

The sanction undoubtedly covered the new charge, as it was based on the same facts, and under the provisions of section 230 of the Code of Criminal Procedure, no additional sanction was required.

Rule discharged.

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30 C. 905=7
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30 C. 910 (=8 C. W. N. 17.)

[910] FULL BENCH.

TARA PROSAD LAHA v. EMPEROR.* [23rd May, 1906.]

"Complaint," meaning of—Prosecution for adultery or enticing away a married woman—Criminal Procedure Code (Act V of 1898), ss. 4, cl. (h), 199.

The word "complaint," referred to in s. 199 of the Code of Criminal Procedure means a "complaint" as defined by s. 4, cl. (h) of that Code.

Jatra Shekh v. Reazat Shekh (1) distinguished.

[Foll. 12 Cr. L. J. 50=8 I. C. 1160=32 P. R. 1910 Cr.=32 P. L. R. 1911=51 P. W. R. 1910 Cr.]

REFERENCE to a Full Bench in Criminal Appeal by Tara Prosad Laha and others.

On the 7th December 1902, one Doyal Chand Mandal laid an information at the Mograhat police station to the effect that he had some five or six days before the occurrence complained of, gone to Charmaria Abad to cultivate his land, leaving at home his grandmother, father, and his wife, who was 17 years of age. While away from home he received information that his wife had been carried away from the house. On his return home he found his wife on the roadside, and she told him that on the previous night, after taking her meal, as she came out of the house, the accused caught hold of her, gagged her by putting a cloth into her mouth, and carried her to a jute-field lying to the north of the house, where they forcibly ravished her. She was detained in the jute-field that night and the whole of the next day.

Doyal Chand Mandal charged the accused with the offence of forcibly committing rape upon his wife. The case was sent up by the police under ss. 342, 352 and 354 of the Penal Code, and came before a Deputy Magistrate who committed the accused to take their trial at the Sessions on charges framed under ss. 376, 497 and 498 of the Penal Code. The accused were placed upon their trial before the Additional Sessions Judge of the 24-Perganas and a jury, and at the trial a further charge was added under s. 366 of the Code.

[911] The jury acquitted the accused on the charges under ss. 366, 376 and 497, but convicted them under s. 498. The accused appealed to the High Court.

At the hearing of the appeal, it was contended on behalf of the appellants that as the husband had only laid an information to the police and had not made a complaint as required by s. 199 of the Criminal Procedure Code, the Court could not take cognizance of the case; the conviction was therefore illegal and must be set aside. It was also contended that if the information was a 'complaint' within the meaning of s. 199 of the Code, it was a complaint of offences under

* Reference to Full Bench in Criminal Appeal No. 991 of 1902.

Full Bench: Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Ghose, Mr. Justice Rampini, Mr. Justice Henderson and Mr. Justice Geldt.

(1) (1892) I. L. R. 20 Cal. 488.

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ss. 366 and 376 of the Penal Code, and not a complaint of an offence under s. 493 of the Penal Code; and if it was not a complaint of an offence under s. 493, then s. 238, cl. (3) of the Criminal Procedure Code made the conviction illegal, and the case of *Chemon Garo v. Emperor* (1) was relied on.

On behalf of the Crown it was contended that "complaint" in s. 199 of the Criminal Procedure Code should be construed in its ordinary sense and not limited to "complaint" as defined in that Code, and reliance was placed on the case of *Jatra Shekh v. Reazat Shekh* (2).

The Criminal Bench of the High Court (HARINGTON and BRETT, JJ.) being of opinion that the decisions in the two cases cited were irreconcilable, referred the matter to a Full Bench in the following terms:—

The appellants in this case have been convicted of an offence under section 498 of the Indian Penal Code, and have been sentenced to 18 months' rigorous imprisonment.

