HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S. B. Criminal Miscellaneous Petition No. 89/2019

Anuj Sharma S/o Shri D.D. Sharma, R/o 497-A, Vidyut Nagar, Ajmer Road, Jaipur (Rajasthan).

----Accused-Petitioner

Versus

1. State of Rajasthan through PP

...Non Petitioner

2. Rajesh Mahala S/o Shri B.L. Mahala, aged about 43 years, R/o 53-K, C-5 Scheme Khatipura Road, Vaishali Nagar, Jaipur.

----Respondents

For Petitioner	:	Mr. Rajneesh Gupta Advocate.
For Respondents	:	Mr. Vivek Choudhary Public Prosecutor.

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

REPORTABLE

03/11/2025

1. The petitioner has preferred this criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C.') seeking quashing of order dated 20.02.2017 passed by the Court of Metropolitan Magistrate No. 14, Jaipur Metropolitan (hereinafter to be referred as 'the trial court'), whereby cognizance was taken against him for the offence punishable under Section 497 of the Indian Penal Code (hereinafter to be referred as 'IPC'), and order dated 20.11.2018 passed by the Court of Additional Sessions Judge, Women Atrocities Cases No. 2, Jaipur Metropolitan (hereinafter to be

referred as 'the revisional court'), whereby revision petition filed by the petitioner against the cognizance order was dismissed.

2. The brief facts leading to filing of the present petition are that the marriage of Respondent No. 2-the complainant was solemnized on 09.04.2000 with Smt. Purnima @ Neetu. Two children were born out of their wedlock. The complainant lodged a complaint before the trial court alleging that his wife, who was working as a teacher at Saint Soldier School, Jaipur, had developed physical relations with the petitioner, who happened to be her student. On the basis of said complaint, FIR No. 434/2013 was registered at Police Station Vaishali Nagar, Jaipur City (South) for commission of offence punishable under Section 497 IPC.

3. After investigation, the police submitted a negative final report finding absence of any evidence in support of allegations in FIR and observing that the FIR appeared to have been lodged merely on suspicion. A divorce petition between the complainant and his wife had already been filed in the year 2005.

4. The complainant filed a protest petition, which was dismissed and the negative final report was accepted by the trial court vide order dated 16.12.2014. However, in revision petition filed by the complainant, the matter was remanded back to the trial court for fresh consideration. Thereafter, after remand, the trial court vide order dated 20.02.2017 took cognizance against the petitioner for the offence punishable under Section 497 IPC.

5. The petitioner challenged cognizance order dated 20.02.2017 before the revisional court by way of filing of revision petition. During pendency of the said revision petition, the Hon’ble

Supreme Court on 27.09.2018 delivered judgment in the case of **Joseph Shine v. Union of India, 2019(3) SCC 39** striking down Section 497 IPC as unconstitutional, being violative of Articles 14, 15 and 21 of the Constitution of India.

6. Nevertheless, the Revisional Court dismissed petitioner's revision vide order dated 20.11.2018 holding that the judgment of **Joseph Shine (supra)** would operate prospectively and, therefore, would not affect proceedings already pending prior to 27.09.2018.

7. Aggrieved thereby, the petitioner has invoked inherent jurisdiction of this Court under Section 482 Cr.P.C. contending that once Section 497 IPC has been struck down, any prosecution or cognizance taken under the said provision stands vitiated and non-est in law.

8. Learned counsel for the petitioner submits that orders dated 20.02.2017 and 20.11.2018 are wholly unsustainable in law. It is argued that after the declaration made by the Hon'ble Supreme Court in the case of **Joseph Shine (supra)**, Section 497 IPC has been decriminalised and on account of Section 497 IPC being struck down, it ceased to exist from inception and all proceedings founded thereupon would automatically abate. Learned Counsel for the petitioner relied upon the judgments in the cases of **Satyam Sudarshan v. The State of Telangana (Criminal Petition No. 1513/2019 decided by Single Bench of Telangana High Court on 03.08.2022); Chetan Kumar v. State of Punjab & Others, 2019 SCC OnLine P&H 6290; Rupesh v. Charandas & Another, 2018 SCC OnLine Bom**

