



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 28th January, 2025

Pronounced on: 17th April, 2025

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CRL.M.C. 3652/2018 & CRL.M.A.28469/2018

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

.....Petitioner

Through: Mr. J.S.Rawat, Advocate.

Versus

1. **THE STATE**

Through Secretary
GNCT of Delhi.

2.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

.....Respondents

Through: Ms. Meenakshi Dahiya, Ld. APP for
the State.

Mr. Satish Kumar, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 of the *Code of Criminal Procedure, 1973* ('Cr.P.C' *hereinafter*) has been filed for quashing of the Order of the learned



ASJ dated 28.04.2018 whereby the Petitioner has been summoned under Section 497 of the *Indian Penal Code, 1860* ('IPC' hereinafter) in Complaint Case No.153/1 filed by [REDACTED] the [REDACTED]

2. Briefly stated, [REDACTED] got married to [REDACTED] on 28.02.1998 at Vikas Puri, New Delhi as per Hindu rites and customs. From their wedlock two sons were born.

3. The Complainant/Respondent No.2 had alleged that in the month of August, 2009 his wife started going to the Park near their house on the pretext of walk after dinner. He found in December, 2009 that [REDACTED] [REDACTED] had been making regular calls to his wife varying from 2 minutes to one hour and even at odd hours between 09:00 P.M. to 11:30 P.M. He, thus, realized that his wife was having an extra marital affair with him.

4. According to him, his wife along with [REDACTED] went to Lucknow on 21.01.2010 in a flight, where they stayed together in the night of 21.01.2010 in Hotel Piccadilly as husband and wife and had sexual-intercourse without the consent of the Complainant. On their return on 22.01.2010, he confronted his wife who told him to leave if he had any problem with their relationship.

5. He served a Legal Notice dated 05.04.2010 on his wife to restrain her relationship with [REDACTED]. Thereafter, he filed the Criminal Complaint under Section 497 IPC.

6. The learned M.M. after recording the pre-summoning evidence, discharged [REDACTED] vide Order dated 09.09.2016. He preferred a **Revision Petition No.57620/16** before the learned ASJ who vide impugned



Order dated 28.04.2018, set aside the Order of the learned M.M and summoned the Petitioner. Aggrieved by the Order of summoning, he has filed the present Petition.

7. The Petitioner has *asserted* that the learned ASJ has ignored the documentary evidence and has relied on the oral statement of the Complainant. It has not been appreciated that the stay of the Petitioner with his wife in the same room in the night of 21.01.2010 at Hotel Piccadilly, Lucknow, has not been established. In the absence of cogent evidence thereof, mere presumption of the Complainant that they resided in the same room or that they must have been involved in sexual activity, is presumptuous and no evidence to this effect is available.

8. It is further submitted that the learned M.M had discharged the Petitioner vide a detailed and well reasoned Order dated 09.09.2016. Such discharge is construed as an acquittal and the Revision Petition was not maintainable. The only option was to file a Leave to Appeal before this Court, as has been held by the High Court of Punjab & Haryana in Harvinder Singh vs. State of Punjab Criminal Revision No.1275 of 2011 (O&M) dated 28.01.2013 and also in Vinay Kumar vs. State of U.P. and Anr. 2007 CrI. L.J.3161 (AP).

9. It is, therefore, submitted that the impugned Order be set aside.

10. **The Respondent No.2-** [REDACTED] **in his Reply** has controverted all the assertions made in the Petition. It is explained that when he confronted his wife-[REDACTED] on her return from Lucknow, she filed a false and frivolous case under Section 12 of *Protection of Women from Domestic Violence Act, 2005* ('DV Act' *hereinafter*) against him which was subsequently withdrawn by her. Furthermore, the Petitioner had admitted in



Reply to Legal Notice that he had travelled with his wife to Lucknow. Despite his legal Notice, his wife has continued her illegal sexual relationship and they have started living an adulterous life in Overseas Apartment, Sector-9, Rohini, Delhi.

