

Shivnarain Vs. State

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Court : Madhya Pradesh

Decided On : Feb-18-1953

Reported in : 1955CriLJ1359

Judge : Chaturvedi, J.

Appellant : Shivnarain

Respondent : State

Judgement :

ORDER

Chaturvedi, J.

1. This is a revision petition by one Shivnarain who was challaned along with eight other persons Under Section 366, I.P.C. in the Court of Additional District Magistrate, Shajapur. During the course of proceedings, the learned Magistrate came to the conclusion that an offence Under Section 366 is not made out. The learned Magistrate framed the charge Under Section 494/114, I.P.C. against Shivnarain, petitioner, but discharged the other eight accused.

2. Shivnarain filed an application in revision-to the Sessions Judge, Shajapur, who dismissed it The petitioner, Shivnarain, now has oame to this Court and wants me to revise the order passed.

3. The Courts below have obviously overlooked the provisions laid down in Section 198, Cr.PC to the effect that a Court cannot take cognizance of an offence Under Section 494, I.P.C. except upon a complaint made by some persons aggrieved by such offence. In a recent case - 'Shrinivasa Aiyar v. Saraswathi Anmal' : AIR1952 Mad193 , a Division Bench of Madras High Court observed that though there is no express provision in the Penal Code for the punishment of abetment of an offence punishable Under Section 494 I.P.C. such abetment is punishable with punishment provided for the offence falling Under Section 494, I.P.C. by reason of Sections 109 and 114, I.P.C.

Abetment of an offence punishable Under Section 494 is also thus, an offence that falls Under Section 494, I.P.C. within the meaning of Section 198, Cr.PC Their Lordships further observed that the fact that there is no specific provision like Section 195 (4), Cr.PC in Section 198, Cr.PC does not make Section 198, Cr.PC any the less applicable where the charge is abetment of an offence punishable Under Section 494, I.P.C. I respectfully concur with this opinion and I am clear in my mind that in the present case the learned Magistrate could not have framed the charge Under Section 494 read with Section 114 of the I.P.C. against the petitioner unless there was a complaint made by Devisingh, husband of the minor girl, Gomati.

The intention of the Legislature plainly is that in the case of bigamy, the aggrieved person must take the initial steps by means of a complaint made to a Magistrate before the latter can take cognizance of the offence.

4. It may be that certain statements made in the deposition of the complainant may amount to a complaint of an offence Under Section 494; but the deposition of complainant, Devisingh is made to the Magistrate as a prosecution witness. The deposition cannot be said to be a complaint within the meaning of Clause (h) of Section 4, Cr.PC I am fortified in this view by several rulings reported in - 'Empress of India v. Kallu', 5 All 233 (B); - 'Emperor v. Imankhan Rasulkhan', 14 Ind Cas 671 (Bom) (C); - 'In re Kishan Das Hirachand', 18 Ind Cas 145 (Bom) (D); - 'Jagdamba Prasad v. Emperor' AIR 1933 All 626 (E); - 'Chemon Garo v. Emperor', 29 Cal 415 (F), and - 'Bangaru v. Emperor', 27 Mad 61 (G),

The contrary opinion expressed in - 'Bhawani Durt v. Emperor' AIR 1916 All 307 (H), and - 'Jatree Sekh v. Reazat Shekh', 20 Cal 483 (I), has not been followed by the High Courts in India.

5. The result is that the proceedings in the Court of the learned Magistrate initiated by framing a charge against the petitioner Under Section 494/114, I.P.C. are without jurisdiction. I, therefore., allow this revision, quash those proceedings and order that the petitioner be discharged.

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