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Court : Kerala

Decided On : Jul-13-1998

Reported in : 1998CriLJ3900

Judge : S. Marimuthu, J.

Acts : Code of Criminal Procedure , 1974 - Sections 2, 155(2), 156(3), 198, 198A, 202 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 198, 493 to 498 and 498A

Appeal No. : Crl. M.C. No. 465 of 1997

Appellant : T.C. Prasad and ors.

Respondent : Circle Inspector of Police and anr.

Advocate for Def. : Public Prosecutor,; S.U. Nazar, Adv. for No. 1 and; P.K.

Advocate for Pet/Ap. : K. Ramakumar and; Babu S. Nair, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

S. Marimuthu, J.

1. This petition has been filed appealing this Court to exercise its authority and command to judicially review the order of the Judicial First Class Magistrate,

Mavelikkara dated 10-1-1997 and also the complaint filed by the 2nd respondent and to quash both of them. Annexure A is a zerox copy of the complaint (drafted in Malayalam) filed by the 2nd respondent before the Magistrate and Annexure B is the English translation of the same. The order of the Magistrate dated 10-1-1997 is as follows :

Complainant present, forward to the S.I. of police, Nooranad under Section 156(3) of the Code of Criminal Procedure.

The grievance of the petitioners would be that Annexure A complaint has been filed by the 2nd respondent under Section 498A, I.P.C. before the Magistrate which is a non-cognizable one (when it is filed before the Magistrate) and therefore, the Magistrate is not empowered to forward the same to the police for investigation and report under Section 156pi, Cr.P.C. Section 198A of the Code of Criminal Procedure provides that a complaint can be filed either before the police or before the Magistrate by the aggrieved party and her relations specifically mentioned in the Section In such a case also, the Magistrate can take it only as a non-cognizable offence and in case the Magistrate deems it fit to be forwarded to the police for investigation and report, that ought to have been sent by the Magistrate only under Section 202, Cr.P.C. and not under Section 156(3), Cr.P.C. So on these above two grounds, learned counsel for the petitioners, Mr. Babu S. Nair, is attacking the order passed by the Magistrate for forwarding the complaint under Section 156, Cr.P.C.

2. Mr. S.U. Nasar, learned Public Prosecutor, on the other hand, submitted that an offence under Section 498 A becomes cognizable when it is lodged before the police by the aggrieved party and those who have been specifically mentioned in column No. 4 of the First Schedule annexed to the Code of Criminal Procedure and in case the complaint is lodged by anyone other than the persons mentioned in the abovesaid column No. 4 of the Schedule before the police, that can be construed as a non-cognizable offence. Such a specific requirement in column 4 of the Schedule (complaint before police) cannot take away or oust the jurisdiction of the Magistrate while the complaint is filed before him, in taking it as a cognizable one. It is also his submission that the Supreme Court clearly held in a judgment

3. On account of the above rival contentions of both, counsel for the petitioners and learned Public Prosecutor, now, the legal position has to be scrutinised hereunder. Column 4 of the First Schedule appended to the Code of Criminal Procedure in respect of Section 498A, IPC is as follows :

Chapter XX of the Indian Penal Code deals with the offences relating to marriage, from Sections 493 - 498. The procedural law in the Code of Criminal Procedure in respect of Chapter XX of the I.P.C. is in Section 198. Section 198A in Cr.P.C. is a procedural one relating to Section 498A of Chapter XX-A in I.P.C. In respect of

the offences coming under Chapter XX of I.P.C. and the rule of procedure under Section 198 of the Code of Criminal Procedure, Supreme Court has elaborately discussed and laid down important principles in a case reported in *State of Orissa v. Sharat Chandra Sahu* AIR 1997 SC 1. In paragraph 9 of that judgment, the view taken by the Supreme Court is that Section 498A is a cognizable offence.