11. Furthermore, [REDACTED], Wife of Respondent No. 2, had filed for Divorce which has been granted in favour of the wife of Respondent No.2 vide Judgement dated 16.09.2016. She has also filed case for Maintenance and also Criminal Case under Section 406/498A IPC against Respondent No.2 at the instance of the Petitioner.

12. It is finally submitted that there is clear evidence of there being a adulterous relationship between Petitioner and his wife and, therefore, the learned ASJ has rightly summoned the Petitioner.

13. ***Written submissions have also been filed on behalf of the Petitioner wherein his averments in the Petition, are reiterated.*** Reliance has also placed on Joseph Shine v. Union of India AIR 2018 SC 4898 to submit that Section 497 IPC has been struck down as unconstitutional being violative of Article 14, 15 and 21 of the Constitution of India.

14. **Arguments heard and record perused.**

15. The Respondent No.2-[REDACTED] is the aggrieved husband who had filed a Criminal Complaint No.153/1, alleging that his wife [REDACTED] has been involved in an adulterous relationship with the Petitioner.

16. The learned M.M. vide detailed Order dated 09.09.2016 discharged the Petitioner. However, this Order of discharge was set aside by learned ASJ vide Impugned Order dated 28.04.2018 and he has been summoned for the offence under Section 497 IPC.



17. In order to appreciate the rival contentions of the parties, reference be made to Section 497 IPC, which reads as under :

“497. Adultery.—

Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.”

18. As per Black’s Law Dictionary, ‘adultery’ is a voluntary sexual intercourse of a married person with a person other than the Offender’s husband or wife.

19. In order to constitute an offence of adultery, following must be established :

- (i) Sexual intercourse between a married woman and a man *who is not a husband*;
- (ii) Such man *knows* and has reason to believe that *she is the wife of another person*;
- (iii) *Such sexual intercourse must take place with her consent* i.e. it does not amount to rape; and
- (iv) Sexual intercourse with a married woman must take place *without the consent or connivance of her husband*.

20. Section 497 IPC is restricted one as the consequence of which a *man* who is not a husband, in given circumstances, becomes criminally liable for



having committed adultery, while in other situations being a husband, he cannot be branded as a person who has committed adultery so as to invite culpability of Section 497 IPC.

21. The *first aspect* which emerges is that ironically, it is not *the husband or the alleged adulterous wife*, who is the accused for the offence under Section 497 IPC; rather it is the *third person* who allegedly has sexual intercourse with the wife of another man who becomes an accused person.

22. Further, as per Section 198 of Cr.P.C., Complaint can be instituted only by the husband thereby implying that it is the *husband who is the aggrieved person*, while the wife has been ignored as the victim. The provision is reflective of '*tripartite labyrinth*' as observed by Deepak Mishra C. J. while penning the judgement in Joseph Shine vs. Union of India AIR 2018 SC 4898 wherein constitutionality of S.497 IPC was considered and was declared unconstitutional.

23. Deepak Mishra C. J. in Joseph Shine (supra), observed that when a party to a marriage lose their moral commitment of a relationship, it creates a dent in the marriage and would depend upon the parties as to how they intend to deal with the situation. Some may exonerate and continue to live together while others may seek divorce. It is absolutely a matter of privacy at its pinnacle. The theories of punishment whether deterrent or reformatory, would not save the situation. *A punishment is unlikely to establish commitment if punishment is meted out to either of them or to the third party.* Adultery in certain situations may not be the cause of an unhappy marriage, but it can be the result thereof. Furthermore, if the act of adultery is treated as an offence and punishment is provided, it would tantamount to punishing people who are unhappy in their marital



relationships and any law that would make adultery a crime, would have to punish indiscriminately both the persons whose marriages have been broken down as well as those whose marriages have not. A law punishing adultery as a crime cannot make distinction between these two types of marriages. It is a law which is bound to fall within the sphere of manifest arbitrariness. *Thinking of adultery from the point of criminality would be a retrograde step.*

