

Siddique Vs. State of Kerala

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Court : Kerala

Decided On : Jul-10-2003

Reported in : 2003(2)ALT(Cri)493; I(2004)DMC316; 2003(3)KLT278

Judge : R. Basant, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 498A; ;[Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 156(3)

Appeal No. : Crl. M.C. 4150 of 2003

Appellant : Siddique

Respondent : State of Kerala

Advocate for Def. : P.M. Habeeb, Public Prosecutor

Advocate for Pet/Ap. : Babu S. Nair,; Jijo Paul and; Smitha Babu, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

R. Basant, J.

1. Is a police officer entitled to investigate an offence punishable under Section 498A of the Indian Penal Code when the complaint is filed by an enumerated

person before the Magistrate and the Magistrate in turn makes a reference under Section 156(3) of the Code of Criminal Procedure to him? The learned counsel for the petitioner submits that though the question is answered in the decision reported in Prasad v. Circle Inspector of Police, 1998 (2) KLT 442, the same requires reconsideration.

2. The fact scenario is simple. A wife complained to the learned Magistrate that her husband is guilty of the offence punishable under Section 498A of the Indian Penal Code. The learned Magistrate referred the complaint to the police under Section 156(3) of the Code. The police officer took up investigation and after completion of the investigation filed a charge sheet before the Magistrate. The Magistrate took cognizance of the crime on the basis of the police report filed by the police official. The petitioner/accused now wants the entire proceedings to be quashed invoking the powers of this Court under Section 482 of the Code.

3. Section 498A of the Indian Penal Code as per column 4 in the first Schedule to the Code of Criminal Procedure is cognizable only if information relating to the commission of the offence is given to an officer in charge of the police station by one of the enumerated persons. It would remain non-cognizable if any one other than an enumerated person furnishes the information to the police officer. In this case the victim wife is the complainant and she is one of the enumerated persons. The crux of the contention of the learned counsel for the petitioner is that the wife has not given information to the officer in charge of the police station but she has given the complaint only to the Magistrate.

4. I have considered the contention. I am of opinion that the expression 'is given to an officer in charge of a police station by the person aggrieved' in column 4 of the 1st Schedule demands a construction consistent with the objects and purposes of the statutory provision. The Legislature did not want the power of the police to investigate the crime to be invoked unless complaint is filed by one of the enumerated persons who must be directly affected by the commission of the offence. Whether the offence is cognizable or non-cognizable therefore depends on who makes the complaint'. Evidently the Legislature did not want any busy body to make a complaint and the police to take action thereon. The Legislature wanted a

police officer to reckon the offence as cognizable and proceed with the investigation only if the enumerated person makes the complaint. This is clear from Section 198A also which mandates that cognizance can be taken even by the Court only on the complaint by an enumerated person.

5. Who has given the complaint in the given case? Certainly the wife who is one of the enumerated persons. Did she make a complaint? Yes, she did. To whom did she make the complaint? She did make the complaint only to the Magistrate. She did not make the complaint directly to the officer in charge of a police station. But the Magistrate forwarded the complaint under Section 156(3) of the Code to the Officer in charge of the police station to investigate the complaint. The person who is expected to take action is undoubtedly the officer in charge of the police station. The fact that the officer in charge of the police station receives complaint only through Court under Section 156(3) of the Code and not directly from the enumerated person cannot according to me in any way militate against the concept that the complaint is one given to the officer in charge of the police station by the enumerated person. The statutory purpose was evidently not to insist that the enumerated person should hand over the complaint personally to the officer. She could send it by post, by messenger, by courier or by any other means. The fact that the complaint by the wife reached the police officer through the court under Section 156(3) cannot affect the cognisability of the offence in the instant case. The complaint must emanate from the enumerated person. That alone is the insistence. This objection raised cannot in these circumstances succeed.

6. The learned counsel very ably and vehemently urges that even if this requirement is satisfied the course adopted in this case is legally maintainable. The Magistrate cannot invoke the powers under Section 156(3) of the Code, it is urged. The powers under Section 156(3) of the Code can be invoked by a Magistrate only in respect of a cognizable offence. Adverting to the language in Clause 4 of Schedule I, it is contended that when the Magistrate receives the complaint, the offence alleged is not a cognizable offence. Only when the complaint is given to the police officer it is a cognizable offence and when the complaint is given to the Magistrate it remains a non-cognizable offence. Powers under Section 156(3) of the Code can be invoked only in respect of a cognizable

offence and therefore the reference made under Section 156(3) is improper, contends the learned counsel strenuously.

7. I find this contention also to be not acceptable. When invoking powers under Section 156(3) of the Code what must be considered is only whether at the hands of the police officer to whom the reference is made, the offence would be cognizable or not. Reference is made under Section 156(3) of the Code by the Magistrate to the police so that the power of investigation available in the case of a cognizable offence can be invoked. The question whether at the hands of the Magistrate the offence is cognizable or not is wholly irrelevant while making the reference under Section 156(3) of the Code. When the Magistrate makes a reference the Magistrate is concerned with the question whether the police officer can exercise powers if reference is made under Section 156(3) of the Code. It is to exercise such power that a reference under Section 156(3) of the Code is made by the Magistrate to the police officer. The question whether at the hands of the Magistrate the offence would be cognizable or not is wholly irrelevant and what is to be considered is whether at the hands of the person who is expected to take action after reference under Section 156(3) of the Code, the offence would be cognizable or not. In this view of the matter I am satisfied that the reference made under Section 156(3) of the Code is also perfectly justified.

8. In these circumstances, I do not find any reason to invoke the powers under Section 482 of the Code to interfere with the impugned order. I find no reason to doubt the dictum laid down in Prasad v. Circle Inspector of Police (1998 (2) KLT 442) and make a reference to a Division Bench.

9. In the result this petition is dismissed in limine.