4. Column No. 4 of the Schedule of the Code of Criminal Procedure, extracted above would indicate under what circumstance an offence under Section 498A, I.P.C. in a complaint filed before police becomes cognizable. A common man by the above wordings employed in column No. 4 of the Schedule, can understand that in case the complaint is lodged by any one other than the persons specifically mentioned in column No. 4 before the police, it is a non-cognizable one. When the complaint is filed by 'anyone of those mentioned in column No. 4 of the 'Schedule', the first limb of Section 198A, Cr.P.C. is attracted. Second limb of Section 198A, Cr.P.C. comes into action when the complaint is filed before the Magistrate by the aggrieved party and others specifically mentioned therein. Here, one thing to be borne in mind is that like column No. 4 of the Schedule (while filing a complaint before the police) in the 2nd part of Section 198A also, there is specification or classification as to the complainant before the Magistrate. Now we must think over as to the reason of legally authorising a particular section of people to espouse the cause either before the police or before the Magistrate. The reason is because of the offence under Section 498A touching the divine relationship between husband and wife and that has to be investigated and determined within a well-defined ambit of codified rule of law. As the learned Public Prosecutor pointed out, it is not the statutory provision in the Schedule or anywhere in the Code that when the complaint is filed before the Magistrate under the 2nd part of Section 198A of Cr.P.C. it is only a non-cognizable offence. Therefore, the above statutory provisions are conspicuously clear that the Magistrate is empowered to take a complaint on file as cognizable one when it is filed under Section 498A, I.P.C. either by the aggrieved party or her blood relations mentioned in Section 198A, Cr.P.C. In the instant case before me, admittedly, the complaint was filed by the aggrieved lady before the Magistrate. The Magistrate has forwarded the same under Section 156(3), Cr.P.C. to the police for investigation and report. The action of the Magistrate in asking for the report from the police under Section 156(3) is

well within his authority conferred under the procedure of the Code of Criminal Procedure. Since the Magistrate had taken the complaint on his file, it is one coming under the category of cognizable offences. Therefore, he can rightly forward it under Section 156(3), Cr.P.C. Here, as adverted to above, the police, on receipt of the complaint, has registered a case. The police in the above circumstances need not seek the permission or sanction of the Court under Section 155(2), Cr.P.C. which is relating to non-cognizable offence. When this is the real state of affairs, factually and legally, there is no necessity for the Magistrate to forward the complaint under Section 202, Cr.P.C. as argued by the learned counsel for the petitioners. As pointed out above, the learned Public Prosecutor drew my attention to the ratio of the judgment of the Supreme Court in *Madhu Bala v. Suresh Kumar* AIR 1997 SC 3104 : (1997 Cri LJ 3757). The principle laid down there is that when a complaint has been forwarded by the Magistrate to the police for investigation and report, the police is empowered to register the case on the complaint forwarded by the Magistrate deeming it as a complaint as defined under Section 2(d) of the Code of Criminal Procedure. That principle, in one way or other, applies to the present case on hand. In this context, it is also important to observe that the police is not more empowered or vested with more power in the Code than the Magistrate in the matter of lodging a complaint, enquiring the same, etc. Therefore, it cannot be founded or determined on account of column No. 4 of the first Schedule of Cr.P.C. that the complaint filed before a Magistrate under Section 498A of I.P.C. becomes non-cognizable. If any view is arrived at that the complaint filed under Section 498A before a Magistrate is non-cognizable, it will reflect that police is more empowered than the Magistrate within the bounds of Cr.P.C. It is not spirit and significance of the Code. Nor could it be the intention of the law makers. Therefore, I am unable to appreciate the submission of the learned counsel for the petitioners that since there is no indication in column No. 4 of the Schedule, a complaint on being filed before the Magistrate, becomes now cognizable. On account of my discussions detailed above, this petition necessarily has to be dismissed under Section 482, Cr.P.C. In the result, this petition stands dismissed.

As the factual and legal aspects in this case are similar to those in CrI.M.C.Nos. 823 of 1997 and 981 of 1997, applying the principles laid down in this CrI.M.C. No.

465 of 1997, those two Crl.M.C. Nos. 823 of 1997 and 981 of 1997, I am, dismissing today, 13-7-1998 by separate orders.

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