

**(1994) 03 MAD CK 0018**

**In the Madras High Court**

**Case No : Criminal M.P. No. 5961 of 1988**

Vaidyanathan Deekshathar

APPELLANT

Vs

T. Ramadoss, Advocate, Mayiladuthurai

RESPONDENT

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**Date of Decision : 08-03-1994**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 203

**Citation : (1994) 03 MAD CK 0018**

**Hon'ble Judges : Pratap Singh, J**

**Bench : Single Bench**

**Advocate : B. Kumar, for the Appellant;**

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**Judgement**

Pratap Singh, J.—The accused in C.C. No. 471 of 1988 on the file of Judicial I Class Magistrate, Chidambaram, has filed this petition

under S.482 Cr.P.C. praying to call for the records in the above case and quash the proceedings in pursuance of the order passed on 21.10.88.

AM 12/1/2011.6.1988.

2. Short facts are: The respondent has filed a private complainant against the petitioner under Ss.5 and 6 of the Child Marriage Restraint Act,

1929, (which I shall hereinafter refer to as the "Act"). On 21.6.1988, learned Magistrate had made an endorsement as follows:-

Complaint forwarded to the Inspector of Police, Chidambaram for investigation and report under S.155(2) Cr.P.C. and on or before 15.7.88.

To quash the said order, this petition is filed.

3. Mr. B. Kumar, learned counsel appearing for the petitioner, would submit that special procedure is laid down in S.10 of the Act and only that

procedure is to be followed before taking cognizance of the offence and that the

Magistrate forwarding the complaint to the police under S.156(3)

Cr.P.C. is infirm and liable to be set aside.

4. I have carefully considered the submission made by learned counsel for the petitioner. In the complaint itself, the prayer reads as follows:-

It is, therefore, prayed that this Hon"ble Court may be pleased to order for an enquiry in the matter under S.10 of the Child Marriage Restraint

Act, 1929, and after such enquiry the accused may please be proceeded against in accordance with law in the interest of public moral and policy

as there is a flagrant violation of public policy enunciated under law.

5. S.10 of the Act needs extraction to consider the above submission and it reads as follows:-

Preliminary inquiries into offences:- Any court, on receipt of a complaint of an offence of which it is authorised to take cognizance, shall, unless it

dismisses, the complaint under S.203 of the Code of Criminal Procedure, 1973 (2 of 1974), either itself make an inquiry under S.202 of that Code

or direct a Magistrate subordinate to it to make such inquiry.

6. In C.K. Moidoo and Others Vs. Vayyaprath Kunnath Mayan and Another, ), the Kerala High Court had held that once a complaint is

preferred alleging an offence under the provisions of the Act before the Magistrate, the Magistrate has to proceed with the complaint in

accordance with the provisions of the Code and in the light of S.10 of the Act. It is, of course, open to him to refrain from taking cognizance on the

materials before him. It is open to him to take cognizance and issue process or otherwise deal with the matter under law. But where he does not

choose to dismiss the complaint under S.203 of the Code after receiving the same, he has a statutory duty to make an inquiry himself under S.202

of the Code or direct a Magistrate subordinate to his court to make such inquiry. S.10 being a special provision in relation to complaints in regard

to offence under the Act, it has an overriding effect on the provisions of S.202 of the Code which may be in conflict with it.

7. This High Court in Jagadeesa Thevar v. Rajabakiya Thevar (1971 L.W. Cri. 94) has referred to the decision State of Gujarat v. Jivraj Khimji

and others (I.L.R.1966 Guj 815), in which, it is held ""as the satisfaction ""of the Magistrate is considered essential under S.10 of the Act, this

provision is of a mandatory character; and in the absence of any such

preliminary enquiry made by the Magistrate the process issued against the accused would not be justified in law"".

8. I agree with the view of learned judges of Kerala and Gujarat High Courts and also our High Court.

9. The specific procedure laid down in S.10 of the Act clearly overrides the relevant provisions of the Code and consequently, it is to be held that

in a complaint filed for offence under the Act; learned Magistrate cannot pass an order directing the investigation by the police under S.156(3),

Cr.P.C. Learned Magistrate is obliged to follow the procedure laid down in S.10 of the Act and that he should himself make such inquiry.

10. In view of the above, the order of learned Magistrate dated 21.6.1988 forwarding the complaint to the Inspector of Police, Chidambaram, for

investigation and report under S.156(3), Cr.P.C. cannot be sustained and it is liable to be quashed and is accordingly quashed. Learned Judicial

Magistrate, Chidambaram is directed to conduct the enquiry by himself as required under S.10 of the Act and proceed with the case in

accordance with law.