

PETITIONER:
STATE OF ORISSA

Vs.

RESPONDENT:
SHARAT CHANDRA SAHU & ANR.

DATE OF JUDGMENT: 08/10/1996

BENCH:
KULDIP SINGH, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

S.Saghir Ahmad, J.

Respondent No.1 is the husband of respondent No.2 who made a complaint in writing to the Women's Commission setting out therein that respondent No.1 had contracted a second marriage and had thus committed an offence punishable under Section 494 I.P.C.. It was also alleged that ever since the marriage with her, he had been making demands for money being paid to him which amounted to her harassment and constituted the offence punishable under Section 498A I.P.C. for which respondent No.1 was liable to be punished.

2. The Women's Commission sent the complaint to police station where G.R.Case No.418 of 1993 was registered against respondent No.1. The police investigated the case and filed a charge-sheet in the court of Sub-Divisional Judicial Magistrate, Anandpur, who, after perusal of the charge-sheet, framed charges against respondent No.1 under Section 498A as also under Section 494 IPC.

3. Aggrieved by the framing of the charge by the Sub-Divisional Judicial Magistrate, Anandpur, respondent No.1 filed a petition (Criminal Misc. Case No.1169/94) under Section 482 of the Code of Criminal Procedure (for short, Code, in the Orissa High Court for quashing the proceedings and the charges framed against him. The High Court by its impugned Judgment dated 3.5.95 partly allowed the petition with the findings that since respondent No.2 had not herself personally filed the complaint under Section 494 I.P.C., its cognizance could not have been taken by the Magistrate in view of the provisions contained in Section 198(1) of the Code. Consequently, the charge framed by the Magistrate under Section 494 I.P.C. was quashed but the charge under Section 498A I.P.C. was maintained and the petition under Section 482, Criminal Procedure Code to that extent was dismissed.

4. It is this Judgment which has been challenged before us by the State of Orissa. We have heard the learned counsel for the parties.

5. The Judgment of the High Court so far as it relates to the quashing of the charge under Section 494 I.P.C., is wholly erroneous and is based on complete ignorance of the

relevant statutory provisions.

6. The first Schedule appended to the Code indicates that the offence under Section 494 I.P.C. is non-cognizable and bailable. It is thus obvious that the police could not take cognizance of this offence and that a complaint had to be filed before a Magistrate.

7. Relevant portion of Section 198 which deals with the prosecution for Offences against Marriage provides as under:

"198. Prosecution for offences against marriage.- (1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that-

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) there the person aggrieved by an offence punishable under [Section 494 or section 495) of the Indian Penal Code (45 of 1860) is the wife, complain may be made on her behalf by her father, mother, sister, son or daughter or by her father's or mother's brother or sister [,or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.]

- (2).....
- (3).....
- (4).....
- (5).....
- (6).....
- (7).....

8. These provisions set out the prohibition for the Court from taking cognizance of an offence punishable under Chapter XX of the Indian Penal Code. The cognizance, however, can be taken only if the complaint is made by the person aggrieved by the offence. Clause(c) appended to the Proviso to Sub-section (1) provides that where a person

aggrieved is the wife, a complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or other relations mentioned therein who are related to her by blood, marriage or adoption.

9. The High Court relied upon the provisions contained in Clause (c) and held that since the wife herself had not filed the complaint and Women's Commission had complained to the police, the Sub-Divisional Judicial Magistrate, Anandpur could not legally take cognizance of the offence. In laying down this proposition, the High Court forgot that the other offence namely, the offence under Section 498A I.P.C. was a cognizable offence and the police was entitled to take cognizance of the offence irrespective of the person who gave the first information to it. It is provided in Section 155 as under:-

"155. Information as to non-cognizable cases and investigation of such cases.(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the information to the Magistrate.

(2) 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.

(3) 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.

(4) Where 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 other offences are non cognizable."

10. Sub-section (4) of this Section clearly provides that where the case relates to two offences of which one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offence or offences are non-cognizable.

11. 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 offences 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.

12. 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 provision 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 the legal fiction enacted in Sub-section (4) provides that even non-cognizable.

13. This Court in *Preveen Chandra Mody vs. State of M.P.* AIR 1965 SC 1185 has held that while investigating a cognizable offences and presenting a charge-sheet for it, the police are not debarred from investigation any non-cognizable offence arising out of the same facts and including them in the charge-sheet.

14. The High Court was thus clearly in error in quashing the charge under Section 494 I.P.C. 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).

15. The Judgment of the High Court being erroneous has to be set aside. The appeal is consequently allowed. The Judgment and order dated 3rd May, 1995 passed by the Orissa High Court in so far as it purports to quash the charge under Section 494 I.P.C. and the proceedings relating thereto is set aside with the direction to the Magistrate to proceed with the case and dispose it of expeditiously.