6292; Devraj Dev v. State of Bihar & Another, 2019 SCC OnLine Pat 431 and **Ashok Kumar Singh v. State through Secretary, GNCT of Delhi & Another, 2025 SCC OnLine Del 2456.**

9. *Per contra*, learned Public Prosecutor, however, has opposed the petition contending that since in the present case, cognizance under Section 497 IPC was taken against the petitioner in the year 2017, i.e., prior to the decision in **Joseph Shine (supra)**, the said judgment would have only prospective operation and would not affect cases already instituted in the light of doctrine of prospective overruling. Hence, no error whatsoever has been committed by the revisional court in dismissing the revision petition by the petitioner.

10. I have heard rival submissions put forward by learned counsel for the parties and perused the record.

11. The core issue that arises for consideration is whether the decision of the Hon'ble Supreme Court in the case of **Joseph Shine (supra),** striking down Section 497 IPC, would apply to cases pending at the time of the decision or the same would only apply prospectively.

12. Indisputably, in the case of **Joseph Shine (supra)**, a Constitution Bench of the Hon'ble Supreme Court unequivocally held that Section 497 IPC violates Articles 14, 15, and 21 of the Constitution and accordingly, struck down the said provision in its entirety.

13. An objection has been raised by learned Public Prosecutor that in view of doctrine of prospective overruling,

judgment of Hon’ble Supreme Court in **Joseph Shine (supra)** shall have prospective operation only in future cases and not on the cases already pending or instituted prior to the date of judgment. In this regard, it would be relevant to observe that as regards the doctrine of prospective overruling is concerned, it allows the courts to apply new legal principles only to future cases to avoid unsettling of prior judgments or ongoing transactions, preserving legal stability. However, in the case of **Joseph Shine (supra)**, the Hon'ble Supreme Court struck down Section 497 IPC as unconstitutional being violating fundamental rights, which would apply retrospectively to all pending and ongoing cases. This retrospective application means that when the law was void *ab initio*, prosecutions under it could not legally stand. Unlike prospective overruling, retrospective effect here is necessary to fully uphold constitutional guarantees of equality, dignity and privacy, which would resultantly invalidate past and present pending prosecutions under the abolished law.

14. It is also significant to observe that the declaration of unconstitutionality by the Hon'ble Apex Court in above case did not contain any qualification restricting its operation prospectively. Once a provision is declared unconstitutional, it becomes void ab initio and cannot be the basis of any prosecution thereafter or even in respect of pending proceedings.

15. The Telangana High Court in **Satyam Sudarshan (supra)** held that, notwithstanding the date of institution, prosecution under Section 497 IPC cannot be continued after the declaration in the case of **Joseph Shine**, and such proceedings

deserve to be quashed. **Para 9 and 10** of the judgment are quoted here under:-

> *"9. However, it is to be noted that the Hon'ble Supreme Court has declared Section 497 of the Indian Penal Code as unconstitutional in **Joseph Shine v. Union of India (supra)**, which was decided on 27.09.2018. It is contended by the learned counsel for the respondent No.2 that this case was registered prior to 27.09.2018 and thereby the proceedings against the petitioner for the offence under Section 497 of the Indian Penal Code cannot be quashed. As per the record before the Court, the trial Court has taken cognizance of the case against the petitioner on 09.05.2018, which means the cognizance was taken against the petitioner prior to declaration by the Hon'ble Supreme Court that Section 497 of the Indian Penal Code as unconstitutional. Therefore, now the question arises as to whether the declaration of Section 497 of the Indian Penal Code as constitutional on 27.09.2018 applies to the cases, which are already pending.*
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> *10. The Hon'ble Supreme Court has decided in **Major General A.S.Gauraya and another v. S.N.Thakur[2] (1986) 2 SCC 709** that declaration of law by the Hon'ble Supreme Court applies to all the pending proceedings even with retrospective effect. Therefore, on considering the above authority of the Hon'ble Supreme Court, even though Section 497 of the Indian Penal Code was declared as unconstitutional on 27.09.2018, still it is applicable to the cases, which are pending even as on that date. Further, the High Court of Punjab and Haryana in a decision rendered on 28.02.2019 between **Chetan Kumar v. State of Punjab and others[3] 2019 0 Supreme (P&H) 221** ruled that striking down of Section 497 of the Indian Penal Code as unconstitutional on 27.09.2018 in case of Joseph Shine v. Union of India (supra) as constitutional being voilative of Articles 14, 15 and 21 of the Constitution of India also applies to the cases which are pending. Similarly in Criminal Revision Petition No.1081 of 2013 the High Court of Jharkand at Ranchi also held that declaration of Section 497 of the Indian Penal Code as unconstitutional in Joseph Shine v. Union of India (supra) also applies to the pending cases."*

