

(1959) 11 AP CK 0021

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 190 of 1958 and Criminal Revision
Petition No. 154 of 1958

Kondepudi Sriramamurthi

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 12-11-1959

Acts Referred:

Child Marriage Restraint Act, 1929 — Section 10, 6, 9
Criminal Procedure Code, 1898 (CrPC) — Section 439, 439(1)

Citation : AIR 1960 AP 302

Hon'ble Judges : Krishna Rao, J; Bhimasankaram, J

Bench : Division Bench

Advocate : N. Bapiraju, for the Appellant; R.V. Rama Rao, Public Prosecutor,
Adavi Rama Rao, N. Kirshnamurthy and A.V.R.K. Murthy, for the Respondent

Final Decision : Dismissed

Judgement

Bhimasankakam, J.—The petitioner was convicted u/s 6 of the Child Marriage Restraint Act XIX of 1929 and sentenced to simple imprisonment till the rising of the Court and a fine of Rs. 500/- or in default to simple imprisonment for three weeks. He appealed against the conviction and sentence to the Sessions Judge, East Godavary who while confirming the conviction reduced the fine to a sum of Rupees 100/- or in default simple imprisonment for two weeks. The present revision case is directed against the conviction and questions its legality.

2. When the case came up for hearing before a colleague of ours, as it appeared to him that the reasons given by the learned Sessions Judge for reducing the sentence were not convincing, he directed the issue of notice to the petitioner, to show cause why the sentence should not be enhanced. The case was after the notice again posted for hearing before one of us who considered it desirable that the matter should be heard and determined by a bench. The case comes before us thus.

3. The petitioner, raises a point of law with which we shall deal first before

considering the question of enhancement of the sentence. He contends that the learned Magistrate took cognizance of the case beyond the period of one year provided by Section 9 of the Act and that therefore the conviction is bad. The marriage to which the offence related took place on 14-6-1955. The complaint which was made by a brother of the petitioner was presented on 5-6-1956. The Magistrate posted the case to 22-6-1956 for the preliminary enquiry which Section 10 of the Act makes obligatory. The two sections of the Act which are relevant read as follows:

"9. No court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

10. Any Court, on receipt of a complaint of an offence of which it is authorised to take cognizance, shall, unless it dismisses the complaint u/s 203 of the Code of Criminal Procedure, 1898 (V of 1898), either itself make an inquiry u/s 202 of that Code or direct a Magistrate subordinate to it to make such inquiry."

The argument in substance is that the Magistrate could not be said to have taken cognizance of the offence before he finished the preliminary enquiry and as by that time, the year was over, the ban of Section 9 operates. We are unable to agree with this contention. Now the expression "taking cognizance of an offence" has not been defined either in the Act or in the Code of Criminal Procedure. The Supreme Court, however, considered the meaning of the word "cognizance" in *R.R. Chari Vs. The State of Uttar Pradesh*, .

They referred first to the observations of the Patna High Court in *Gopal Marwari and Others Vs. Emperor*, to the effect that "the word "cognizance" is a word of somewhat indefinite import and it is perhaps not always used in exactly the same sense" in the Code; that it is generally used "to indicate the point when the Magistrate or a Judge first takes judicial notice of an offence" that it is not identical with the initiation of proceedings; and that it is rather a condition precedent to the initiation of any proceedings. After quoting those remarks, the Supreme Court extracted, with approval, from the judgment of *Das Gupta J.*, in *Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee*, the following passage:

"What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence u/s 190(1)(a) Criminal Procedure Code, he must not only have applied his mind to the contentions of the petition, but he must have done so for the purpose of proceeding, in a particular way as indicated in the subsequent provisions of this Chapter, proceeding u/s 260 and thereafter sending it for inquiry and report u/s 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this chapter, but for taking action of some other kind, e. g., ordering investigation ... u/s 156(3), or issuing a search

warrant for the purpose of the investigation he cannot be said to have-taken cognizance of the offence."

These observations of the learned Judge were preceded by an extract from an earlier judgment of the Calcutta High Court in *Emperor v. Sourindra Mohan* ILR Cal 412 at p. 416 of the following: remark:

""Taking cognizance does not involve any formal action or indeed action of any kind hut Occurs as soon as a Magistrate, as such, applies his mind: to the suspected commission of an offence."

It seems to us that cognizance may therefore be said to occur, to use the words of Gruer J, in AIR 1940 245 (Nagpur) as soon as he (Magistrate) reads the complaint and even before he examines the complainant which he is bound to do." In order to elucidate the matter further, reference may be made to the language of Section 200 of the Code of Criminal Procedure which reads:

"200. A Magistrate taking cognizance of am offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath" and etc.

