

Madhu Vs. Saseendra

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Court : Kerala

Decided On : Feb-25-2000

Reported in : 2000CriLJ2353; II(2000)DMC286

Judge : K.A. Mohamed Shafi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 198 and 202(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 494

Appeal No. : Cri.MC. No. 581 of 2000

Appellant : Madhu

Respondent : Saseendra

Advocate for Def. : S.U. Nazar, Public Prosecutor

Advocate for Pet/Ap. : K. Satheesh Kumar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.A. Mohamed Shafi, J.

1. This M.C. is filed by the 1st accused in Crime No. 202/99 registered by the Palode police alleging offence punishable under Section 494 r/w Section 34 of

I.P.C. to quash the entire proceedings initiated against him.

2. The 1st respondent filed a complaint before the Judicial First Class Magistrate's Court-I, Nedumangad alleging offence punishable under Section 494 r/w Section 34 of I.P.C. against the accused. The learned Magistrate took the complaint to file as C.M.P. No. 6282/99 and forwarded the same to the S.I. of Police, Palode for investigation and report under Section 156(3) of the Cr.P.C. Accordingly, the Palode police registered the above crime alleging offence punishable under Section 494 r/w Section 34 of I.P.C. and commenced investigation.

3. The petitioner has contended that the course adopted by the learned Magistrate in this case is illegal and violating the provisions of Section 198(1) of the Cr.P.C. According to him, the learned Magistrate has no authority to forward the complaint alleging offence punishable under Section 494 of I.P.C. to the police for investigation and report under Section 156(3) of the Cr.P.C. and the police has no power to register the case against the petitioner and investigate the same. Therefore, according to the petitioner, the entire proceedings initiated against him should be quashed by invoking the inherent jurisdiction of this Court under Section 482 of the Cr.P.C.

4. Section 198(1) of the Cr.P.C. deals with prosecution for offences against marriage which reads as follows:

'198. Prosecution for offences against marriage-(1) No Court shall take cognizance of an offence punishable under Chapter XX of Indian Penal Code, 1860 (45 of 1860) except upon a complaint made by some person aggrieved by the offence.'

5. In this case there is no dispute that the complaint is filed by the 1st respondent claiming to be the legally wedded wife of the 1st accused, petitioner herein. The Counsel for the petitioner submitted that since the offence punishable under Section 494 is non-cognizable and cognizance can be taken by the Court only on the complaint filed by some person aggrieved by the offence under Section 198 of the Cr.P.C, the learned Magistrate has to resort to the procedure provided under Chapter XV of the Code in order to take cognizance of the offence alleged against the petitioner. Therefore, according to him, the learned Magistrate ought to have

proceeded with the complainant filed by the 1st respondent under Section 200 or Section 202 of the Cr.P.C. as the case may be before taking cognizance Of the offence alleged against the petitioner. The petitioner has also contended that with regard to the complaint cases to be dealt with by the Magistrate under Chapter XV of the Code, he has no jurisdiction to forward the complaint to the police for investigation and report. Therefore, according to him, the action taken by the Magistrate without resorting to the procedure provided under Chapter XV of the Cr.P.C. and forwarding the same to the police for investigation and report under Section 156(3) of the Cr.P.C. is illegal and, therefore, the consequent registration of the FIR by the police against him is also illegal.

6. The contention of the petitioner that the Magistrate has no jurisdiction to forward the complaint filed under Section 198 of the Cr.P.C. to the police for investigation and report under Section 156(3) of the Cr.P.C. is not sustainable. Section 156(3) of the Cr.P.C. provides that any Magistrate empowered under Section 190 of the Cr.P.C. may order an investigation by the police. Under Section 202(1) of the Cr.P.C. also the Magistrate has got jurisdiction either to enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding in the matter.