16. Similarly, in **Chetan Kumar(supra)**, Punjab and Haryana High Court quashed the proceedings under Section 497 IPC holding that the law declared by the Hon'ble Supreme Court in the judgment of **Joseph Shine (supra)** would apply to pending cases as well. Para 3 of the judgment, being relevant, is reproduced as under:

> ***"3.** Learned counsel for the petitioner has contended that Hon'ble Supreme Court in Joseph Shine v. Union of India, (2018) 4 RCR (Cri) 480 : (2018) 11 Scale 556 has struck down Section 497 of the Penal Code, 1860 as unconstitutional*

being violative of Articles 14, 15 and 21 of the Constitution. As per the decision of Hon'ble Supreme Court in Maj. Genl. A.S. Gauraya v. SN Thakur, (1986) 2 SCC 709, a declaration of law by the Supreme Court applies to all pending proceedings even with retrospective effect."

17. Bombay High Court in **Rupesh v. Charandas (supra)** held that once Section 497 IPC is declared unconstitutional, pending proceedings or trial under the said provision cannot survive. Following portion of the judgment is relevant and the same is reproduced as under:-

*"**5.** As per the submissions of learned counsel for the applicant that now Hon'ble Apex Court has turned down Section 497 of the Penal Code, 1860. Learned counsel pointed out the judgment in the case of Joseph Shine v. Union of India reported in (2018) 11 Scale 556. Learned counsel has submitted that it has a retrospective effect in view of the judgment in the case of Maj. Genl. A.S. Gauraya v. S.N. Thakur reported in (1986) 2 SCC 709 : AIR 1986 SC 1440.*

***6.** Hon'ble Apex Court in the case of Joseph Shine v. Union of India (supra) has observed that Section 497 is unconstitutional. Hon'ble Apex Court has observed as under.*

> *The moving times have not left the law behind as we have just seen, and so far as engaging the attention of law makers when reform of penal law is undertaken, we may only hasten to add that even when the CrPC was fully replaced in 1973, Section 198 continued to be on the statute book. Even as of today, Section 497 IPC continues to be on the statute book. When these sections are wholly outdated and have outlived their purpose, not only does the maxim of Roman law, cessante ratione legis, cessat ipsa lex, apply to interdict such law, but when such law falls foul of constitutional guarantees, it is this Court's solemn duly not to wait for legislation but to strike down such law. As recently as in Shayara Bano (supra), it is only the minority view of Khehar, C.J.I. And S. Abdul Nazeer, J. that one must wait for the law to change legislatively by way of social reform. The majority view was the exact opposite, which is why Triple Talaq was found constitutionally infirm and struck down by the majority. Also, we are of the view that the statement in this judgment that stability of marriages is not an ideal to be scorned, can scarcely be applied to this provision, as we have seen that marital stability is not the object for which this provision was enacted. On all these counts, therefore, we overrule the judgment in Sowmithri Vishnu (supra). Equally, the judgment in V. Revathi (supra), which upheld the constitutional validity of Section 198 must, for similar reasons, be held to be no longer good law. We, therefore, declare that Section 497 of the Penal Code, 1860 and Section 198 of the Code of Criminal Procedure, 1973 are violative of Articles 14, 15(1) and 21 of the Constitution of India and are, therefore, struck down as being invalid.*