The language of this section of the Code speaks of a Magistrate taking cognizance of an offence doing the thing specified therein and therefore clearly indicates that taking cognizance precedes the commencement of any action on his part. It is true that while Section 202 of the Code of Criminal Procedure confers an option on the Magistrate either at once to issue process for compelling the attendance of the person complained against Or to enquire or direct an enquiry or investigation into the ease for the purpose of ascertaining the truth or falsehood of the complaint, while section of the Act with which we are now dealing compels a preliminary enquiry.

The necessity for such an enquiry does not however mean that the offence cannot be said not to have been taken cognizance of before the enquiry is completed. Mr. Bapiraju strongly relics upon the language in Section 10 of the Act which speaks of "Any Court on receipt of a complaint of an offence of which it is authorised to take cognizance" and contends that the words do not speak of a Magistrate who has taken cognizance but only of one who is authorised to take cognizance. These words, in his submission, support the construction that the enquiry referred to in that section is an enquiry to be made by a Magistrate authorised to take but has not taken cognizance.

It seems to us that the words relied on by the learned counsel do not support his construction and are merely descriptive of the Court which is to undertake or direct the enquiry referred to. They do not seem to us to have any bearing upon the point of time when a Court can be said to have taken cognizance.

4. Our pointed attention has been drawn to the difference in the language between Sections 9 and 10 of the Act as they were originally enacted and as they were subsequently amended in 1959 by Act No. XIX of 1938 and it is contended that the difference favours the argument of the petitioner. The old Sections stood

as follows:

"Section 9. No court shall take cognizance of any offence under this Act save upon complaint made within one year of the solemnization of the marriage in respect of which the offence is alleged to have been committed.

Section 10. The Court taking cognizance of an offence under this Act shall, unless it dismisses the complaint u/s 203 of the Code of Criminal Procedure, 1898, either itself make an enquiry u/s 202 of that Code, or direct a Magistrate of the 1st Class, subordinate to it, to make such enquiry."

The argument is that while old Section 9 insisted upon a complaint being made within one year of the solemnization of the marriage in respect of which the offence is alleged to have been committed, the new section requires that taking cognizance should take place before the enquiry of one year from that date. It is also urged that while the old Section 10 speaks of a Court taking cognizance making an enquiry, the amended section speaks of a court authorised to take cognizance. In our opinion, however, the alteration in the language of these sections makes no difference to the position in law.

If a complaint was made within one year from the date of the offence u/s 9 as it previously stood, even if it was made to a Magistrate who was not competent to take cognizance of the offence, it could be argued that the complaint was not barred by time even though the period of one year might have expired by the time it was represented to the proper Magistrate on an endorsement u/s 201 of the Criminal Procedure Code.

Section 9 as it now stands does not admit of such a contention. As regards the language in Section 10, it seems to us that by the change the legislature has brought the language of that section nearer now to the language used in Section 202 of the Criminal Procedure Code which also speaks of a Magistrate, on receipt of a complaint of which he is authorised to take cognizance. These changes, in language, in our opinion, do not support the contention urged on behalf of the petitioner.

5. Reliance is placed by the learned Counsel for the petitioner on a decision of a single Judge of the Madras High Court in *In Re: Darapureddi Jaggu Naidu and Others*, In that case, the learned Judge Pandrang Row J. stated that

"a preliminary enquiry is absolutely necessary before the Court can take cognizance of an offence under the Act (Child Marriage Restraint Act)."

Reference has also been made to the decision of Lakshmana Rao J. in *Sivagami Animal v. Muthu Iyer* AIR 1939 Mad 294 in which the learned Judge pointed out that a Magistrate acting u/s 10 of the Act could not transfer a case under the Act for disposal according to law before conducting an enquiry u/s 10 of the Act. The decision of Lakshmana Rao J. does not seem to have any bearing upon the present discussion. As regards the decision of Pandrawg Row J., it would seem to support the contention of the petitioner, but we do not think that the learned

Judge when making that observation applied his mind to the point with which we are now concerned.

6. We are clearly of the view that even when a Magistrate upon receiving a complaint under the Act does not dismiss the complaint but decides upon the necessary preliminary enquiry, he is taking cognizance of the offence complained against and that it cannot be said that he takes cognizance only when he directs the issue of process to the accused. We therefore hold that the Magistrate had jurisdiction to entertain the case and that it was not barred by Section 9 of the Act.

