

Khursheed and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Apr-28-1989

Reported in : 1989WLN(UC)262

Judge : Navin Chandra Sharma, J.

Appeal No. : S.B. Cr. Misc. Petition No. 358 of 1989

Appellant : Khursheed and ors.

Respondent : State of Rajasthan and ors.

Advocate for Pet/Ap. : Shri. Balwada

Disposition : Petition dismissed

Judgement :

Navin Chandra Sharma, J.

Heard, Shri Balwada counsel for the petitioner and Shri K.N. Sharma, Public Prosecutor for the State.

2. The facts giving rise to this petition are that non-petitioner No. 2 Hakim Ali filed a criminal complaint under Section 498A of the Indian Penal Code against the petitioners in the Court of Chief Judicial Magistrate, Sikar on April 23, 1988. The complaint was forwarded by the Chief Judicial Magistrate, Sikar under Section

156(3), Cr.P.C. by his order of the same date to the police station, kotwali siker. the police where upon registered a case under Section 498A, IPC and after investigation filed a charge-sheet against the petitioners in the Court of Chief Judicial Magistrate, Sikar offence under Section 498A read with Section 34, IPC. On this report of the Police, the Chief Judicial Magistrate took cognizance of the offence under the said section on August 20, 1988 the directed issue of processes against the petitioners This taking of cognizance by the Chief Judicial Magistrate, Sikar for offence under Section 498A r/w Section 34, IPC is challenged by the petitioners in this petition.

3. The sole contention advanced by the learned Counsel for the petitioners is that in the First Schedule appended to the Code of Criminal Procedure, the offence under Section 498A is made cognizable only if an information relating to the commission of the offence is given to an Officer inCharge of a Police Station by the person aggrieved by the offence or by any person related to her blood, marriage or adoption or if there is no such relative, by any public servant. It was contended that in the present case, Hakim Ali, non-petition No. 2 who was father of the girl who was subjected to cruelty by the petitioners had not made a report of the commission of the offence to an Office in-Charge of the Police Station and, therefore, the CJM could not take cognizance against the petitioners for the said offence.

4 The contention of the learned Counsel for the petitioners has no merit in it. What the relevant entry in the Schedule provides is only this that an offence under Section 498A is cognizable if the conditions mentioned in Column 4 of the Schedule are fulfilled. The result of this is that if the conditions mentioned in Column 4 of the entry are not complied with, or fulfilled, an offence under Section 498A would not be cognizable. The necessary consequence of this is that such an offence will be non-cognizable, in which a Police Officer has no authority to arrest without warrant. All Magistrates under Section 190 of the Code can take cognizance either upon receiving a complaint of facts which constitute such offence; or upon a Police report of such facts; or upon information received from any person other than a Police Officer, or upon his own knowledge, that such offence has been committed. In the instant case, a private criminal complaint had

been made by Hakim Ali, father of the girl, before the Chief Judicial Magistrate containing allegations for taking action under the Code that some persons had committed an offence. The complaint before the Chief Judicial Magistrate was of a non-cognizable offence. Section 155(2) of the Code provides that not no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. The Chief Judicial Magistrate must have acted under Section 155(2) of the Act and made an order for investigation by the police officer of the non-cognizable case which came before him by way of a private complaint filed by Hakim Ali to the police was bound to investigate. Section 155(3) provides that any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case. Consequently, when the police filed a charge-sheet in pursuance of the investigation ordered by the Chief Judicial Magistrate, the latter could legally take cognizance on the basis of the report.

5. This petition has no merit in it.