The facts are as follows:—

On December 7th, 1902, Doyal Chand Mandal laid an information at the Mograhat police station to the following effect:—

"I, Doyal Chand Mandal of Shibpur, on coming to the thana, am making this statement that five or six days before the occurrence I went to Charamaria Abad to cultivate my land. There were in the house my old grandmother, Saramoni Bewa, father, Chandī Churn Mandal, and wife, Narain Dasi, aged 17 years. Ram Mandal of Tashrala village sent me information in the afternoon of last Thursday that my father is not finding out my wife who has been carried away from the house, but is not known to which place or by whom she has been carried away. On receipt of this information I returned home in the night of the aforesaid Thursday, and I heard from my father, Chandī Churn Mandal, verbally that on the 9th July last, [312] Wednesday, he had been to Baila Chandī to the house of my sister: my grandmother the aforesaid Saramoni Dasi, and my wife, Narain Dasi, were only in the house. She was not to be seen anywhere from the evening. On learning this I was very much anxious. At about 10 P.M. in the night Nibaran Haldar of Tashrala village called me and said that when your wife was being carried by Jogen Laha, Tara Prosad Laha and Uma Charan Das of Shibpur village, I met them on the way. When Jogen, Tara Prosad and Uma Charan Das fled away, your wife caught hold of my feet and was crying. At that time Kala Charan Haldar of Tashrala village, who was coming with him from Salipat, also saw my wife. On hearing this I went with him to the roadside, where my wife was said to have taken her seat and to have been crying, and when we arrived there my wife caught hold of my feet, cried and said that yesternight when she was going to wash her mouth and hands after taking her meal at about 8 P.M. and just as she came out Tara Prosad and Jogendra Laha of Shibpur caught hold of her, gagged her by putting a cloth into her mouth and carried her to the jute-field lying at a distance of 8 or 10 *rasis* to the north of the house. When she was being carried there elder Jogen Laha, Suren Dutta, Uma Charan Das, Peary Dutta, Peary Nundy came and joined them in carrying her to the jute-field. There the accused forcibly ravished her. She was detained in the jute-field for the whole night and for the next whole day and was ravished by them. In the night of the next day, as she was in a dying state, Tara Prosad, elder Jogen Laha and Uma Charan Das with the intention of taking her to her house, were carrying her by the road when Nibaran and Kala Chand met them, and they fled leaving her there. After having heard all these I brought her home, and in the following morning I informed Ram Sagar Dutta and the collecting member Elahi Buksh of the occurrence. They having advised me to lodge a complaint at the thana, I came to the thana yesterday. When I came to the thana there was no one except the Munshi, whom I informed of the occurrence. On coming again to the thana this day I lodge my complaint charging the accused with the offence of forcibly committing rape upon my wife. My wife has been much injured and is bedridden—no strength to get up. For that reason I could not bring her here. The Panchayat did not submit any report. He came with me this day. I know to read and write. My statement, which was read over to me, being correctly recorded, I attached my signature to it."

(1) (1902) I. L. R. 29 Cal. 415.

(2) (1892) I. L. R. 20 Cal. 483.

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The case was sent up by the police as true under sections 352, 354, 342 of the Indian Penal Code, and came before the Deputy Magistrate in due course. He committed the accused to take their trial at the sessions on charges framed under sections 376, 497, 498 of the Indian Penal Code. The accused were placed upon their trial before the learned Additional Sessions Judge of the 24-Perganas and a jury, and at the trial a further charge under section 366 was added.

The jury unanimously acquitted the accused on the charges under sections 366, 376 and 497, but convicted them under section 498. The accused have appealed to this Court. 30 C. 910=8
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On behalf of the appellants it is contended that the Court could not legally take cognizance of the charge under section 498 because no complaint had been made by the husband in accordance with section 199 of the Criminal Procedure Code.

Section 199 of the Criminal Procedure Code is in these terms :—

“No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by [913] the husband of the woman or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.”

“Complaint” is defined by section 4, clause (h) of the Criminal Procedure Code thus :—

“In this Code the following words and expressions have the following meanings unless a different intention appears from the subject or context :—

“(h) Complaint means the allegation 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, had committed an offence, but it does not include the report of a police officer.”

Section 238 provides that a person charged with one offence may be convicted of a minor offence when the particulars proved only constitute a minor offence ; but it contains the following clause :—(3) “Nothing in this section shall be deemed to authorise a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.”

