
(1967) 02 GUJ CK 0003
In the Gujarat High Court

Babubhai Madhavlal Patel and Another APPELLANT
Vs
State of Gujarat RESPONDENT

Date of Decision : 13-02-1967

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 417, 418, 419, 420

Citation : (1969) CriLJ 567 : (1968) GLR 963

Hon'ble Judges : N.G. Shelat, J

Bench : Single Bench

Judgement

N.G. Shelat, J.—The facts giving rise to these two applications in revision before this Court broadly stated are that one Hasumati's marriage was settled with accused No. 1 on or about 13.12.65 at Ahmedabad and a writing in that respect came to be executed by him in favour of Hasumati. In that writing, in addition to certain terms agreed to between their, it was stated that the accused No. 1 was not married, and that in those circumstances their marriage took place on the next day. She then lived with her husband-accused No. 1 and had even sexual intercourse. Sometime after, Hasumati came to know that her husband was already married before and that his first wife was living. That led her to lodge a complaint before the police in respect of offences under Sections 417-420 read with Section 114 of the Indian Penal Code. The accused Nos. 2 and 3 were said to have abetted the commission of the said offence as it was through them that her marriage with accused No. 1 was brought about. After finishing the investigation of the case the charge-sheet against all the three accused was sent up to the Court of the City Magistrate, Ahmedabad.

2. On the basis of the police papers in the case the learned Magistrate at first framed a charge as per Ex. 2 on 25.8.66 against all the three accused. By that while accused No. 1 was alleged to have deceived or dishonestly induced the complainant Hasumati to marry with him by saying that he was an unmarried person, so as to be liable u/s 417 of the Indian Penal Code, the two other accused Nos. 2 and 3 were said to have abetted accused No. 1 in committing the

said offence, so as to be liable for an offence u/s 417 read with Section 114 of the Indian Penal Code. To that the accused pleaded not guilty.

3. Thereafter the evidence of Hasumati came to be recorded in the case. On the strength of her evidence, the learned Police Prosecutor in charge of the case before the trial Court presented a report Ex. 9 requesting the Court to amend the charge, urging that the charge for offences under Sections 493, 494, 495, 496 against accused No. 1 and for offences under Sections 493, 494, 495, 496 read with Section 114 of the Indian Penal Code against accused Nos. 2 and 3 should be framed. After hearing the learned advocate for the accused, the learned Magistrate framed the charge at Ex. 10 for those offences accordingly. Since some of those offences under Sections 493, 495 and 496 were triable exclusively by the Court of Session, the learned Magistrate committed all the accused to stand their trial in respect of all the offences before the Court of City Sessions Judge at Ahmedabad, u/s 213 of the Criminal Procedure Code. Though no order is passed with regard to the earlier charge u/s 417 and Section 417 read with Section 114 of the Indian Penal Code, it has to be taken that the accused were discharged in that respect. In fact while framing the charge, the earlier charge was allowed to have been given a go by. Feeling aggrieved by that order of commitment passed on 29.12.1966 by Mr. B.J. Shelat, City Magistrate, 4th Court, Ahmedabad, while accused No. 1 has filed Application No. 31/67 in revision, the other two accused have filed an application No. 44/67 in revision before this Court.

4. Now an order of commitment made u/s 213 of the Criminal Procedure Code by a competent Magistrate as laid down u/s 215 of the Criminal Procedure Code, can be quashed only by the High Court and only on a point of law. The point of law raised by Mr. Patel, the learned advocate for the applicants-accused is that in view of Section 198 of the Criminal Procedure Code, the learned Magistrate was not competent to take cognizance of offences under Sections 493 to 496 (both inclusive) of the Indian Penal Code, except upon a complaint made by some person aggrieved by such offences, and since there was no complaint from Hasumati as contemplated u/s 4(1)(h) of the Criminal Procedure Code, the order of commitment passed by the learned Magistrate in respect of those offences, was bad in law and that way liable to be quashed. The charge levelled against all the accused is in respect of offences relating to cohabitation caused by a man deceitfully inducing a belief of lawful marriage or by concealment of his former marriage etc., contemplated under Sections 493 to 496 of the Indian Penal Code. In respect of such offences, the Court can take cognizance only upon a complaint made by some person aggrieved by such offence. The cognizance of offences by a Magistrate has to be taken as provided u/s 190(1) of the Criminal Procedure Code, Now as provided therein,

except as hereinafter provided...any Presidency Magistrate (in this case the City Magistrate)...may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts-made by any police officer;

(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.

The charge-sheet or the report sent up by the police officer makes no reference about any such offences such as Sections 493 to 496 of the Indian Penal Code in respect of which the accused are committed to the Court of Session. That charge-sheet was in respect of offences under Sections 420 and 417 read with Section 114 of the Indian Penal Code. Nor would the case come within Clause (c), and it would therefore clearly fall within Clause (a) of Sub-section (1) of Section 190 of the Criminal Procedure Code. The mere fact that cognizance was taken by the Magistrate on a police report would make no difference as it was not for offences under Sections 493 to 496 of the Indian] Penal Code. If they were tried only for offence u/s 417 and Section 417 read with Section 114 of the Indian Penal Code, as per the original charge framed by the Court, there was no difficulty. But that charge was given a go-by and a fresh charge is one in respect of offences under Sections 493 to 496 of the Indian Penal Code. Since they fall u/s 198 of the Criminal Procedure Code, the cognizance thereof has to be on the basis of the complaint falling u/s 190(1)(a) of the Code.

5. Now the term "complaint" has been defined u/s 4(1)(h) as meaning the allegations made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed" an offence, but it does not include the report of a police officer. Thus, the Magistrate must have a complaint filed by Hasumati herself before him and, at any rate, not on the basis of a report or a charge-sheet from the police officer in respect of such offences for which the accused have-been committed to the Court of Session. No such complaint has been given by Bai Hasumati before the learned City Magistrate in respect of any such offences under Sections 493, 494, 495 and 496. It would, therefore, follow that unless there was any complaint by Bai Hasumati who was the, person aggrieved, the Court was not competent to take cognizance in respect of the offences falling under those sections as contemplated in Section 198 of the Criminal Procedure Code. When that is so, the learned Magistrate was not even competent to go ahead with the case, hold an inquiry against the accused in respect of those offences and even commit them to stand their trial for those offences u/s 213 of the Criminal Procedure Code. The order of commitment passed by the learned City Magistrate was, therefore, beyond his competence and invalid. It is liable to be set aside.

6. In the result, the order of commitment passed by the learned Magistrate against all the three accused is quashed u/s 215 of the Criminal Procedure Code.