



HC-KAR

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NC: 2025:KHC-K:7762
CRL.P No. 200976 of 2025

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**



DATED THIS THE 15TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CRIMINAL PETITION NO.200976 OF 2025

(482(CR.PC)/528(BNSS))

BETWEEN:

1. NEELAKANTESHVAR S/O DEVINDRAPP A IDIGA,
AGE: 35 YEARS, OCC: BUSINESS & AGRICULTURE
2. SMT. CHANDRAKALA W/O DEVINDRAPP A IDIGA
AGE: 50 YEARS OCC: HOUSE HOLD
3. SRI. MANOHAR S/ O DEVINDRAPP A IDIGA,
AGE: 30 YEARS OCC: COOLIE
4. SRI. NARSING S/ O DEVINDRAPP A IDIGA,
AGE: 28 YEARS OCC: COOLIE
5. SMT. MANGALA W/O VENKATESH GOUDA,
AGE: 37 YEARS OCC: PRIVATE TEACHER
6. SMT. PRABHAVATI W/O MARUTI @ MARENNA KALA,
AGE: 33 YEARS OCC: HOUSE HOLD
ALL OF R/O KOLIWADA, YADAGIRI,
TQ: AND DIST: YADAGIRI
7. VENKATESH S/O KRISHNA
AGE: 37 YEARS, OCC: COOLIE
8. MARUTI @ MARENNA S/O YALLAYYA KALAL,
AGE: 47 YEARS, OCC: BUSINESS
R/O KOLIWADA, YADAGIRI,
TQ AND DIST: YADAGIRI





PETITIONER NOS.1 TO 4 AND 6 ARE
R/O GANDHI NAGAR THANDA, YADAGIRI,
TQ AND DIST: YADAGIRI

...PETITIONERS

(BY SRI. GANESH NAIK, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA THROUGH
RAICHUR WOMEN POLICE STATION DIST: RAICHUR
REPRESENTED BY ADDL. S.P.P,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585103
2. SMT. TANUJA W/O NEELAKANTESHIWARA
AGE: 26 YEARS OCC: HOUSEHOLD
R/O GANDHI NAGAR, YADAGIRI,
TQ AND DIST: YADAGIRI
NOW AT 1ST CROSS, SHAKTI NAGAR RAICHUR
DIST: RAICHUR-584102

...RESPONDENTS

(BY SRI JAMADAR SHAHABUDDIN, HCGP FOR R1;
SRI D. P. AMBEKAR, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. (OLD), UNDER SECTION 528 OF BNSS (NEW), PRAYING TO SET ASIDE THE ORDER DATED 09.05.2024 IN C.C.NO.1818/2024 (P.C.NO.384/2023), PASSED BY THE PRL. SENIOR CIVIL JUDGE AND CJM AT RAICHUR AND QUASH THE FURTHER PROCEEDINGS AGAINST THE PETITIONERS IN C.C.NO.1818/2024, ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND CJM AT RAICHUR.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.12.2025 COMING ON FOR 'PRONOUNCEMENT OF ORDERS' THIS DAY, THE COURT MADE THE FOLLOWING:



CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CAV ORDER

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

Petitioners in the captioned petition are assailing the order dated 09.05.2024 passed by the learned Magistrate, wherein, cognizance is taken by the learned Magistrate advertng to the charge sheet filed by the Investigating Officer for the offence punishable under Section 494 of Indian Penal Code, 1860 (for short 'IPC').

2. Brief facts leading to the case are as under:

The second respondent/complainant instituted a private complaint in P.C. No. 384/2023 against the first petitioner/her husband and the other accused, alleging that the first petitioner had contracted a second marriage during the subsistence of the complainant's marriage with him and thereby committed the offence of bigamy. The complainant sought a reference of the matter for investigation.



3. Upon presentation of the said private complaint, the learned Magistrate referred the matter under Section 156(3) of Cr.P.C. for investigation for the offences punishable under Sections 498A and 494 of IPC. Pursuant thereto, the Investigating Officer submitted a charge sheet. While dropping the charge under Section 498A of IPC, the Investigating Officer filed a final report for the offence punishable under Section 494 of IPC alone. The learned Magistrate, on perusal of the charge sheet material, took cognizance of the offence under Section 494 of IPC. It is this cognizance order that is assailed in the present petition.

