

HIGH COURT OF UTTARAKHAND AT NAINITAL

Miscellaneous Criminal Application No.1904 of 2019

Dilip Kumar alias Raja alias Dev Sharma Applicant

Versus

State of Uttarakhand and another Respondents

Present:-

Mr. Tribhuwan Chandra Pandey, Advocate for the applicant.
Mr. Bhaskar Chandra Joshi, AGA with Mr. Sunil Upadhyay,
Brief Holder for the State.

Hon'ble Siddhartha Sah, J. (Oral)

Service report dated 23.10.2024 states that respondent no.2 served personally. Since none has appeared on behalf of respondent no.2 in spite of service, the matter will be proceeded with.

2. Heard Mr. Tribhuwan Chandra Pandey, learned counsel for the applicant.

3. By means of this criminal miscellaneous application under Section C-482 Cr.P.C., the applicant has sought for quashing of the impugned summoning order dated 18.09.2018 passed by the Judicial Magistrate-1st Class, Tanakpur as well as the entire proceedings of Criminal Case No.548 of 2018, under Section 497 of the IPC, Asheesh Dhasmana vs. Dilip Kumar, pending in the court of Judicial Magistrate-1st Class, Tanakpur, District Champawat.

4. The present criminal miscellaneous application under Section 482 Cr.P.C. (hereinafter referred to as C482 Cr.P.C.) emanates out of a complaint under Section 497 of the IPC which was filed in the court of Judicial Magistrate-1st Class, Tanakpur, District Champawat with the allegations that the complainant was married with Smt. Ruchi Dhasmana on 20.05.1997 as per Hindu rites and rituals. Two children were born from the said wedlock. On 23.09.2014, the Police of P.S. Nanakmatta, District Udham Singh Nagar arrested the complainant

and sent him to jail. After the complainant went to jail, the responsibility of the entire family was on the father of the complainant who had retired from government service. On 22.08.2018, the complainant's father met with the sad demise. The complainant has come to be present in Pipalpani on short term bail. When the complainant came out on bail and on 01.09.2018 along with his family member and elder son Suyash Dhasmana went to his house, Dhasmana Hospital, Banbasa where he saw complainant's wife with another person, namely, Dilip Kumar alias Raja alias Dev Sharma S/o Shri Krishna Chandra Sharma Resident of Kali Mandir, Nai Colony, Yusufnagar, Bhagwan Tirwa, District Kannauj.

5. It is further alleged in the complaint that when the complainant's wife saw the complainant and his family members, she got very angry and abused them. The complainant tried to talk with his wife but she got ready for fight and called the Banbasa Police on the spot. Dilip Kumar alia Dev Sharma also sided with his wife and threatened the complainant that he has remained in Tihar Jail, Delhi, therefore, the complainant should talk with his wife Ruchi Dhasmana properly. When the complainant asked his wife Ruchi Dhasmana as to who is this person who is talking from her side then she replied that he is my second husband, namely, Dilip Kumar alias Dev Sharma.

6. The complaint was filed in the court of Judicial Magistrate, Tanakpur, District Champawat. It is further alleged in the complaint that the accused is residing with the wife of the complainant in the form of second husband and he is continuously making physical relations with his wife. The son of the complainant has seen his mother Ruchi Dhasmana and Dilip Kumar alias Dev Sharma many times in compromising position. It is further alleged in the complaint that in the complainant's wife establishing physical relations with the accused does not have any consent of the complainant and the complainant's wife is deliberately establishing physical relations with the accused. Thus it was prayed that cognizance be taken and the accused be punished accordingly.

7. In pursuance to the aforesaid complaint, the statements of the complainant Ashish Dhasmana were recorded under Section 200 Cr.P.C. and the statements of the witness-Suyash Dhasmana were

recorded under Section 202 Cr.P.C. and the trial court heard the counsel for the complainant on summoning and considered the complaint, the statements under Sections 200 and 202 Cr.P.C. In the said statements, the complainant reiterated the version of the complaint and the complainant's witness Suyash Dhasmana also supported the complaint case. The Judicial Magistrate-1st Class, Tanakpur on the basis of the said complaint and the statements under Sections 200 and 202 Cr.P.C. and after relying upon the judgment of the Hon'ble Supreme Court in the case of Shivjeet Singh vs. Nadim Tiwari, 2010 (3) Criminal Court Cases Supreme Court page 580, came to the conclusion that on the basis of the complaint and the evidence in support of the complaint, prima-facie case under Section 497 of the IPC is made out and thus proceeded to summon the accused-applicant herein under Section 497 of the IPC.

8. Assailing the aforesaid summoning order, the learned counsel for the applicant would make the submission that when the complainant/respondent no. 2 was in jail, in his absence, his wife Ruchi Dhasmana takes care of his business. The family of respondent no.2 is the owner of building situated at Khata Khatauni No.0028 and Khasra No.128, Gram Panchpakariya Banbasa, District Champawat. Hence the applicant met with Smt. Ruchi Dhasmana for lease of the said building to run hotel business and Smt. Ruchi Dhasmana had executed the lease agreement in favour of the applicant on 08.05.2018 for eleven months. In relation to this lease agreement, the applicant also met the respondent no. 2 in jail and the respondent no. 2 was fully aware of everything and even he had given his consent regarding the lease of his inherited building.

9. Learned counsel for the applicant would further submit that after the expiry of the lease agreement, the respondent no. 2 was to return the security amount of Rs.50 lakhs which was deposited with Smt. Ruchi Dhasmana, therefore, as a pressure tactic, the complaint was filed by the respondent no. 2.