It is contended—

1. That the husband has only laid an information to the police and has not made a complaint as required by section 199 of the Code. The Court therefore could not take cognizance of the case and the conviction must be set aside ;

2. That if the information be a complaint within section 199 of the Criminal Procedure Code, it is a complaint of an offence under sections 366 and 376 of the Indian Penal Code, and not a complaint of an offence under section 498 of the Indian Penal Code, and if it be not a complaint of an offence under section 498, then section 238, clause (3) makes the conviction illegal.

In support of these arguments the case of *Chemon Garo v. Emperor* (1) was relied on. In it the Court, following the case of *Empress v. Kallu* (2) held “that a Court could not take cognizance of an offence under section 497 of the Indian Penal Code (and it is submitted, the reasoning applies equally to an offence under section 498 of the Indian Penal Code), without a formal complaint of that offence as provided by law.”

For the Crown it is contended that “complaint” in section 199 must be construed in its ordinary sense and not limited to complaint as defined in the Criminal Procedure Code. It was urged that the object of the section was to prevent a Magistrate inquiring into differences between husband and wife when the parties were not desirous of moving him so to do, and that object was equally attained whether the complaint was laid to the police or to a Magistrate. It was also contended that the fact stated in the complaint made to the Police by the husband sufficiently disclosed an offence under section 498 of the Indian Penal Code to justify the conviction.

Reliance was placed on the case of *Jatra Shekh v. Reazat Shekh* (3), in which when a complaint had been made to the police by a husband of an offence under section 366 committed against his wife, and the Court, had convicted the accused under section 498 of the Penal Code, on reference to this Court that conviction was upheld.

The case of *Jatra Shekh v. Reazat Shekh* (3) was not referred to in the case of *Chemon Garo v. Emperor* (1). The decisions in the two cases are in [914] our opinion irreconcilable. We accordingly refer to a Full Bench the following question :—

(1) (1902) I. L. R. 29 Cal. 415.

(3) (1892) I. L. R. 29 Cal. 403.

(2) (1882) I. L. R. 5 All. 289.

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(1) Is the word "complaint" in section 199 of the Criminal Procedure Code limited to complaint as defined in section 4 of the Criminal Procedure Code?

If that question be answered in the negative, then the question:—

(2) Where a complaint is made by a husband of an offence under section 366 or 376 of the Indian Penal Code, can a charge be added and a conviction be had under section 498 of the Indian Penal Code?

On this reference,

Babu Narendra Kumar Bose for the appellant. The word "complaint" as used in the Criminal Procedure Code has, I submit, a perfectly well-understood meaning. It means an allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence: see s. 4 (h) of the Code. The Code of 1882 was the first to define what a complaint was, and it has been defined in precisely the same terms in the present Code. Since the Code of 1882 there has been a current of decisions to the effect that the word "complaint" as used in the Code is limited to complaint as defined in s. 4: see *Ishri v. Bakshi* (1), *The Queen-Empress v. Polavarapu* (2), *Queen-Empress v. Monu* (3), *Queen-Empress v. Sham Lall* (4), *Queen-Empress v. Chenchayya* (5).

The only case that may be said to be against me is that of *Jatra Shekh v. Reazat Shekh* (6). In that case, however, this question was not decided, the case was not argued, and their Lordships seemed to have overlooked this part of the question. S. 199 of the Criminal Procedure Code is in Chapter XV-B of the Code, headed "Conditions requisite for initiation of proceedings," which commences with s. 190, and I submit that the word "complaint" must have the same meaning in s. 199 as it has in s. 190. Further ss. 198 and 199 provide a special procedure, and must be strictly interpreted—*In re Ganesh Narayan Sathe* (7). I would also refer to the *Queen v. Luckhy Narain Nagory* (8), *Empress v. Kallu* (9), and *Queen-Empress v. Deokinandan* (10).

[915] *The Deputy Legal Remembrancer (Mr. Douglas White)* for the Crown. The point raised in the letter of reference has not been decided in the case of *Jatra Shekh v. Reazat Shekh* (6), so that decision cannot be said to be at variance with the other decisions of this Court. There has been a series of decisions in which it has been held that the word complaint as used in the Criminal Procedure Code is limited to "complaint" as defined in s. 4, cl. (h) of that Code. The latest cases on the point decided by this Court are the cases of *Kailas Kurmi v. Emperor* (11) and *Jagabundhoo Karmakar v. Emperor* (12).

