after plucking chillies from their fields, Tej Singh appellant accompanied by other accused persons (since acquitted) sprang out of a full-grown chad field, caught hold of Sm. Bhagwati and took her away with them. On the morning of 28th August, 1961, i.e., two days after the report had been made to the police by the husband of Smt. Bhagwati, the latter was recovered from the house of Tej Singh appellant. The case against Tej Singh and others was committed to the Court of Session. In the course of trial Chandrasen appeared as a witness for the prosecution and fully supported the prosecution case. The learned Sessions Judge, however, arrived at the conclusion that the case against Tej Singh appellant and others under Sections 366/368/376/147 and 323/149, Penal Code, had not been made out beyond reasonable doubt. The learned Sessions Judge, however, convicted Tej Singh alone under Section 497, Penal Code, (a minor offence) on the finding that this minor offence had been made out and sentenced him to undergo one year's rigorous imprisonment. Tej Singh filed an appeal against his conviction and sentence. The learned single Judge, who heard that appeal, being of the opinion that there was some conflict in the earlier decisions of this Court, has referred the following question for the decision of a Division Bench:

'Whether in a case where the husband has lodged a report with the police but has not filed a complaint before the Magistrate for action being taken under Section 497, I. P. C. the accused can be punished for that offence, if a case under Section 497, I. P. C. is made out against him at the trial.'

3. The learned Sessions Judge appears to have convicted Tej Singh by virtue of the provisions of Section 238, Criminal P. C. which are that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it. The learned Sessions Judge, however, could not have convicted Tej Singh under

Section 497, 1. P. C, unless he was satisfied that a complaint had been made by the husband. In this connection the provisions of Section 199 and Sub-section (3) of Section 238, Criminal P. C. may be examined. They are as follows :--"199. No court shall take cognizance of an offence under Section 497 or Section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed.'

'238.....

4. Nothing in this section shall be deemed to authorize a conviction of any offence referred to in Section 198 or Section 199 when no complaint has been made as required by that section'.

4. The main question for consideration is whether the lodging of a report to the police by the husband and his subsequent statement in the case as a witness can be held to be a "complaint" within meaning of Section 199, Criminal P. C.

5. The word 'complaint' has been defined in Clause (h) of Sub-section (1) of Section 4 of the Code of Criminal Procedure as follows :--

"4. (1) In this Code the following words and expressions have the following meanings unless a different intention appears from the subject or context :--

.....

(h) 'complaint' means 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, but it does not include the report of a police officer.'

6. The essential ingredients of a 'complaint' under Section 4 (1) (h), Criminal P. C., unless a different intention appears from the subject or context, are (1) the allegation made orally or in writing to a Magistrate, (2) with a view to his taking action under this Code, and (3) stating that some person whether known or unknown has committed an offence.

7. If the definition of the word 'complaint' as contained in Section 4 (1) (h) is given its plain meaning, the report made by the husband to the police cannot be regarded to be a complaint for the simple reason that it was not made to a Magistrate. The subsequent appearance of the husband as a witness before the court of the Magistrate or before the Court of Session, or in both the courts, and making a statement in support of the police case cannot amount to a 'complaint' within the meaning of Section 4 (1) (h), Criminal P. C. for three reasons.

(1) The cognizance of the case is taken by the Magistrate before any statement is made by the husband and is, therefore, barred by the provisions of Section 199, Criminal P. C.

(2) The Sessions Judge takes cognizance of the offence, not on the basis of any statement made before him by the husband of the woman, but under the provisions of S, 193, Criminal P. C. which reads as follows:

'193. (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the State Government by general or special order may direct them to try, or as the Sessions Judge of the division, by general or special order, may make over to them for trial.'

(3) When the very cognieance of an offence under Section 497, I. P. C. is barred, neither the Magistrate nor the Sessions Judge could record the statement of any witness in the case. Where the initial jurisdiction was lacking, any subsequent statement made by the husband could not confer jurisdiction on the court.

8. It has, however, been contended by Sri Shukla, learned counsel appearing for the complainant, that where a report is lodged with the police by a husband, and he continues his interest in the prosecution by appearing as a witness in the case, the court should give a wider meaning to the word 'complaint' so as to include the

report made by the husband to the police followed by his statement before the court. The argument is that it is possible to give a wider meaning to the definition of 'complaint' as contained in Clause (h) of Sub-section (1) of Section 4 of the Code of Criminal Procedure, because the opening words of Sub-section (1) of Section 4, Criminal P. C. make it clear that this definition could be departed from if the subject or context so warranted. He has relied upon the case of Public Prosecutor v. A. V. Ramiah AIR 1958 Andh-Pra 392, in which a police report in a non-cognizable case was treated as a complaint within the meaning of Section 4 (1) (h) of the Code of Criminal Procedure, and the following passage was quoted with approval :--

"The report of the police officer in this case was a 'complaint' as defined in the Criminal P. C. It could not be considered to be such a police report as is excluded from the definition of a complaint in Section 4 (1) (h) of the Criminal P. C. because that kind of report can only be made by the police in cognizable cases. This is quite obvious. If the case were otherwise, it would lead to the absurd conclusion that no police officer can ever make a complaint.'