7. The next question is whether the sentence should be enhanced.

8. The question of sentence as pointed out by the Supreme Court in *Alamgir and Another Vs. The State of Bihar*,

"is normally in the discretion of the trial Judge. It is for the trial Judge to take into account all relevant circumstances and decide what sentence would meet the ends of justice in a given case."

This discretion, as the Supreme Court said in *Sarjug Rai and Others Vs. The State of Bihar*, "has to be exercised in a judicial way", that is to say, to use the words of the same Court in *Bed Raj Vs. The State of Uttar Pradesh*,

"like all judicial acts involving an exercise of discretion, (it) must be exercised along well-known judicial lines."

Although, as pointed out in the two decisions last referred to, there may be no limitations imposed by the Code upon the powers of an appellate court to enhance the sentence, the sentence imposed by the trial Court

"should not be lightly interfered with and should not be enhanced unless the appellate Court comes to the conclusion, on a consideration of the entire circumstances disclosed in the evidence, that the sentence imposed is inadequate."

In the first of these two cases, it was also observed that

"it is well-settled that when discretion has been properly exercised along accepted judicial lines, an appellate Court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment,"

and that "interference is only called for when it (the sentence), is manifestly inadequate." None of these decisions, no doubt, deals with the power of the appellate court to reduce the sentence; but presumably the same principle would apply.

9. It must however be borne in mind that in matters involving discretion there can be no absolute standards and that it is possible that a person may reasonably consider a sentence lenient which another may regard as harsh. As

Lord Atkin observed in *Andre Paul v. The Attorney-General of Trinidad and Tobago* AIR 1936 PC 141 it is obvious

"that sentences do vary in apparently similar circumstances with the habit of mind of the particular Judge".

He further observed as follows:

"It is quite inevitable (that) some very conscientious Judges have thought it their duty to visit particular crimes with exemplary sentence?; others equally conscientious have thought it their duty to view the same crimes with leniency."

9a. The operation therefore, of discretion must be allowed a reasonable latitude and the tendency to interfere must be kept in check by an alert scepticism as to the infallibility of one's own standards. The appellate court should be circumspect not to substitute its own discretion for the discretion of the lower court; it should be careful to distinguish between what in its own view is an adequate punishment, and punishment the infliction of which could be described as an abuse of discretion or failure to exercise any discretion at all.

10. In the present case although it is true that u/s 439(1) CrI. p. C., the High Court is empowered in its discretion to exercise any of the powers conferred on a court of appeal including the power to enhance the sentence, we are now called upon to deal with a reduction of the sentence effected by a court of appeal and are not invited to enhance or reduce the sentence imposed by the trial court. The question really is whether we should interfere with the discretion of the appellate court. In reaching the conclusion as to Whether we should exercise out powers of interference, we must take into consideration the reasons given by the learned Sessions Judge for reducing the sentence.

In doing so, he has stated that he has regard "to the background of the case and the inordinate delay in filing of the complaint petition." In referring to the background of the case" he has clearly referred to the motive which lay at the back of the complaint and also to the motive which inspired the accused to contravene the law. An of fence under this Act may be committed for an altogether; sordid motive such as love of lucre Or as in this case, it may have been committed under a superstitious belief that the marriage confers religious merit upon the parents. The prosecution too for an offence might be tainted by an indirect end unworthy motive.

Although the object of the Act is to prevent the marriages of infants and the object is defeated whenever such a marriage takes place, the court would not, in our opinion, be wrong when deciding upon the sentence to be imposed in a particular case in taking such factors as we have mentioned into consideration. It seems to us that the learned Sessions Judge in this case did no more than that. If the Magistrate too had taken these matters into account in inflicting the sentence the Sessions Judge might not perhaps have been justified in interfering with it. But when he did not, the Sessions Judge was, in our judgment, well

within his rights in relying, upon these circumstances to reduce the sentence.

11. We may also observe that while it is the duty of the court to see that the violation of law meets with condign punishment, it may also take note of the fact that the legislature has not thought fit to enact that the prosecution for an offence under this Act should be undertaken by the State. Further, deterrent sentences in cases under this Act do not seem to us now to be called for as such offences are, it may be stated, fortunately few and far between. This is one of those pieces of legislation which have been backed by the general sense of the community, with the result that in the course of less than three decades, what was once a widely prevalent social evil has today become a rare occurrence.

12. We accordingly think that no enhancement is called for. The Criminal Revision Case fails and is dismissed.