

Ram Kishore and anr. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : May-17-2004

Reported in : I(2005)DMC315; RLW2004(4)Raj2143; 2004(4)WLC82

Judge : Sunil Kumar Garg, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 195, 195(1) and 340;
Indian Penal Code (IPC) - Sections 193

Appeal No. : S.B. Criminal Misc. Petition No. 345 of 2003

Appellant : Ram Kishore and anr.

Respondent : State of Rajasthan and anr.

Advocate for Def. : M.P. Bishnoi, Public Prosecutor and; Sandeep Mehta, Adv.
for Respondent No. 2

Advocate for Pet/Ap. : Mahesh Bora, Adv.

Disposition : Petition allowed

Judgement :

Sunil Kumar Garg, J.

1. This petition under Section 482 Cr.P.C. has been filed by the accused petitioners against the order dtd. 30.1.2003 passed by the learned Additional Chief

Judicial Magistrate No. 2, Bikaner by which on the application under Section 340 Cr.P.C. filed by the non-petitioner No. 2 (complainant), cognizance for offence under Section 193 I.P.C. was taken against the accused petitioners.

2. It arises in the following circumstances:

i) That marriage between petitioner No. 2 and respondent No. 2 had taken place on 9.5.8-1 and out of this wedlock, two sons, namely, Saumitra and Abhimitra were born.

ii) On 1.11.93, an application under Section 125 Cr.P.C. was filed by the petitioner No. 2 against the respondent No. 2. During the proceedings under Section 125 Cr.P.C., it was alleged by the petitioner No. 2 that she had no means of income and for that she had filed an affidavit on 15.12.94 and her statement was also recorded in which she had stated that she was not working anywhere.

iii) During the pendency of application under Section 125 Cr.P.C., the petitioner No. 2 filed an application withdrawing the claim of maintenance for herself and the matter was finally decided by the learned ACJM No. 2, Bikaner vide order dtd. 8.12.2000 and the respondent No. 2 was directed to pay Rs. 500/- each to his two sons per month.

iv) It may be stated here that during the proceedings under Section 125 Cr.P.C. respondent No. 2, moved an application before the ACJM No. 2, Bikaner for taking cognizance under Section 193 I.P.C. against the petitioner No. 2 on the ground that petitioner No. 2 was working as teacher and she gave false affidavit before the Court. That application was decided by the learned ACJM No. 2, Bikaner as premature.

v) The application under Section 125 Cr.P.C. was decided by the learned ACJM No. 2, Bikaner through order dtd. 8.12.2000 and in that order, the learned Magistrate did not pass any order under Section 340 Cr.P.C. After passing of final order on 8.12.2000, the respondent No. 2 moved an application under Section 340 Cr.P.C. before the learned ACJM No. 2, Bikaner on 11.12.2000 with a prayer that cognizance be taken against the petitioners for offence under Section 193 I.P.C.

vi) Reply was filed by the petitioners on 9.7.2001 in which petitioner No. 2 stated that till the statements of petitioners were recorded on 21.11.95, she did not get any salary from the school and ultimately when she started getting salary, she moved an application for withdrawal of her claim.

vii) That the learned Magistrate through order dtd. 30.1.2003 decided the application of respondent No. 2 and took cognizance against the petitioner for offence under Section 193 I.P.C. inter alia holding prima facie case under Section 193 I.P.C. was found against the petitioners.

viii) Aggrieved from the order dtd. 30.1.2003, the present misc. petition has been preferred by the petitioners.

3. In this misc. petition, the main ground of the counsel for the petitioners is that as per Section 195 Cr.P.C. no court shall take cognizance under Section 193 I.P.C. except on the complaint in writing by that Court or some other court to which that court is subordinate. Since in the present case, ACJM No. 2, Bikaner has himself taken cognizance on the application filed under Section 340 Cr.P.C. by the respondent No. 2, therefore, the order dtd. 30.1.2003 passed by the learned Magistrate is bad in law and deserves to be quashed and set aside.

4. On the other hand, the learned counsel for the respondent No. 2 has submitted that if this Court comes to the conclusion that cognizance was wrongly taken against the accused petitioner's, then the matter be remanded back to the learned Magistrate to proceed in accordance with law.

5. Heard and perused the case file.

6. A bare perusal of the order dtd. 30.1.2003 clearly reveals that proceedings under Section 125 Cr.P.C. were finally decided by the learned Magistrate through order dtd. 8.12.2000.

7. There is also no dispute on the point that on 11.12.2000, the respondent No. 2 moved an application under Section 340 Cr.P.C. and the same was decided through impugned order dtd. 30.1.2003 and cognizance for offence under Section 193 I.P.C. was taken against the accused petitioners.

8. The question which arises for consideration is whether in the facts and circumstances of the case, the impugned order dtd. 30.1.2003 can be sustained or not.

9. Section 195 Cr.P.C. creates a bar and Section 340 confers jurisdiction on the Court to proceed for the offences mentioned in Section 195(1)(b)(ii). These two sections are supplementary to each other. The one creates a bar on the filing of the complaint by all and sundry and the other removes the bar and confers exclusive jurisdiction on the Court to file the complaint after satisfying itself prima facie about the correctness of the offences said to have been committed and covered by Section 195(i) or (ii). Therefore, both the sections must be read together.

10. Section 340 Cr.P.C. provides the procedure for offences enumerated in Section 195(1)(b). That section is one of the exceptions to the general rule that any person can lodge complaint of an offence. When the offence is in relation to a court Section 195(1)(b) the sanction of the Court should be obtained first.

11. As per the procedure as is given in Section 340 Cr.P.C., the Court whether Civil, Revenue or Criminal can proceed under this Section and hold preliminary inquiry. It should then record a finding, should itself make a complaint in writing, and forward it to the first class Magistrate having jurisdiction. It is further made it clear that the court should make a complaint and cannot directly order prosecution. While making the complaint, the court should satisfy itself that there is atleast a prima facie and there is reasonable probability of conviction and the prosecution is necessary in the interest of justice and the statement alleged to be false must be intentional in order to justify prosecution. It is also well settled that there must be a prima facie case of deliberate falsehood and court should be satisfied that there is reasonable foundation for perjury.

12. Since in the present case instead of making complaint, the learned Magistrate himself took cognizance against the petitioners for offence under Section 193 I.P.C. and such an order, suffers from basic infirmity or illegality and is against the provisions of Section 340 and 195 Cr.P.C. and cannot be sustained.

13. So far as the argument that now the learned Magistrate be directed to file a complaint is concerned, in my opinion since the matter is old one and therefore, it would not be proper to direct the learned Magistrate to file a complaint as per provisions of law.

14. For the reasons mentioned above, impugned order dtd. 30.1.2003 cannot be sustained and is liable to be quashed and set aside.

Accordingly, the present misc. petition filed by the accused petitioners under Section 482 Cr.P.C. is allowed and the impugned order dtd. 30.1.2003 passed by the learned Additional Chief Judicial Magistrate No. 2, Bikaner by which on the application under Section 340 Cr.P.C. filed by the non-petitioner No. 2 (complainant), cognizance for offence under Section 193 I.P.C. was taken against the accused petitioners is quashed and set aside.

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