MACLEAN, C. J. In my opinion the question submitted to us ought to be answered in the affirmative. The word "complaint," referred to in section 199 of the Code of Criminal Procedure means a "complaint" as defined by section 4, clause (h) of the same Code. The precise point now before us does not seem to have been decided by Mr. Justice Pigot and Mr. Justice Hill in the case of *Jatra Shekh v. Reazat Shekh* (6). The decisions in this Court and other Courts in India seem to proceed upon the view I have enunciated.

The conviction, therefore, cannot stand and must be set aside.

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| (1) (1883) I. L. R. 6 All. 96. | (7) (1889) I. L. R. 18 Bom. 600. |
| (2) (1884) I. L. R. 7 Mad. 563. | (8) (1875) 24 W. R. Cr. 18. |
| (3) (1888) I. L. R. 11 Mad. 443. | (9) (1882) I. L. R. 5 All. 233. |
| (4) (1887) I. L. R. 14 Cal. 707. | (10) (1887) I. L. R. 10 All. 39. |
| (5) (1900) I. L. R. 28 Mad. 626. | (11) <i>Ante</i> , p. 285. |
| (6) (1892) I. L. R. 20 Cal. 493. | (12) <i>Ante</i> , p. 415. |

GHOSE, J. I am of the same opinion. I should desire, however, to add that at one time I was inclined to think that the information lodged by the husband before the police having been placed before the Magistrate in due course, and the Magistrate having taken action upon such information, and the husband in his evidence before the Magistrate having referred to the information before the police, there was a complaint before the Magistrate within the meaning of the word "complaint" as given in section 4 of the Code of Criminal Procedure; but having considered more carefully the different sections of the Code which bear upon the question, and by the light of the various cases which have been quoted before us, I am of opinion that the information before the police could not be regarded as a complaint as defined by the Code.

[916] RAMPINI, J. I am of the same opinion. It appears to me that when the word "complaint" has been defined in clause (h) of section 4 of the Code of Criminal Procedure, it must be interpreted throughout that Code as bearing that meaning, and, therefore, in sub-section 3 of section 238, the word "complaint" can only mean a complaint made to a Magistrate. That being so, I think, the first question submitted to us must be answered in the affirmative. The second question does not arise.

HENDERSON, J. I am of the same opinion.

GEIDT, J. I am also of the same opinion.

Conviction set aside.

30 C. 916.

CIVIL RULE.

MUNNA LAL CHOWDHRY v. PADMAN MISSER.*

[14th May, 1903.]

Jurisdiction—Sanction to prosecute—Criminal Procedure Code (Act V of 1898), s. 195, sub-ss. (6) and (7)—Subordinate authority—Sonthal Parganas Justice Regulation (V of 1893), s. 15.

For the purposes of s. 195 of the Code of Criminal Procedure, the Court of the Deputy Commissioner of Sonthal Parganas shall be deemed to be subordinate to the Court of the Commissioner of Bhagalpur. Accordingly, an application against an order of the Deputy Commissioner of Sonthal Parganas, revoking a sanction given by the Subordinate Judge of Godda under s. 195 of the Code of Criminal Procedure, should be made to the Commissioner of Bhagalpur, and not to the High Court.

[Com. 19 C. L. J. 292=23 I. C. 876; 41 Cal. 915.]

RULE granted to Munna Lal Chowdhry.

This Rule was issued by a Division Bench (GHOSE and PRATT, JJ.) calling upon the opposite party to show cause why an order of the Deputy Commissioner of Sonthal Parganas should not be set aside.

[917] On the 4th October 1902, the Subordinate Judge of Godda, who was also the Sub-divisional Officer of the place, gave sanction for the prosecution of one Ram Sundar Singh and others under sections 177, 182 and 193 of the Indian Penal Code. From that order there was an appeal to the Deputy Commissioner of Sonthal Parganas, who revoked the sanction on the ground that it was passed without jurisdiction. Thereupon Munna Lal Chowdhry moved the High Court against that order and obtained this Rule.

* Civil Rule No. 64 of 1903 against the order of C. H. Bompas, Deputy Commissioner of Dumka, dated Dec. 2, 1902.

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