There can be no doubt that it is always open to a Court to give a more liberal interpretation to the definition of 'complaint' as contained in Section 4 (1) (h), Criminal P. C. where the context or subject so warrants. The qualifying clause occurring in Sub-section (1) of Section 4 of the Code of Criminal Procedure, i.e., 'unless a different intention appears from the subject or context' makes that interpretation possible. However, in the question referred to us there is nothing which might warrant a more liberal interpretation of the definition of the term 'complaint'. When the word 'complaint' has been defined in clause (h) of Sub-section (1) of Section 4, Criminal P. C. it must be interpreted throughout that Code as bearing that meaning, and, therefore, both in Section 199 and Sub-section (3) of Section 238, Criminal P. C. the word 'complaint' can only mean a complaint made to a Magistrate.

9. Coming to the case-law on the point, we find that in most of the cases decided by single Judges of this Court this very view has been taken & except the case of Bhawani Dutt v. Emperor AIR 1916 All 307 the word 'complaint' as contained in

Section 199, Criminal P, C. has been strictly construed to mean what is laid down in the definition of the term as contained in Clause (h) of Sub-section (1) of Section 4, Criminal P. C.

10. The earliest case on the point is that of *Empress of India v. Kallu*, ILR 5 All 233, It was held that unless a complaint for the offence of adultery punishable under Section 497, I. P. C. had been actually instituted by the husband of the woman with whom adultery was committed, the accused could not be convicted under Section 497, I. P. C. The effect of the bar created under Section 238, Criminal P. C. was also considered in that connection.

11. The next case is that of AIR 1916 All 307 (Supra.. An accused person was tried under Section 366, I. P. C. at the instance, of the police. During the course of the trial the husband was examined, and from his deposition it appeared that he wanted the conviction of the accused as he had committed adultery with his wife. It was held that the deposition of husband was a complaint on the basis of which the accused could be convicted under Section 498, I. P. C. The matter had come up before the Court in a criminal revision and the learned Judge who decided that criminal revision did not refer to the earlier decision of this Court, ILR 5 All 233 (Supra). The revision application was dismissed on the ground that it was not a fit case for interference.

12. Next comes the case of *Jagdamba Prasad v. Emperor* : AIR1933 All626 , again decided by a single Judge of this Court. The matter came up before the Court in a criminal appeal. The appellants were prosecuted by the police as a result of a report which was made under Section 366-A, I. P. C. and they had been charged under that section. They were, however, convicted under Section 498 although no complaint was made by the husband of the woman in respect of whom the offence was said to have been committed. The bar of Section 199, Criminal P. C. was considered and it was held that the conviction was bad even though the husband had come forward to give evidence. The case of ILR 5 All 233 (Supra) was followed, but from the report it appears that the case of AIR 1916 All 397 (Supra) was not brought to the notice of the Court.

13. The last reported case of this Court on this point is that of Haidar Ali v. Emperor : AIR1940 All201 . The prosecution of the accused in that case was started under Sections 366 and 376, I. P. C. The trial Magistrate came to the conclusion that these charges were not established. He, however, held that the accused had committed an offence under Section 498, I. P. C. and, therefore, convicted him of the same, and sentenced him to rigorous imprisonment for a period of one year. The accused preferred an appeal against his conviction and sentence, which was unsuccessful. The matter came in revision before a single Judge of this Court. The learned Judge relied on the cases of ILR 5 All 233 (Supra) and : AIR1933 All826 (Supra), and held that the conviction of the accused for an offence under Section 498, I. P. C, without a complaint having been lodged by the husband is bad in law and must be set aside. The case of AIR 1916 All 307 (Supra) does not appear to have been cited before the learned Judge at the time Haidar Ali's case : AIR1940 All201 was decided.

14. The Calcutta High Court in the Full Bench case of Tara Prosad Laha v. Emperor, ILR 30 Cal 910, after the consideration of the provisions of Section 199 and Section 238 (3), Criminal P. C. held that the word 'complaint' in Section 199. Criminal P. C. is limited to a complaint as defined in Section 4 of that Code and was not capable of a more liberal interpretation. Ghose, J. observed in the course of his judgment:

'I should desire, however, to add that at one time I was inclined to think that the information lodged by the husband before the police having been placed before the Magistrate in due course, and the Magistrate having taken action upon such information, and the husband in his evidence before the Magistrate having referred to the information before the police, there was a complaint before the Magistrate within the meaning of the word 'complaint' as given in Section 4 of the Code of Criminal Procedure; but having considered more carefully the different sections of the Code which bear upon the question, and by the light of the various cases which have been quoted before us I am of opinion that the information before the police could not be regarded as a complaint as defined by the Code.'

15. The same view has been taken by the Madras High Court in the case of *Bangaru Asari v. Emperor*, ILR 27 Mad 61 and it was relied upon in the case of : AIR1940 All201 (Supra).

16. The cases relied upon by the learned counsel for the complainant for the proposition that the word 'complaint' is capable of more liberal interpretation are :

(i) *Jatra Shekh v. Reazat Shekh*, ILR 20 Cal 483 and

(ii) AIR 1918 All 307 (Supra).

17. The view taken in the case of ILR 20 Cal 483 (Supra) was not approved in the later Full Bench decision of the Calcutta High Court in the case of ILR 30 Cal 910 (FB) (Supra). In the case of AIR 1916 All 307 all the relevant provisions of the Criminal Procedure Code were not considered nor was an earlier decision of this Court in ILR 5 All 233 (Supra) examined. In view of that we have stated above we are, with the greatest respect, unable to follow the view taken in *Bhawani Dutt's* case AIR 1916 All 307.

18. The answer to the question formulated by the learned single Judge is, therefore, in the negative.

19. Let the record of this case be now returned to the learned single Judge who heard this appeal with this answer.

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