

LEGAL NOTES

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Chapter XX of Indian Penal Code deals with the offences relating to Marriages. One such offence falls under section 494 IPC.

Section 494 IPC was made cognizable in Andhra Pradesh by the State amendment brought to the First schedule appended to Cr.P.C. by Act 2 of 1992.

In view of the State amendment the investigating agency is at liberty to register a case and conduct investigation in to the offence of bigamy alleged against the accused. But Section 198 Cr.P.C. imposes a restriction on the court to take cognizance of offences U/s 494 IPC based on police reports. This Section relates to prosecution for offences against marriage.

SECTION 198 Cr. P.C. READ AS FOLLOWS:

No Court shall take cognizance of an offence punishable under chapter XX of Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence.

The Verbatim of Section 198 Cr.P.C. reveals that a Complaint should be filed by the aggrieved person in Court. The complaint and Police report are defined in Section 2 of the Cr.P.C.

Sec. 2 (d) Cr.P.C.:

"Complaint" means any allegation made orally or in writing to a Magistrate with a view to taking a cognizance under this code, that some person, known or unknown has committed an offence, but does not include a police report. Thus the requisites of complaint are

(1) An oral/ written allegation (2) That persons known or unknown has committed an offence (3) it must be made to a Magistrate (4) with the object that the Magistrate should take cognizance of it.

Sec. 2 (r) Cr.P.C.:

"Police Report" means a report forwarded by a Police Officer to a magistrate under sub section (2) of Section 173 Cr.P.C.

As could be seen from the above two definitions, it is clear, that the complaint is different from Police report. As far as the offence under Section 494 IPC is concerned, the aggrieved person must lodge a complaint to a Magistrate with a view to take cognizance of it U/s 190 (a) of Cr.P.C.

The proviso (c) of section 198 Cr.P.C. clearly discloses, that who is the aggrieved person and who are entitled to lodge a complaint before a Magistrate.

PROVISO (C) 198 Cr.P.C.

Where the person aggrieved by an offence punishable under section 494 of the Indian Penal Code, is the wife, complaint may be made on her behalf by her father, mother, sister, son or daughter or by father's or mother's brother or sister or with the leave of the Court, by any other person related to her by blood, marriage or adoption.

From the above proviso, it is learnt that the persons mentioned in the proviso are only entitled to lodge a complaint before a magistrate, but not the Police Officer.

The Hon'ble High Court of A.P. has examined the issue in D. VIJAYA LAKSHMI Vs. D. SANJEEVE REDDY AND OTHER IN 2000(2) ALT (Cri.) 136 (A.P) and held that,

"In view of the State amendment, the investigating agency is entitled to investigate the offence alleged Under Section 494 of the IPC. But that is not the end of the matter. There are certain limitations for the Court to take cognizance. As could be seen from Chapter XIV of the Cr.P.C. one such limitation enjoined Under Section 198 Cr.P.C. bars the

Court from taking cognizance of any offence falling Under Chapter XX of the Indian Penal Code and relating to institution of marriage with the avowed object of preserving the institution of marriage. This bar enjoined that Section 198 Cr.P.C. is for the Court but not for the investigating agency. Although the agency is at liberty to register a case and conduct investigation in to the offence under section 494 of the IPC, the Court is precluded from taking cognizance of the said offence in view of the mandatory provisions of section 198 of the Cr.P.C. It may be reiterated here that bar is for the Court but not for the investigating agency. There has been no amendment to section 198 so as to bring the same in consonance with the State amendment brought to Section 494 of the IPC as has been done in respect of the offence U/s 498 (A) by

incorporating Section 198 (A) of Cr.P.C. Section 198 being a legislation of the Parliament would prevail in the event of any inconsistency between the State law and the Central law since both pertain to the concurrent list. The initial cognizance taken by the court upon the Charge sheet filed by the investigating agency, namely the Sub-Inspector of Police, itself is bad. That clearly vitiates the entire trial and the eventual conviction by the trial court of the 1st respondent herein"-

This anomaly is clearly due to the fact that while making the offences U/s 494 to 496 IPC cognizable, the restrictions contained in Sec. 198 Cr.P.C. were not deleted and no amendment was made to Sec. 198 Cr.P.C. There is need to amend Sec. 198 Cr.P.C. Till such time treating these offences as cognizable is of no use.

