

Suresh Kumar and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Aug-01-1997

Reported in : 1998CriLJ601; 1998(2)WLC291; 1997(2)WLN202

Judge : Amaresh Ku. Singh, J.

Acts : Schedule Castes and Schedule Tribes Cases (Prevention of Atrocities) Act; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 155(4), 156(3), 173(2), 198, 198(1), 198(4), 468, 468(3) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 109, 120B, 494 and 498A

Appeal No. : Criminal Misc. Petn. No. 981 of 1996

Appellant : Suresh Kumar and ors.

Respondent : State of Rajasthan and ors.

Advocate for Def. : R.S. Rathore, Public Prosecutor and; G.R. Poonia, Adv. for Respondent No. 2

Advocate for Pet/Ap. : Shambhoo Rathore and; D.S. Udawat, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

Amaresh Ku. Singh, J.

1. Heard the learned counsel for the petitioners, learned Public Prosecutor and the learned counsel for non-petitioner No. 2.

2. The facts of the case may be briefly stated as below :

Smt. Ganga Devi alias Guddi is legally married wife of Suresh Kumar petitioner No. 1. The marriage of Smt. Ganga Devi was solemnised on 10th February, 1989. Smt, Ganga Devi filed a complaint against the petitioners alleging the commission of offences punishable under Sections 498A, 109, 494 and 120B of the Indian Penal Code. The complaint was sent by the learned Judicial Magistrate to the Police under Section 156(3) of the Criminal Procedure Code for investigation. In compliance with the order passed by the learned Judicial Magistrate the Police investigated the case and after completion of the investigation submitted a report under Section 173(2) of the Criminal Procedure Code alleging therein that offences under Sections 498A, 494, 109 and 120B were prima facie made out. The learned Additional Chief Judicial Magistrate, Makrana took cognizance of the offences disclosed by the police report and registered the case at No. 267/94 cognizance of the offence was taken on 15th October, 1994.

3. Feeling aggrieved by the order dated 15th October, 1994 by which cognizance had been taken of the above mentioned offences, the accused persons (petitioners) filed a revision petition before the learned Sessions Judge, Merta. The revision petition was transferred to the Court of learned Special Judge, SC/ST Cases (Prevention of Atrocities Act), Merta where it was registered at No. 39/96. The learned Special Judge vide order dated 23rd November, 1996 dismissed the revision petition filed by the petitioners.

4. It was urged before the learned Sessions Judge that in view of Sub-section (1) of Section 198 (1973) of the Criminal Procedure Code the cognizance of the offences under Section 494, I.P.C. could not have been taken by the learned Additional Chief Judicial Magistrate without a complaint required by Section 198 of the Criminal Procedure Code. It was also urged before the learned Sessions Judge that the investigation by the Police in the matter of allegation of bigamy was

not authorised and that the cognizance of the offence under Section 498A, I.P.C. by the learned Additional Chief Judicial Magistrate, Makrana was barred by limitation.

5. All the three submissions made by the learned Special Judge were found to be untenable and the revision was dismissed. Feeling aggrieved by the order passed by the learned Special Judge the petitioners have approached this Court under Section 482 of the Criminal Procedure Code.

6. The first submission of the learned counsel for the petitioners is that cognizance of the offence punishable under Section 494 of the Indian Penal Code by the learned Additional Chief Judicial Magistrate, Makrana without a complaint as required by Section 198(1) of the Criminal Procedure Code was without jurisdiction. In *State of Orissa v. Sharat Chandra Sahu* 1996 Cri LR (SC) 786 a similar question arose before the Hon'ble Supreme Court (AIR 1997 SC 1).

7. Women's Commission had sent complaint to the Police alleging the commission of offence punishable under Sections 498A and 494 of the Indian Penal Code. The Police registered the case at No. 418/93 against the respondent No. 1 and investigated the case. After completion of investigation a charge-sheet was filed, in the Court of learned Sub-Divisional Magistrate, Anandpur who perused the charge-sheet and framed charges against respondent No. 1 under Sections 498A and 494 of the Indian Penal Code. Aggrieved by the framing of the charge by the Sub-Divisional Magistrate, Anandpur, the respondent No. 1 filed a petition before the Orissa High Court for quashing the proceedings and the charges framed against him. The High Court partly allowed the petition with the findings that since respondent No. 2 had not herself personally filed the complaint under Section 494 of the Indian Penal Code the cognizance of the offence under Section 494 of the Indian Penal Code by the learned Sub-Divisional Magistrate was contrary to the provisions of Section 198(1) of the Criminal Procedure Code. Consequently, the charge framed by the Magistrate under Section 494 of the Indian Penal Code was quashed but the charge under Section 498A of the Indian Penal Code was maintained and to that extent the petition filed under Section 482 of the Criminal Procedure Code was dismissed.

