

State Vs. Mahesh

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Court : Kerala

Decided On : Jul-26-1999

Reported in : I(2000)DMC586

Judge : K. Narayana Kurup and; T.M. Hassan Pillai, JJ.

Acts : [Child Marriage Restraint Act, 1929](#) - Sections 4, 5 and 8; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 344 and 366

Appeal No. : Cri. R. No. 3 of 1999

Appellant : State

Respondent : Mahesh

Advocate for Pet/Ap. : Public Prosecutor

Judgement :

K. Narayana Kurup, J.

1. Accused four in number in C.P. No. 4/98 before the Judicial First Class Magistrate, Thalassery stands charged under Sections 366 and 344 r/w Section 34, I.P.C. and under Sections 4 and 5 of the [Child Marriage Restraint Act, 1929](#) (for short 'the Act') in Crime No. 41/96 of Dharmadam Police Station. The Judicial First Class Magistrate Court, Thalassery committed the case to the Sessions Court as per his order dated 31.3.1997. On receipt of the case records along with

the committal order it is registered as SC No. 109/98 and thereafter the Sessions Court noted that the learned Judicial First Class Magistrate has committed the case under Sections 4 and 5 of the Act also to the Sessions Court. According to the Sessions Court, the offences under Section 366, I.P.C. is triable by it. However, as per Section 8 of the Act, no Court other than a Court of Judicial Magistrate of First Class shall take cognizance or try offence under that Act. Therefore, the offences punishable under Sections 4 and 5 of the Act alleged in the case is exclusively triable by the Judicial First Class Magistrate. Hence, according to the Sessions Court, the committal order in respect of offences punishable under Sections 4 and 5 of the Act is illegal and is liable to be quashed to that extent. The learned Sessions Judge relied on the decision reported in *State of Gujarat v. Fulsinh Bimsinh and Ors.*, AIR 1971 Gujarat 1, to drive home this point and has referred the question to this Court.

2. Having heard learned Public Prosecutor, we are of opinion that the reference has to be accepted. On a plain reading of Section 8 of the Act, we are of opinion that, that is an express provision which debars any Court other than the Magistrate of First Class to take cognizance of offences under the Act as well as to try such offences under the Act. The inevitable consequence of the express prohibition enacted in Section 8 of the Act is that any such offence under the Act cannot be tried by the Sessions Court even though the Magistrate has committed the case for trial. The result is that the committal order itself would become illegal as far as the offence under the Act is concerned; the power to take cognizance of and jurisdiction to try such offences by any other Court being excluded by clear prohibition in the provisions of Section 8 of the Act. The order of committal in so far as these offences under the Act are concerned is bad and cannot be sustained in the eye of law.

3. In the aforesaid view, we accept the reference and as a sequel, there will be a direction to the police to file a separate charge sheet for the various offences committed under the Act before the Magistrate. However, we make it clear that the other part of the committal order in so far as it relates to offences under the I.P.C. will stand and the Sessions Court will be free to proceed with the same in accordance with law.

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