
(1932) 11 PAT CK 0006
In the Patna High Court

Sukha Sahu

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 10-11-1932

Acts Referred:

Child Marriage Restraint Act, 1929 — Section 6
Criminal Procedure Code, 1898 (CrPC) — Section 190(1)(c), 438

Citation : AIR 1933 Patna 87

Hon'ble Judges : James, J

Bench : Division Bench

Judgement

James, J.—Sukha Sahu complained before the District Magistrate of Muzaffarpur alleging that Chandar Sahu had brought about a marriage between his son and Sukha Sahu's daughter, thereby committing an offence punishable u/s 6, Child Marriage Restraint Act.

2. The complaint was referred to Babu Rameshar Prasad, a local Magistrate, for enquiry, as a result of which the Magistrate reported that proceedings under the Act should be taken against Sukha Sahu, Chandar Sahu and Achhaibat Jha. On this report process was issued against these three persons who were placed on their trial and in due course convicted and fined under the Act. The Sessions judge had forwarded the record u/s 438, Criminal P.C. for revision of the order of the District Magistrate on the ground that he had no jurisdiction to take cognizance of the offence without a formal complaint. The learned Sessions Judge considers that cognizance was taken as soon as the District Magistrate directed Babu Rameshwar Prasad to hold a local enquiry and as Sukha Sahu did not complain against himself, the proceedings against Sukha Sahu were irregular.

3. A complaint as defined in Section 4(h), Criminal P.C., includes any allegation made in writing to a Magistrate with a view to his taking action under the Code that some person had committed an offence.

4. The learned Sessions Judge has remarked that if the District Magistrate is to be regarded as having taken cognizance on the report of Babu Rameswar Prasad

the cognizance would have been u/s 190(1)(c), Criminal P.C., and not under Sub-section (1)(a); but the report of the Magistrate to the effect that other persons than the person named by Sukha Sahu including Sukha Sahu himself ought to be prosecuted under the Act was a complaint within the meaning of Section 4(h) of the Code; and when the District Magistrate took cognizance on this complaint he was taking cognizance under Sub-section (1)(a), Section 190 of the Code. The complaint was made by a public servant acting in the discharge of his official duties, so that it was not necessary for the District Magistrate to examine him on oath u/s 200 of the Code before issuing process.

5. I do not consider that there was any irregularity in his taking cognizance on this complaint. The District Magistrate ought u/s 11, Child Marriage Restraint Act, to have recorded in writing his reasons for exempting Babu Rameswar Prasad from liability to execute a bond, but since the complaint was made by a judicial officer it was sufficiently manifest that he could not be required to execute the bond described in Section 11 of the Act, so that the District Magistrate's omission to record his reasons for not requiring Babu Rameswar Prasad to execute a bond cannot be held to vitiate his proceedings.

6. The reference must accordingly be discharged.