

Mahendra Kumar Jain and ors. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Sep-11-1987

Reported in : 1988CriLJ544

Judge : B.L. Yadav, J.

Appellant : Mahendra Kumar Jain and ors.

Respondent : State of U.P. and anr.

Advocate for Pet/Ap. : Sri. M. S. Pipersenia

Judgement :

ORDER

B.L. Yadav, J.

1. By the present revision under Section 397/401 of the Criminal P.C., 1973, (for short the Code), the order dt. 22-11-84 passed by the Munsif Magistrate IV, Jhansi, in proceedings under Sections 494/109/205/498, I.P.C., is sought to be quashed, as the alleged complaint made by Smt. Suman Devi Jain, opposite party 2, who was the wife of Mahendra Kumar Jain, applicant 1, has not filed the complaint to the Magistrate as provided by Section 198 of the Code. The present applicant 1 is the husband of opposite party 2, who has filed the alleged complaint, and applicant 2 is the real brother of applicant 1. Whereas applicant 3 is a relation of applicants 1 and 2. On behalf of the applicants an application was filed before

the Magistrate that as the offence under the aforesaid sections was covered by Chap. XX of the Penal Code, hence the complaint should have been made by the aggrieved person, namely, opposite party 2, only to the Magistrate. But she preferred the complaint in the form of F.I.R. to the Superintendent of Police who, treating it to be a non-cognizable offence, obtained permission of the Magistrate to investigate. The investigation was completed and charge sheet was submitted against the applicant. According to the applicant in view of Section 198 of the Code, the complaint could have been filed only before the Magistrate and in no form either in the form of the First Information Report or in any other. By the impugned order that application has been rejected

2. Sri M. S. Pipersenia, learned Counsel for the applicant urged that Section 198 of the Code was mandatory, hence unless the complaint was filed before the Magistrate by the aggrieved person, no cognizance can be taken, as in the instant case the report was lodged before police, which treated it to be non-cognizable offence and obtained permission of the Munsif Magistrate for investigation, and as a result of that investigation the charge sheet was submitted. Reliance was placed on *G. Narasimhan v. T.V. Chokkappa* : 1973 CriLJ52 , and *Tej Singh v. State* : AIR1965 All508 .

3. Sri P. S. Adhikari, learned Counsel appearing for the State urged that the procedure adopted, was correct, as the word 'complaint' under Section 198 does not necessarily refer to the word 'complaint' as defined under Section 2(d), inasmuch as Section 2 is captioned with the words 'in this Code unless the context otherwise required'. It means that in case in a particular context the meaning is intended to be otherwise than as the word 'complaint' defined under Section 2(d), in that event the other meaning, other than contained in the definitive clause, would be the correct meaning. Sri N. K. Rastogi, appearing for the complainant, on the other hand, submitted that as the definition clause was subject to the words 'unless the context otherwise requires', hence in the instant case the context was different, inasmuch as when a helpless wife is being harassed by the husband and other members of family, in that event ordinarily it cannot be expected that the legislature would have directed that the wife, the aggrieved person, must make an application to the Magistrate and follow the procedure prescribed before process is

issued against her husband and others as contemplated under Section 204. It was further urged that apart from lodging a report to the police, opposite party 2, the wife, has filed a complaint before the Chief Judicial Magistrate, Jhansi, which was transferred to the Judicial Magistrate, Jhansi, who after taking statement of witnesses in view of Sections 200 and 202, issued process under Section 204. Against that order Dt. 25-3-86 issuing process, a revision was filed before the Sessions Judge, Jhansi, and those proceedings in complaint case No. 19 of 1986 have been stayed when the present revision was filed before this Court and stay was granted. On the basis of the present criminal revision, further proceedings in the revision, arising out of the order issuing process in the complaint by opposite party 2 before the Magistrate, have been stayed. These facts have been stated in paras 3 and 4 of the Supplementary affidavit filed by Sri Ashok Kumar Jain, real brother of opposite party 2, the wife of the applicant 1.

4. Having heard the learned Counsel for the parties, the principal question for determination is as to whether under Section 198 of the Code it is only the Magistrate, who could entertain the complaint filed by the aggrieved person in connection with an offence under Chap. XX of the Penal Code and the local police could not entertain the F.I.R. in connection with any offence under Chapter XX of the Penal Code, and no investigation can be made even after permission being obtained from the Sub-Divisional Magistrate. The next question is as to what shall be the effect of actual complaint being filed by opposite party No. 2 before the Magistrate, in which process had been issued under Section 204 after being satisfied that a prima facie case has been made out as required by Section 204. It is better to have relevant statutory provisions under Section 198, so far as it is material in the present case.