8. In Special Appeal it was urged before the Hon'ble Supreme Court that the Orissa High Court was not justified in acquitting the accused charged under Section 494 of the Indian Penal Code. Their Lordships of the Hon'ble Supreme Court considered the provisions of Section 198 and Sub-section (4) of Section 155 of the Criminal Procedure Code. Sub-section (4) of Section 155 is a new provision introduced for the first time in the Code of 1973. This sub-section authorises the Police Officer to investigate non-cognizable offences also if a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the offence or offences are non-cognizable.

9. The Hon'ble Supreme Court held that in view of Sub-section (4) of Section 155 of the Criminal Procedure Code the Police Officer was legally authorised to investigate the non- cognizable offences.

At page 789 (of 1996 Cri LR 786 : at p. 3 of AIR 1997 SC 1 their Lordships observed as below :

Sub-section (4) creates a legal fiction and provides that although a case may comprise of several offences of which some are cognizable and others are not, it would not be open to the police to investigate the cognizable offence only and omit the non-cognizable offences. Since the whole case (comprising of cognizable and non-cognizable offences) is to be treated a cognizable, the police had no option but to investigate the whole of the case and to submit a charge-sheet in respect of all the offences, cognizable or non-cognizable both, provided it is found by the police during investigation that the offences appear, prima facie, to have been committed.

Sub-section (4) of Section 155 is a new provision introduced for the first time in the Code in 1973. This was done to overcome the controversy about investigation of non-cognizable offences by the police without the leave of the Magistrate. The statutory provisions is specific, precise and clear and there is no ambiguity in the language employed in Sub-section (4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as legal

fiction enacted in Sub-section (4) provides that even non-cognizable case shall, in that situation, be treated as cognizable.

This Court in *Preveen Chandra Mody v. State of A.P.* AIR 1965 SC 1185 : 1965 (2) Cri LJ 250 has held that while investigating a cognizable offence and presenting a charge-sheet for it, the police are not debarred from investigating any non-cognizable offence arising out of the same facts and including them in the charge-sheet.

The High Court was thus clearly in error in quashing the charge under Section 494 of the Indian Penal Code on the ground that the trial Court could not take cognizance of that offence unless a complaint was filed personally by the wife or any other near relation contemplated by Clause (c) of the Proviso to Section 198(1).

10. The Supreme Court quashed the order passed by the Orissa High Court. In view of the authority of the Hon'ble Apex Court, the submission of the learned counsel for the petitioner that the learned Additional Chief Judicial Magistrate, Makrana could not have taken cognizance of the offence under Section 494 of the Indian Penal Code without a proper complaint by the non-petitioner No. 2 is without any force.

11. Since the Police Officer was authorised to conduct the investigation in respect of the cognizable offence punishable under Section 498A of the Indian Penal Code and the non-cognizable offence punishable under Section 494 of the Indian Penal Code, the Police Officer must be said to be competent to submit charge-sheet in respect of both the offences and the charge sheet which was submitted before the learned Additional Chief Judicial Magistrate, Makarana on 15th October, 1994 contained allegation relating to both offences, that is, the offence under Section 498A of the Indian Penal Code and as well as the offence under Section 494 of the Indian Penal Code.

12. The offence under Section 494 of the Indian Penal Code is punishable with imprisonment for 7 years, therefore, it cannot be said that the act of taking of cognizance of the offence by the learned Additional Chief Judicial Magistrate,

Makarana was barred by Section 468 of the Criminal Procedure Code. Sub-section (3) of Section 468 expressly provide that 'for the purpose of this Section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

13. In view of Sub-section (3) of Section 468 of the Criminal Procedure Code the limitation provided in Section 468 of the Criminal Procedure Code was not applicable as the offence under Section 494 of the Indian Penal Code is punishable with imprisonment for 7 years.

14. For reasons mentioned above there is no force in the submissions made by the learned counsel for the petitioner. Consequently, this petition under Section 482 of the Criminal Procedure Code has no force, it deserves to be dismissed and is hereby dismissed.