7. In the decision in *Ajithakumari v. State of Kerala*, 1986 KLT 7, a single Judge of this Court has held that the prohibition under Section 198 of the Cr.P.C. taking cognizance of the offence punishable under Section 494 of I.P.C. is only except on the complaint filed by some person aggrieved by that offence and after taking cognizance of the case the Magistrate can direct an investigation by the police under Section 202 of the Cr.P.C. In that decision this Court has further held that Section 198 of the Cr.P.C. is a bar to an investigation by the police under Section 156(3) of the Cr.P.C. since the Magistrate has to take cognizance on the complaint of an aggrieved person and there is no question of resorting to the pre-cognizance stage procedure of ordering investigation under Section 156(3) of the Cr.P.C.

8. In a recent decision in *Prasad v. Circle Inspector of Police*, 1998 (2) KLT 442=II (1999) DMC90, a Single Judge of this Court has held that the Magistrate is

competent to forward a complaint alleging offence punishable under Section 498A of the I.P.C. to the police for investigation and report under Section 156(3) of the Cr.P.C. and there is no necessity for the Magistrate to forward the complaint for investigation under Section 202 of the Cr.P.C.

9.I am inclined to prefer the view expressed by the learned Single Judge in the decision reported in 1998 (2) KLT 442, on this aspect than the view expressed by the learned Single Judge in the decision reported in 1986 KLT 7. Therefore, the power of the Magistrate to forward a complaint to the police for investigation and report under Section 156(3) of the Cr.P.C. in a non-cognizable offence and on complaints filed under Section 198 of the Cr.P.C. cannot be disputed.

10. The next question to be considered is the procedure that should be followed by a Magistrate on forwarding the complaint filed under Section 190 or Section 198 of the Cr.P.C. to the police for investigation and report and after receipt of the report by the Magistrate. It has to be noted that with regard to the complaints filed before the Magistrate the procedure to be followed is provided in Chapter XV of the Cr.P.C.

11. In the decision in *Emperor v. Ghulam Hussain*, 1925 Lahore 237, a Division Bench of the Lahore High Court has held that a police report with regard to a non-cognizable offence has to be treated as a complaint as defined in Section 4 of the Cr. P.C. and not as a police report and it is competent for the Court to take action thereon as a complaint under Section 190 of the Cr.P.C.

12. In the decision in *Saramma Zacharia v. State*, AIR 1953 Tra. Co. 43, a Single Judge of the Travancore Cochin High Court has held that a Magistrate can take cognizance of even a non-cognizable offence upon a report by a police officer. Even if such a report cannot be considered as a report within the meaning of Section 190(1)(b), such report will constitute a complaint under Section 4(1)(h), and therefore, the Magistrate can take cognizance of the offence.

13. In the decision in *Manuel Augustine v. State of Kerala*, 1984 KLT 859, a Single Judge of this Court has held that in respect of non-cognizable offences the police report is deemed to be a complaint and the police officer who makes the report is

again deemed to be a complainant.

14. From the above decisions it is clear that the police report filed by the Investigating Officer with respect to the non-cognizable offences cannot be treated as police report as such and cognizance cannot be taken. But such police reports should be treated as complaints and the procedure stipulated in respect of the complaints filed before the Magistrate should be followed. Therefore, in this case even though the Magistrate has forwarded the complaint filed by the 1st respondent for investigation and report under Section 156(3) of the Cr.P.C, the learned Magistrate cannot proceed straight away and take cognizance of the offence on receipt of the final report from the Investigating Officer. He has to follow the procedure laid down in Chapter XV of the Cr.P.C. with regard to the complaints filed before the Magistrate after receipt of the final report from the Investigating Officer before taking cognizance of the offence against the accused, petitioner herein.

15. It follows from what is stated above that the contention of the petitioner that the procedure followed by the learned Magistrate in forwarding the complaint filed by the 1st respondent against the petitioner alleging offence punishable under Section 494 r/w Section 34 of I.P.C. to the police for investigation and report under Section 156(3) of the Cr.P.C. is illegal and, therefore, the entire proceedings against him should be quashed, is not sustainable. Hence this CrI.M,C, is dismissed.

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