198. Prosecution for offences against marriage : (1) 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.

5. No doubt a bare reading of the aforesaid provision indicates that the section was mandatory and no Court shall take cognizance except upon a complaint made

by the aggrieved person, The word 'complaint' being a defined term under Section 2(d) of the Code, but Section 2 opens with the words 'unless the context otherwise requires'. It means that if in the context the word 'complaint' indicates some other sense other than the meaning to be conveyed under Section 2(d), in that event the complaint need not be taken to be as defined under Section 2(d). The words 'unless the context otherwise requires' indicate, that before every clause, under Section 2 including Clause 2(d) defining complaint, these words must be read. The word 'complaint' being a defined term, means allegations made, oral 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. I need not cite the principles of interpretation of criminal statutes in detail, but suffice it to say that instead of ascertaining the intention of legislature it is better to have the intention of statute, which shall be more relevant than the intent of legislature. There is no denying the fact that looking to the conditions prevailing in the present Indian Society where dowry deaths and torture of married ladies at the behest of their husbands and fathers-in-laws etc. have become common feature, it becomes difficult to assume that the legislature would have intended a procedure that unless the complaint was made to the Magistrate by the aggrieved person, namely the wife, for an offence under Chap. XX of the Indian Penal Code, no Court could take cognizance. It may be pointed out that no doubt drafting of legislation is done by Parliament, but whether all the problems arising before the Court could be contemplated at the time when a particular statute is being drafted.'

6. There is a Latin maxim '*Neque Leges Neque Senatus Sconsulta Ita. Sorivi Possunt Ut Omnis Casus Qui Quanto Que In Sedirint Comprehendatur Sed Saffic It Eaque Plaerum Que Accibunt Contineri*', which obviously means that neither the laws, nor Acts of Parliament, can be so written as to include all actual or possible cases, it is sufficient if they provide for those things which strictly or ordinarily happen, (See Morgan's Legal Maxims). Very often there is a situation before the Court which no one may have even contemplated at the time of drafting the Statute or at the time of passing of the Bill. This inevitably leads to the measure of construction. See *In Re Regulation of Radio Communication in Canada*, 1932 AC 304. Further it is an elementary rule that the entire section must

be read together, particularly in the context in which it appears. No part of section has to be omitted. In other words, the statute must be read as a whole. The same principle applies to different parts of the same section as well. See *Balasinor Nagrik Cooperative Bank Ltd. v. Babubhai Shanker Lal Pandey* : AIR 1987 SC849 . The cardinal principle of interpretation is that it must change with the changing society, keeping in view various problems facing the society from time to time.

7. As regards the interpretation of Section 198 with reference to word 'complaint', whether it has been used in different sense under Section 2(d), or in its ordinary sense, it is better to refer to Chapter 16, *Biology Society & Legal Evolution of W. Friedman's Legal Theory* (Third Edition), page 167 to the following effect:

There is indeed, an irreconcilable conflict between rival philosophies of life, but the technique of modern life, demands social discipline, the co-ordination of individuals as the only alternative to chaos. Legal theory has played an important part in the development of these new ways of social life.

Again on page 170, W. Friedmann, refers to the theories of positivist Spencer and metaphysicist Kant. He further refers the views of Spencer and states that he (Spencer) tempers the individual's right by certain principles of 'corrective equity' in the sense developed by Aristotle (expounded by Spencer in his *Negative and Positive Beneficence*). Beneficence compels the individual to mitigate certain consequences of justice by helping the weak.'

8. In 'Theory of Legal Interpretation' by Holmes (Hary LR 417) and in 'The Morality of Law' by Fuller, (page 87), there are statements about principles of interpretations that the general principle about ascertaining the intention of the legislature, in fact, boils down to the 'intent of the statute', in other words to find out the meaning of the words used. Further there is another difficulty as pointed out by R.W.M. Dias in *Jurisprudence* (Fourth Edition), page 220, that 'the statutes seek to control the future, so the wording has to be in broad terms of classes and categories. These are men made and there are bound to be *Casus Omissi* which means that a measure of discretion is imported into every decision as to whether the provision applies to the case in hand or not.'

9. As a matter of fact, the statutes once drafted and enacted remain operative for a number of years to come. The solution in respect of majority number of problems facing the society in respect of which the legislature has taken notice, are provided by the legislature, but if some new problems arise for which there is no solution in a positive way in the statute, in that event the Court has to perform the herculean task of interpretation so that the new problem may also be solved. In other words, activity has to be in a time continuum as the statutes once enacted remain operative for an indefinite period of time. I am accordingly of the firm view that the interpretation must keep pace with the new developments in society and it must be in that time frame.

