

(1916) 03 MAD CK 0053
In the Madras High Court
In Re: Rathna Padayachi

Date of Decision : 31-03-1916

Acts Referred:

Citation : 35 Ind. Cas. 667

Hon'ble Judges : Seshagiri Aiyar, J

Bench : Single Bench

Judgement

Seshagiri Aiyar, J.—The father is the complainant in the case. The facts deposed to by the father of the girl are these: while his daughter was

living with him, the accused enticed her away on the 20th of July, 1915, that the husband was aware of it, that he came in search of his wife but

went away on learning of the elopement and that this complaint was filed without consulting the husband. In another place, his deposition implies

that the husband was not anxious to complain.

2. On these facts, which have been spoken to by the other witnesses, a charge u/s 498 of the Indian Penal Code was framed.

3. Mr. Osborne asks this Court to cancel the charge. His chief argument is that as the husband has not chosen to complain, it is not competent to

the father to institute proceedings. The learned Counsel lays stress on the words in his absence", in Section 199 of the Code of Criminal

Procedure, and contends that it is only where the husband has authorised, either expressly or impliedly, the filing of the complaint, that the Courts

can take cognizance. I am unable to accede to this argument. My reading of the section is this: No Court shall take cognizance of an offence u/s

497 or Section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman (who had care of such woman) or, in

his absence, by some person who had care of such woman on his behalf." I am

prepared to concede that if the wife was under the care of her husband at the time of the offence, and the husband does not want that proceedings should be instituted, it is not open to a person, whether he be the father or the brother, to institute a complaint. But where at the time of the offence,"" the wife was left under the care of another, the fact that the husband stands by will not prevent the temporary guardian from preferring the complaint. The words ""in his absence"" refer to the original entrustment and not to the time of the complaint.

4. Mr. Osborne contends that the object of the Legislature is to protect marital rights, and that, if the husband is unwilling to prosecute, it is not open to others to interfere. It is true the law is designed to protect the rights of the husband; but that is not its sole aim. The violation of the rights of guardianship is also entitled to its protection. I am further of opinion that the object of the law is not so much to afford protection to the husband or the guardian, as to inflict punishment on those who interfere with the sacred relation of marriage.

5. The restriction in Section 199 is not intended to afford immunity to the offender, but to prevent a person unconnected with the woman from giving publicity to a matter which neither the husband nor the guardian is willing to agitate.

6. The learned Counsel admits that he is unable to quote any authority for the position taken up by him, nor have I been able to come across any decision which has considered this point. Nonetheless, I feel no doubt that the construction sought to be placed on the section by the petitioner is not right.

7. I dismiss the petition.