

SUPREME COURT OF INDIA

Muzaffar Ali Sajjad

Vs.

State of Andhra Pradesh

Crl.A.No.667 of 2002

(B. N. Srikrishna and K. G. Balakrishnan JJ.)

09.03.2004

JUDGMENT

B. N. Srikrishna, J.

1. The second respondent herein filed a criminal complaint before the IIInd Metropolitan Magistrate at Hyderabad alleging that the appellants herein had committed the offence punishable under Sections 4, 5 and 6 of the *Child Marriage Restraint Act, 1929*. The complainant alleged that these accused persons entered into conspiracy and contracted the marriage of Mahjabeen Fatima with the 3rd accused Muzamil Ahmed Sajid on 24-2-1997 at 7 p.m. at Sameera Function Hall in Hyderabad. The complainant alleged that Mahjabeen Fatima was born on 4-1-1980 and at the time of her marriage with the 3rd accused she was a "child" and hence the accused committed the offence under the Act. The complainant gave a sworn statement before the Magistrate on 19-3-1997 and thereafter summons were issued to these accused persons.

2. The appellants filed petition under Section 482 of the Criminal Procedure Code challenging the issuance of summons on the ground that no case was made out against the appellants. The appellants alleged that no enquiry was conducted by the Magistrate as contemplated under Section 10 of the Child Marriage Restraint Act read with Section 202 Cr PC. The pleas raised by the appellants were not accepted by the High Court and the petition was dismissed. The order passed by the Magistrate is challenged before us.

3. We heard the counsel for the appellants and also the counsel for the complainant. We also heard Mr. Huzffa Ahmadi, learned counsel appearing on behalf of the Muslim Personal Law Board as intervenor.

4. As regards A-8 and A-9, the allegation in the complaint is that they were witnesses to the marriage agreement allegedly executed between the parties. A-9 Mir Jameel Ahmed is no more and the proceedings against him have lapsed. As regards A-8 Mir Mohd. Haleem, no allegations are made against him in the complaint except stating that he was a witness to the marriage contract. So also there are no allegations either in the complaint or in the statement

that A-5, A-7 and A-8 either performed or conducted or directed or actively participated in the alleged child marriage.

5. The remaining accused are A-1, A-3, A-4 and A-6, A-2 is stated to be dead. As part of enquiry under Section 202 Cr PC, the complainant had given a sworn statement. Under Section 202 Cr PC before issuing process, the Magistrate should be satisfied prima facie, that the accused have committed the offence. The counsel for the appellants pointed out that as regards Accused 5, the mother of the bride, Accused 7 Abul Hassan Mir Nazeer Ahmed, uncle of the bride, no allegations have been made in the complaint. We have perused the complaint and the statement given by the complainant. During the relevant period, the bride was allegedly staying with the 4th accused Wajidunnisa Begum and A-5, the biological mother of the bride was staying elsewhere. We do not find any justifiable reason for the Magistrate to issue summons against A-5. So also nothing is mentioned in the complaint regarding the rote played by A-7. Therefore, proceedings against A-5, A-7 and A-8 are liable to be quashed.

6. In the case of child marriage, offences are punishable under the Child Marriage Restraint Act and Section 10 of the Act specifically provides that there should be an enquiry under Section 202 Cr PC. From the sworn statement of the complainant and the records which were produced by the complaint, we are not satisfied that a proper inquiry was conducted by the Magistrate.

7. In the absence of a proper enquiry, issuance of summons by the Magistrate to the accused was not legal. The Magistrate would be at liberty to conduct afresh preliminary enquiry as contemplated under Section 10 of the Child Marriage Restraint Act read with Section 202 Cr PC and on being satisfied prima facie, to justify for issue of process, the Magistrate would be at liberty to proceed against A-1, A-3, A-4 and A-6. With the above directions, the matter is remitted back to the Magistrate for the said purpose. Proceedings against accused A-5, A-7 and A-8 are quashed. The appeal is disposed of accordingly.