4. Learned counsel for the petitioners contends that the referral of the complaint under Section 156(3) of Cr.P.C. itself is legally unsustainable, since the offence under Section 494 of IPC is non-cognizable. It is further argued that the final report submitted by the police cannot be treated as a "complaint" within the meaning of Section 198(1)(b) or Section 198(2)(b) of Cr.P.C. Once the only



surviving offence is under Section 494 of IPC, the bar under Section 198(1) of Cr.P.C. becomes absolute, and cognizance could have been taken only upon a complaint filed by the aggrieved person. Therefore, the Magistrate could not have taken cognizance upon a police report under Section 190(1)(b) of Cr.P.C.

5. *Per contra*, learned counsel for the respondents submits that the initial private complaint under Section 200 of Cr.P.C. was itself filed by the aggrieved wife, thereby satisfying the mandate of Section 198(1) of Cr.P.C. It is contended that when the Magistrate, instead of recording the sworn statement, chose to refer the matter for investigation under Section 156(3) of Cr.P.C., the subsequent police report assumes the character of a final report under Section 173 of Cr.P.C., enabling the Magistrate to take cognizance under Section 190(1)(b) of Cr.P.C. It is therefore urged that no illegality can be attributed to the cognizance order.



6. This Court has heard the learned counsel for the parties and carefully examined the relevant statutory provisions and the prayer sought in the private complaint.

7. The following points arise for consideration:

(1) Whether the cognizance taken by the Magistrate under Section 190(1)(b) of Cr.P.C. for an offence under Section 494 of IPC is in violation of the bar contained in Section 198(1) of Cr.P.C.?

(2) Whether the Magistrate was justified in taking cognizance on a police report after referring the private complaint under Section 156(3) of Cr.P.C., notwithstanding the embargo under Section 198 Cr.P.C. in respect of an offence under Section 494 of IPC?

8. Before examining the above issues, it is necessary to extract the prayer made in the private complaint in P.C. No. 384/2023, which reads as follows:

"The petition may kindly be allowed and the SHO of Mahila PS. Raichur may kindly be



directed to register the case on the basis of the complaint filed by the petitioner dated 31.07.2023 and to investigate the case in accordance with law and submit report, in the interest of justice and equity.”

9. On a perusal of the prayer in the private complaint, it becomes evident that the complainant explicitly sought a direction to the police to investigate the alleged offence of bigamy. The learned Magistrate, acting upon such prayer, referred the complaint for investigation under Section 156(3) of Cr.P.C. The legality of such referral has to be tested in the context of the express mandate of Section 198(1) of Cr.P.C.

10. Section 198(1) of Cr.P.C. is couched in negative terms and creates an absolute statutory bar. It categorically declares that no Court shall take cognizance of an offence punishable under Chapter XX of the IPC, which includes Section 494 of IPC, except upon a complaint made by the person aggrieved. The legislative intent behind this embargo is unmistakable. Offences



relating to matrimonial wrongs, such as bigamy, adultery, and similar intimate offences are treated as matters of personal injury to the marital relationship. To prevent misuse, unnecessary public intrusion, or investigations initiated by extraneous persons, the legislature has reserved the locus exclusively to the aggrieved spouse. Thus, Section 198(1) of Cr.P.C. not only protects the sanctity of matrimonial ties but also ensures that the State machinery is not set into motion unless the aggrieved spouse chooses to prosecute.

11. The provision, however, does not restrict the aggrieved person from approaching the Court. But what Section 198(1) of Cr.P.C. unequivocally restricts is the mode of taking cognizance namely, that cognizance must arise only upon a complaint of the aggrieved person in the strict sense of a complaint under Section 2(d) of Cr.P.C., and not upon a police report.



12. When Section 198(1) of Cr.P.C. is examined conjointly with Section 190 of Cr.P.C., the statutory scheme becomes clear. Section 190(1)(a) of Cr.P.C. empowers the Magistrate to take cognizance upon a "complaint of facts." In contrast, Section 190(1)(b) of Cr.P.C. contemplates cognizance upon a "police report." But where the statute itself mandates that cognizance of a particular class of offences namely those falling under Chapter XX of IPC can be taken only upon a complaint by the person aggrieved, the general enabling provision in Section 190(1)(b) of Cr.P.C. necessarily stands excluded.