> ***7.*** *Hon'ble Apex Court in Maj. Genl. A.S. Gauraya v. S.N. Thakur (supra) has held that law laid down by the Supreme Court applies to all pending proceedings even with retrospective effect."*

18. Likewise, Patna High Court in **Devraj Dev (supra)** has held as under:

> *"**5.** In view of the aforesaid, once Section 497 of the Indian Penal Code itself has been held to be unconstitutional and Section 198 of the Code which allows for filing of complaint also meeting the same fate, cognizance against the opposite party no. 2 under Section 497 of the Indian Penal Code cannot be sustained and rightly it has been interfered by the Sessions Judge, Purnea by the impugned order dated 22.09.2014."*

19. Delhi High Court in **Ashok Kumar Singh (supra)** has reiterated that the judgment of the Hon'ble Supreme Court in **Joseph Shine (supra)** applies to all pending proceedings, as the striking down of a penal provision renders it void from inception. It was held as under :

> ***27. The next aspect which comes for consideration is whether the declaration of Section 497 IPC as unconstitutional*** *in Joseph Shine (supra) vide judgment dated 27.09.2018 is* ***retrospective and would be applicable to the present case which got initiated with a Complaint filed by the Husband on 24.04.10.***
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> ***28.*** *This aspect has been considered in the judgment Maj. Genl. A.S. Gauraya v. S.N. Thakur, (1986) 2 SCC 709 : AIR 1986 SC 1440 wherein the Apex Court had held that declaration of law by the Supreme Court applies to all the pending proceedings even with retrospective effect.*
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> ***29.*** *The principle as declared by the Apex Court, was followed by High Court of Telangana in Satyam Sudarshan v. State of Telangana Crl. Pet. No. 1513 of 2019 dated 03.08.2022.*
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> ***30.*** *Likewise Punjab and Haryana High Court in the case of Chetan Kumar v. State of Punjab, 2019 SCC OnLine P&H 6290, wherein the proceedings under Section 497 IPC were pending, were struck down in view of the judgment of the Apex Court in the case of Joseph Shine (supra), by observing that the judgment would apply even to the pending cases.*
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> ***31.*** *Similarly, High Court of Jharkhand in August Kumar Mehta v. The State of Jharkhand Crl. Rev. Pet. No. 1081/2013 has struck down the pending proceedings under Section 497 IPC."*

20. In the light of above consistent judgments, it is clear that the objection raised by the learned Public Prosecutor regarding the prospective application of judgment of the Hon'ble Supreme Court in the case of **Joseph Shine (supra)** is unfounded and cannot be accepted. Thus, it is hereby held that the declaration of unconstitutionality of Section 497 IPC by the Hon’ble Supreme Court operates retrospectively, nullifying all pending prosecutions based solely on that provision. However, the proceedings already culminated in the cases by concluding the trials prior to the judgment in the case of **Joseph Shine (supra)** cannot be reopened.

21. Moreover, in the present case, it is clear that the investigation earlier resulted in a negative final report, observing that the allegations were based merely on suspicion and conjecture, however, cognizance order dated 20.02.2017 lacks clarity and evidentiary foundation. Allowing the prosecution to continue in such circumstances, particularly under a provision now held void, would amount to gross abuse of process of law, which would also cause miscarriage of justice to the petitioner.

22. In view of the above discussion, this Court deems it just and proper to exercise its inherent jurisdiction under Section 482 Cr.P.C. and accordingly, this criminal miscellaneous petition is allowed. Order dated 20.02.2017 passed by the Metropolitan Magistrate No. 14, Jaipur Metropolitan and order dated 20.11.2018 passed by the Additional Sessions Judge, Women Atrocities Cases No. 2, Jaipur Metropolitan are hereby quashed and set aside. The proceedings arising out of FIR No. 434/2013

registered at Police Station Vaishali Nagar, Jaipur City (South) for commisison of offence punishable under Section 497 IPC along with all consequential proceedings are also quashed.

23. It is made clear that this judgment shall not affect any independent civil or matrimonial proceedings pending between the parties.

24. Pending applications, if any, stand disposed off.

(ANAND SHARMA),J

MANOJ NARWANI /40