

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION NO. 2 OF 2018

Rupesh S/o. Haribhau Mundle,
aged 35 years, Occupation : Service,
Resident of Taluka Health Officer,
Opposite Bhiwapur Police Station,
Tahsil : Bhiwapur, District : Nagpur.

... Applicant

VERSUS

(1) Shri Charandas S/o. Fulchand
Chandanbawane,
aged about 51 years,
Occupation : Service,
Resident of Primary Health Centre,
Dorli, Tahsil : Parsheoni,
District : Nagpur.

(2) The State of Maharashtra,
through Police Station Officer,
Police Station, Bhiwapur,
District : Nagpur.

... Respondents

Shri A. K. Choube with Shri R. M. Daga, Advocates for the applicant
Ku. N. K. Subhedar, Advocate for the respondent no. 1
Shri C. A. Lokhande, A.P.P. for the respondent no. 2

CORAM : M. G. GIRATKAR, J.

Date : 14/12/2018.

Oral Judgment

Heard learned counsel appearing for the parties.

2. The present revision is against the judgment of conviction passed by the Judicial Magistrate First Class, Bhiwapur dated 22-5-2015 in Summary Criminal Case No. 41/2010 for the offence punishable under Section 497 of the Indian Penal Code. Said judgment was challenged before the Additional Sessions Judge-1, Nagpur. By judgment dated 2-1-2018, the appeal came to be dismissed confirming the judgment of Judicial Magistrate First Class.

3. It was alleged by the husband/respondent no. 1 against the accused/applicant that he had sexual relations with his wife. Evidence was adduced before the Judicial Magistrate First Class, Bhiwapur, after framing charge. Learned Magistrate come to the conclusion that charge is proved against the applicant and, therefore, convicted him for the offence punishable under Section 497 of the Indian Penal Code.

4. The said judgment is confirmed by the Additional Sessions Judge, Nagpur.

5. As per the submissions of learned counsel for the applicant that now Hon'ble Apex Court has turned down Section 497 of the Indian Penal Code. Learned counsel pointed out the judgment in the case of

Joseph Shine Vs. 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 and anr. Vs. S.***

N. Thakur and anr. reported in **AIR 1986 SC 1440**.

6. Hon'ble Apex Court in the case of ***Joseph Shine Vs. 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 duty 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 Indian 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 and anr. Vs. S. N. Thakur and anr.*** (supra) has held that law laid down by the Supreme Court applies to all pending proceedings even with retrospective effect.

8. There is no dispute about the decision of the Supreme Court in the above cited decisions. In view of the decision of Hon'ble Apex Court holding Section 497 of Indian Penal Code is not an offence, the punishment awarded by the Judicial Magistrate First Class, Bhiwapur in Summary Criminal Case No. 41/2010 is liable to be quashed and set aside. Hence, following order.

ORDER

- (i) Revision is allowed.
- (ii) Impugned judgment in Summary Criminal Case No. 41/2010 dated 22-5-2015 passed by Judicial Magistrate

First Class, Bhiwapur sentencing the accused/applicant for the offence punishable under Section 497 of the Indian Penal Code and which is confirmed by the Additional Sessions Judge-1, Nagpur in Criminal Appeal No. 161/2015 on 2-1-2018 are hereby quashed and set aside.

- (iii) Accused/applicant is acquitted of the offence punishable under Section 497 of the Indian Penal Code.
- (iv) Fine amount, if any, paid by the applicant/accused be refunded to him.
- (v) R & P be sent back to the trial Court.

JUDGE

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