13. The scope and ambit of Section 198 of the Code of Criminal Procedure, 1973, being a clear exception to the general rule enabling any person to set the criminal law in motion, has been authoritatively settled by the Hon'ble Supreme Court. Chapter XX of the Indian Penal Code deals with offences against marriage, and the legislative mandate under Section 198 Cr.P.C. places an express embargo on the power of the Court to take cognizance of



such offences, unless the complaint is made by the “person aggrieved” by the offence. The expression “complaint” occurring in Section 198 Cr.P.C. necessarily takes its colour from the definition under Section 2(d) Cr.P.C., which contemplates an allegation made orally or in writing to a Magistrate with a view to taking action under the Code, expressly excluding a police report. Therefore, save and except in statutorily carved-out situations, cognizance of offences under Chapter XX IPC cannot be founded on a police report simpliciter.

14. The distinction between (i) a case where the police independently registers an FIR and submits a report after investigation in respect of both cognizable and non-cognizable offences, and (ii) a case where a private complaint is forwarded by the Magistrate for investigation under Section 156(3) Cr.P.C., is of decisive significance. In ***Ushaben v. Kishorbhai Chunilal Talpada, 2012 (6) SCC 353*** the Hon’ble Apex Court examined whether, in a complaint alleging commission of offences under Section



498-A IPC (cognizable) and Section 494 IPC (non-cognizable and falling under Chapter XX), the Court could take cognizance of the offence under Section 494 IPC on the basis of a police report. The Hon'ble Supreme Court answered the issue in the affirmative, holding that when the police register a case for a cognizable offence and, in that process, investigate and submit a report encompassing both cognizable and non-cognizable offences, including those under Chapter XX IPC, the Magistrate is not precluded from taking cognizance of all such offences on the police report. The rationale underlying the said principle is that no fetter can be placed on the statutory power of the police to investigate a cognizable offence, merely because the same incident also discloses a non-cognizable offence falling under Chapter XX IPC.

15. However, the Hon'ble Supreme Court has, at the same time, drawn a clear demarcation between such a situation and one where the Magistrate, at the threshold,



forwards a private complaint for investigation under Section 156(3) Cr.P.C. In such cases, as explained in ***M/s. SAS Infratech Pvt. Ltd. v. State of Telangana & Anr., Criminal Appeal No.2574/2024*** the Magistrate does not take cognizance of the offence while directing investigation; cognizance is deferred and arises only when the Magistrate applies his mind to the complaint under Chapter XV of the Code. The report submitted by the police pursuant to an order under Section 156(3) Cr.P.C. is, by virtue of the Explanation to Section 2(d) Cr.P.C., deemed to be a complaint only in respect of offences which are non-cognizable and where the investigation has been directed by the Magistrate. Even in such a scenario, when the offence alleged falls within Chapter XX IPC, the statutory requirement of Section 198 Cr.P.C. cannot be diluted or bypassed.

16. In the present case, though the learned Magistrate was not legally barred from forwarding the private complaint lodged by wife competent under Section



198 Cr.P.C. for investigation under Section 156(3) Cr.P.C., the decisive stage is that of taking cognizance. At that stage, the police report submitted pursuant to such direction does not satisfy the essential ingredients of a “complaint” within the meaning of Section 2(d) Cr.P.C. for the purposes of Section 198. This is because the police report is not the original complaint of the aggrieved person invoking the jurisdiction of the Magistrate to take cognizance of an offence under Chapter XX IPC; rather, it is only a report of investigation. Consequently, the Magistrate is duty-bound to revert to the original complaint if any filed by the aggrieved person and follow the procedure prescribed under Section 200 read with Section 198 Cr.P.C. before taking cognizance, albeit with the benefit of the materials collected during investigation.

17. The above legal position also stands reinforced by the decision of the Hon’ble Supreme Court in ***Pradeep S. Wodeyar v. State of Karnataka, Criminal Appeal No. 1288 of 2021*** wherein it has been held that certain



procedural lapses or irregularities in the matter of taking cognizance may not ipso facto vitiate the proceedings, unless they go to the root of the jurisdiction. However, where the statute itself imposes a substantive bar on cognizance such as under Section 198 Cr.P.C., non-compliance cannot be brushed aside as a mere irregularity. The mandate of Section 198 is jurisdictional in nature, and cognizance taken in disregard of the said provision would be without authority of law.