24. It was succinctly observed by *Nariman J.* in his concurring opinion in *Joseph Shine* (supra) that the ostensible Object of Section 497 IPC being the protection and preservation of the sanctity of marriage is not in fact the object achieved by Section 497 IPC at all. The sanctity of the marriage can be utterly destroyed by a married man having sexual intercourse with the unmarried woman or a widow. Also, if the husband consents or connives for such sexual intercourse, no offence is committed thereby showing it is not the sanctity of marriage which is sought to be protected and preserved, but the *proprietary right of a husband*. Secondly, no deterrent effect has been shown to exist or ever to have existed, which may be a legitimate consideration for a State enacting criminal law. The manifest arbitrariness is writ large even in cases where the married woman, whose marriage has broken down and she no longer cohabits with her husband and may in fact, preparatory to a divorce may have obtained a decree for judicial separation against her husband, has sex with another man during this period; the other man is immediately guilty of the offence.

25. The complexity and the anomalous situation in this Section was noted by *Rohinton F. Nariman J.* in *Joseph Shine* who observed that the real part of this archaic law discloses itself when consent or connivance of the



married woman's husband is obtained; the married or unmarried man who has sexual intercourse with such a woman does not then commit the offence of adultery. *It is only on this paternalistic notion of a woman being likened to a chattel for if one is to use the chattel or is licensed to use to chattel by the licensor namely the husband, no offence is committed.* Consequently, the wife who has committed adultery, is not the subject matter of offence, and cannot, for the reason that she is regarded only as a chattel, even be punished as an abettor. *This is also for the chauvinistic logic that the third party male had seduced her, she being a victim.* What is clear, therefore, is that this archaic law has long outlived its purpose and does not square with today's constitutional morality in that the very object with which it was made, has since become manifestly arbitrary having lost its rationale long ago and become in today's day and age, utterly irrational.

26. The woman being considered as the property of the husband and its devastating consequences are well documented in Mahabharat wherein Draupadi was put on stake in a game of gamble by none other than her own husband Yudhishtira where other four brothers were the silent spectators and Draupadi had no voice to protest for her dignity. As it happened, she was lost in the game of gamble and what followed was the great war of Mahabharat leading to mass loss of lives and wiping out of many of the family members. Despite having such example to demonstrate the consequence of absurdity of treating of a woman as a chattel, the misogynistic mindset of our Society understood this only when the Apex Court declared Section 497 IPC as unconstitutional in the case of Joseph Shine (supra).



27. **The next aspect which comes for consideration is whether the declaration of Section 497 IPC as unconstitutional in Joseph Shine (supra) vide judgement 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.**

28. This aspect has been considered in the judgment Maj. Genl. A.S. Gauraya & Anr. Vs. S.N. Thakur 1986 AIR 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.

29. The principle as declared by the Apex Court, was followed by High Court of Telangana in Satyam Sudarshan vs. State of Telangana Crl. Pet. No.1513 of 2019 dated 03.08.2022.

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.

31. Similarly, High Court of Jharkhand in August Kumar Mehta vs The State Of Jharkhand Crl. Rev. Pet. No.1081/2013 has struck down the pending proceedings under Section 497 IPC.

32. Therefore, the Complaint Case No.153/1 filed by Respondent No.2 on the allegations of Section 497 IPC against the Petitioner, is therefore, liable to be quashed.

33. *Further, even on facts, the Ld. M.M. had rightly noted that the case of the Petitioner was that since his wife along with the Petitioner stayed overnight in the same room in Piccadilly Hotel, Lucknow, there can be no*



presumption of they having indulged in a sexual intercourse. The gravamen of Section 497 is that they must have indulged in the act of adultery i.e. *they must have had sexual intercourse for which there is no oral or documentary evidence, but is based on a presumption which cannot be considered prima facie for summoning of the Petitioner. **The essential ingredients of Section 497 IPC, were therefore, not made out.***

34. The impugned Order of Ld. ASJ dated 28.04.2018 summoning the Petitioner under S. 497 IPC, is hereby set aside and the Complaint of the Respondent No.2 is hereby quashed and the Petitioner is discharged. The Petition is accordingly, allowed. The pending Applications are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 17, 2025
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