10. As the dowry death cases, torture of, ladies in different ways were not prevalent in 1973 when the Cri. P.C. was enacted, in a number of cases it is easy for a house wife to lodge a report at the police station and leave the investigation to the police, rather than to file a written complaint in respect of offences pertaining to marriage as envisaged under Chap. XX of the Penal Code, before a Magistrate and thereafter to get her own statement recorded and procure two more witnesses to be examined under Section 202, so as to make out a prima facie case, before process is issued under Section 204. A bare reading of Section 198 as a whole keeping in view the context in which the section has been placed by the legislature, it becomes crystal clear that the word 'complaint' used under Section 198 does not connote the meaning assigned to it under Section 2(d). In my considered opinion under Section 198 of the Code the word 'complaint' has been used in the ordinary sense of the terms, i.e. the expression of grief, statement of injury suffered, statement of injury or grievance.

11. There is another redeeming feature and the matter has to be viewed entirely from another angle. The suggestions of the learned Counsel for the applicant are not substantially correct for one more substantive reason that as stated in the supplementary affidavit filed on behalf of opposite party 2, the wife, which has not been denied by the applicant, that Smt. Suman Devi Jain, opposite party 2 has already filed a complaint before the Chief Judicial Magistrate, which was transferred to the Special Judicial Magistrate, Jhansi, who took evidence as provided under Sections 200 and 202 of the Code and passed an order on 25-3-

86 issuing process against the applicant and some other accused persons for the offence under Sections 494/109, I.P.C. etc. That order is still intact. The applicant had, against that order of issuing process under Section 204, filed a Criminal Revision No. 103 of 1986, which is still pending before the learned Sessions Judge. But the proceedings in that criminal revision have been stayed in pursuance of stay order granted in the present revision. It is thus obvious that as opposite party 2, the wife who is aggrieved person within the meaning of Section 198(1), has already filed a complaint before the Magistrate and the process has been issued against the applicants but the 'proceedings have been stayed in pursuance of the stay order granted in the present revision, hence it cannot be said that opposite party 2, the wife, has violated the procedure of filing complaint before the Magistrate as required by Section 198 of the Code.

12. It appears that opposite party 2 has lodged an F.I.R. and on that basis after obtaining the permission of the Magistrate concerned, the investigation was done by the police and the allegations in the F.I.R. were found to be correct, hence the charge sheet was submitted against the applicants. In the proceedings as a result of investigation conducted by the police, an application was made by the husband, applicant 1 in the present revision that the Court cannot take cognizance as the investigation was made by the police and no complaint was filed before the Magistrate as contemplated by Section 198. In fact, opposite party 2 has already filed a complaint before the Magistrate, which was maintainable and on that after following procedure under Sections 200 and 202, process has been issued under Section 204 and the same is intact. It cannot, therefore, be said that the charge sheet against the applicant was submitted only in pursuance of the investigation made by the police and not on the basis of the complaint made before the Magistrate. Now the result is that both the cases would be consolidated and tried together against the applicants.

13. Adverting to the cases relied upon on behalf of the applicant, suffice it to say that in *G. Narasimhan v. T.V. Chokkappa* 1973 Cri LJ 52 (supra) their Lordships of the Supreme Court have held that the provisions under Section 198 of the Code are mandatory and the complainant must himself make complaint being aggrieved person. I am bound by the dictum laid down by their Lordships of the Supreme

Court and there is no quarrel with the same. But applying these principles to the present case, as the complaint has already been filed before the Magistrate by the wife, opposite party 2, there does not appear to be any illegality. Similarly in *Tej Singh v. State* 1965(2) Cri LJ 455, (supra) a Division Bench of this Court has interpreted the word 'complaint' under Section 4(1)(h) of the old Code which was in pari materia with the present definition of the word 'complaint' under Section 2(d). In that case it was held that the words qualifying the section were 'unless different intention appears from the subject or context'. Hence unless it became clear that the word 'complaint' was used in some different context, it has to be assigned the same meaning as defined under Section 4(1)(h) of the old Code. I am in respectful agreement with the observations made by the Division Bench. But in the instant case as social conditions have changed drastically since the Cr.P.C of 1898 was enacted and the same was repealed and new Cr.P.C., 1973 was enacted. Hence in the present context under Section 198 am of the view that the word 'complaint' has to be read subject to the qualifying clause occurring in Section 2(d). But apart from the interpretation of the word 'complaint' under Section 198, as in the instant case a criminal complaint has already been filed before the Magistrate and the process has been issued, whatever might have been the result of investigation made by the police, the complaint has validly been filed by opposite party 2, the wife, aggrieved person, and that complaint was still pending after process being issued and even though the police also reached the same conclusion that prima facie there was sufficient evidence to proceed against the applicants, it cannot be said that there was any illegality or irregularity in the impugned order.

14. In the result, the present revision fails and it is hereby dismissed. The interim stay order dt. 20-12-84 is vacated. Similarly the stay order passed by the Sessions Judge, staying the proceedings in the criminal revision is also vacated. The matter has been dragged on for too long. What is required is expedition. Both the cases would be consolidated and decided together.

15. Office is directed to send back the record of the case immediately.