18. Thus, while the ratio in ***Ushaben (supra)*** permits cognizance on a police report in cases where investigation originates from registration of a cognizable offence, the same principle cannot be extended to a case like the present one, where the foundation is a private complaint forwarded under Section 156(3) Cr.P.C. In such circumstances, the police report does not, by itself, fulfil the statutory requirements of a "complaint" under Section 2(d) Cr.P.C. for offences under Chapter XX IPC, and the Magistrate must necessarily adhere to the procedure



contemplated under Section 200 read with Section 198 Cr.P.C., acting on the original complaint of the aggrieved person.

19. In the present case, although the complainant is undeniably the aggrieved wife, the private complaint filed by her under Section 200 of Cr.P.C. did not contain any supporting material and was expressly intended only to seek referral of the matter to the police for investigation. The learned Magistrate, without recording the sworn statement of the complainant as mandated under Chapter XV of Cr.P.C., mechanically referred the matter for investigation under Section 156(3) of Cr.P.C.

20. It is also relevant to note that though the learned Magistrate referred the matter under Section 156(3) of Cr.P.C. for investigation into the alleged offences punishable under Sections 498A and 494 of IPC, the Investigating Officer, upon completion of investigation, has filed a final report only for the offence under Section 494



of IPC, having dropped the charge under Section 498A of IPC. The consequence of this development is significant. Once the investigation culminated solely in a charge sheet for the offence under Section 494 of IPC an offence falling squarely under Chapter XX of IPC, the bar under Section 198(1) of Cr.P.C. became fully operative. The referral order, which may have been initially justified only because the complaint contained an allegation under Section 498A of IPC (a cognizable offence), lost its legal foundation the moment the police themselves concluded that no offence under Section 498A of IPC was made out. In such circumstances, the charge sheet filed exclusively for an offence under Section 494 of IPC cannot confer jurisdiction upon the Magistrate to take cognizance under Section 190(1)(b) of Cr.P.C., as the statutory embargo under Section 198(1) of Cr.P.C. prohibits cognizance of bigamy based on a police report.

21. Such referral was patently without jurisdiction, because an offence under Section 494 of IPC is non-



cognizable, and by virtue of Section 198(1) of Cr.P.C., cannot be investigated by police unless the Magistrate takes cognizance upon a complaint and records sworn statements, or unless the law expressly permits police investigation which it does not.

22. Once the referral under Section 156(3) of Cr.P.C. was without jurisdiction, the entire investigation and the consequent charge sheet suffer from the same foundational illegality. A final report filed under Section 173 of Cr.P.C. cannot be elevated to the status of a "complaint" under Section 198(2) of Cr.P.C. because such equivalence is permissible only in limited contingencies expressly provided by law. Bigamy is not one such contingency. Therefore, the police report cannot be treated as a complaint, nor can the Magistrate take cognizance under Section 190(1)(b) of Cr.P.C. for an offence under Section 494 of IPC.



23. Accordingly, cognizance taken on the basis of a police report in the present case is clearly contrary to the statutory embargo of Section 198(1) of Cr.P.C. and therefore wholly unsustainable.

24. In view of the foregoing discussion, this Court has no hesitation in holding that although the aggrieved wife did file a private complaint, the nature of the complaint reveals that she sought only a referral to the police, which the Magistrate was not empowered to grant for an offence exclusively triable upon a complaint. The reference made under Section 156(3) of Cr.P.C. in respect of a non-cognizable offence falling under Chapter XX of IPC is, therefore, without jurisdiction, illegal and void. Consequently, the charge sheet filed pursuant to such illegal referral is also vitiated, and the Magistrate's act of taking cognizance on such a police report for the offence punishable under Section 494 of IPC amounts to a clear infraction of Section 198(1) of Cr.P.C. Accordingly, the



following points formulated by this Court are answered in the affirmative.

25. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

i. In the result, the Criminal Petition is ***allowed.***

ii. The order of the learned Magistrate taking cognizance for the offence punishable under Section 494 of IPC on the basis of the police report is hereby set aside.

iii. It is clarified that nothing in this order shall preclude the complainant from availing remedies available to her under the Criminal Procedure Code, in accordance with law.

**SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE**

SRT
List No.: 2 SI No.: 47
CT:SI