10. Learned counsel for the applicant would further submit that no prima-facie case under Section 497 of the IPC is made out against the applicant in any manner. The allegation made against the

applicant does not prove and there is no evidence in support of the case and whatever evidence is adduced manifestly fails to prove the charges, therefore, entire case against the applicant is liable to be quashed.

11. Learned counsel for the applicant has further made a submission that Section 497 of the IPC has been struck down as unconstitutional and the entire proceedings of the Criminal Case No.548 of 2018, Asheesh Dhasmana vs. Dilip Kumar, under Section 497 of the IPC, pending before the Civil Judge (J.D.)/Judicial Magistrate-1st Class, Tanakpur has become illegal and liable to be quashed. In this regard, the learned counsel for the applicant has drawn the attention of this Court to the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **Joseph Shine vs. Union of India** reported in **(2019) 3 SCC 39**.

12. Learned counsel for the applicant has drawn the attention of this Court to paras 30, 48, 67 and 109 of the judgment of the Supreme Court in the case of Joseph Shine (supra), the same are being extracted as under:-

“30. As we notice, the provision treats a married woman as a property of the husband. It is interesting to note that Section 497 IPC does not bring within its purview an extramarital relationship with an unmarried woman or a widow. The dictionary meaning of “adultery” is that a married person commits adultery if he has sex with a woman with whom he has not entered into wedlock. As per Black's Law Dictionary, “adultery” is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife. However, the provision has made it a restricted one as a consequence of which a man, in certain situations, becomes criminally liable for having committed adultery while, in other situations, he cannot be branded as a person who has committed adultery so as to invite the culpability of Section 497 IPC. Section 198 CrPC deals with a “person aggrieved”. Sub-section (2) of Section 198 treats the husband of the woman as deemed to be aggrieved by an offence committed under Section 497 IPC and in the absence of husband, some person who had care of the woman on his behalf at the time when such offence was committed with the leave of the court. It does not consider the wife of the adulterer as an aggrieved person. The offence and the deeming definition of an aggrieved person, as we find, is absolutely and manifestly arbitrary as it does not even appear to be rational and it can be stated with emphasis that it confers a licence on the husband to deal with the wife as he likes which is extremely excessive and disproportionate. We are constrained to think so, as it does not treat a woman as an abettor but protects a woman and simultaneously, it does not enable the wife to file any criminal prosecution against the husband. Indubitably, she can take civil action but the husband is also entitled to take civil action. However, that does not save the

provision as being manifestly arbitrary. That is one aspect of the matter. If the entire provision is scanned being Argus-eyed, we notice that on the one hand, it protects a woman and on the other, it does not protect the other woman. The rationale of the provision suffers from the absence of logicity of approach and, therefore, we have no hesitation in saying that it suffers from the vice of Article 14 of the Constitution being manifestly arbitrary.

48. From the aforesaid analysis, it is discernible that the Court, with the passage of time, has recognised the conceptual equality of woman and the essential dignity which a woman is entitled to have. There can be no curtailment of the same. But, Section 497 IPC effectively does the same by creating invidious distinctions based on gender stereotypes which creates a dent in the individual dignity of women. Besides, the emphasis on the element of connivance or consent of the husband tantamounts to subordination of women. Therefore, we have no hesitation in holding that the same offends Article 21 of the Constitution.

67. As we have held that Section 497 IPC is unconstitutional and adultery should not be treated as an offence, it is appropriate to declare Section 198 CrPC which deals with the procedure for filing a complaint in relation to the offence of adultery as unconstitutional. When the substantive provision goes, the procedural provision has to pave the same path.

109. In *Sowmithri Vishnu* [*Sowmithri Vishnu v. Union of India*, 1985 Supp SCC 137 : 1985 SCC (Cri) 325] , this Court upheld Section 497 while repelling three arguments against its continuance, as has been noticed hereinabove. This judgment also must be said to be swept away by the tidal wave of recent judgments expanding the scope of the fundamental rights contained in Articles 14, 15, and 21. Ancient notions of the man being the seducer and the woman being the victim permeate the judgment, which is no longer the case today. 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* [*Shayara Bano v. Union of India*, (2017) 9 SCC 1 : (2017) 4 SCC (Civ) 277] , it is only the minority view of Khehar, C.J. 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* [*Sowmithri Vishnu v. Union of India*, 1985 Supp SCC 137 : 1985 SCC (Cri) 325] . Equally, the judgment in *V. Revathi* [*V. Revathi v. Union of India*, (1988) 2 SCC 72 : 1988 SCC (Cri) 308] , 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.”

13. While placing reliance upon the aforesaid judgment, the learned counsel for the applicant would submit that since Section 497 of the IPC has been struck down as invalid being violative of Article 14, 15(1) and 21 of the Constitution of India, hence the trial court has erred by taking cognizance under the said Section.

14. Since, the Hon’ble Supreme Court has declared Section 497 of the IPC as unconstitutional; hence the trial court could not have taken cognizance under the aforesaid Section.

15. It is also apparent that the aforesaid complaint appears to be a counter blast and a pressure tactic for not refunding an amount of Rs.50 lakhs as security amount and since the Hon’ble Supreme Court has already struck down Section 497 of IPC, hence the cognizance order dated 18.09.2018, passed by the learned Judicial Magistrate-1st Class, Tanakpur, District Champawat as well as entire proceedings of Criminal Case.548 of 2018 under Section 497 of IPC, Asheesh Dhasmana vs. Dilip Kumar, are hereby quashed.

16. The present criminal miscellaneous application under Section 482 Cr.P.C. is, accordingly, allowed.

(Siddhartha Sah, J.)
04.06.2026

Ravi