

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.7528 of 2017

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in C.C.No.120 of 2017 pending on the file of VII Metropolitan Magistrate, Visakhapatnam, registered for the offences punishable under Sections 494, 497 read with Section 34 IPC, against the petitioners.

2. The second respondent herein filed a private complaint under Section 200 of Cr.P.C., before the VII Metropolitan Magistrate, Visakhapatnam and the same was referred under Section 156(3) of Cr.P.C., to the police, who in turn, registered a case in Cr.No.157 of 2016 of Palem Police Station, Visakhapatnam, and later took up investigation, and after completion of investigation, the Sub-Inspector of police filed charge sheet before the Court, whereby the Magistrate took cognizance of the offences punishable under Sections 494, 497 read with Section 34 IPC vide order dated 08.05.2017.

3. The petitioners are A1 and A2 in C.C.No.120 of 2017. The first petitioner is the alleged paramour of the second petitioner and the complainant, by name, Rayudu Adilakshmi, is the wife of first petitioner/A1.

4. The main contention urged by the petitioners in the present petition is that the complaint is not maintainable as the wife of A1 i.e., second respondent, is incompetent to file a complaint in view of the bar under Section 198(1) of Cr.P.C., and consequently, taking

cognizance of offence by the trial Court against the petitioners for the offence punishable under Section 497 is illegal and prayed to quash the proceedings.

5. During hearing, learned counsel for the petitioners requested this Court to quash the proceedings for the offence under Section 497 of IPC based on Section 198(1) of Cr.P.C., as the Court is incompetent to take cognizance on the complaint of the second respondent, who is the wife of A1. He placed reliance on the judgment of the Apex Court in **V. Revathi v. Union of India and others**¹.

6. Whereas Sri T.S.Phani Kumar, learned counsel for the second respondent, contended that the law declared by the Apex Court in **V. Revathi's** case, referred supra, was not accepted by the Division Bench of the Supreme Court in **Joseph Shine v. Union of India**² and the issue was referred to larger Bench for authoritative pronouncement and therefore, based on the principle in **V. Revathi's** case, referred supra, the Court cannot quash the proceedings against the petitioners for the offence punishable under Section 497 IPC based on 198(1) of Cr.P.C. and requested to pass appropriate orders.

7. The petitioners are allegedly committed two offences punishable under Sections 494 and 497 IPC, but in view of the submission made by the counsel for the petitioners, this Court need not decide about the illegality of taking cognizance for the offence punishable under Section 494 IPC and therefore, the present

¹ 1988 AIR 835

² LAWS (SC) 2017 12 42

petition is filed to quash the proceedings against the petitioners for the offence under Section 497 IPC only.

8. Section 497 IPC deals with punishment of adultery, which reads as under:

“Whoever has sexual intercourse with a person who is 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”.

An offence punishable under Section 497 IPC is non-cognizable, bailable and triable by the Magistrate of First Class. According to Section 198(1) of Cr.P.C., no Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence. In the present case, the first petitioner/A1 is the paramour of A2 and the person aggrieved is only the husband of A2. Therefore, the husband of the second petitioner/A2 alone is competent to file a complaint, but not the wife of paramour of A2 and this view is supported by the judgment of the Apex Court in **V. Revathi’s** case, referred supra, wherein the Apex Court held as follows:

“The law does not envisage the punishment of any of the spouses at the instance of each other. Thus, there is no discrimination against the woman in so far as she is not permitted to prosecute her husband. A husband is not permitted because the wife is not treated an offender in the eye of law. The wife is not permitted as Section 198(1) read with Section 198(2) does not permit her to do so. In the ultimate analysis the law has meted out even handed justice to both of them in the matter of prosecuting

each other or securing the incarceration of each other. Thus, no discrimination has been practised in circumscribing the scope of Section 198(2) and fashioning it so that the right to prosecute the adulterer is restricted to the husband of the adulteress but has not been extended to the wife of the adulterer.”

But, in the later judgment in **Joseph Shine’s** case, referred supra, the Apex Court took a different view and a reference is made to the larger Bench for authoritative pronouncement, but till today, the law laid down by the Apex Court in **V. Revathi’s** case holds the field and is binding precedent. Thus, as on today, as per the law laid down by the Apex Court in **V. Revathi’s** case, referred supra, the Magistrate is incompetent to take cognizance of the offence punishable under Section 497 IPC in view of the bar under Section 198(1) Cr.P.C. Hence, the order passed by the trial Court, taking cognizance of the offence punishable under Section 497 IPC against the petitioners is hereby set aside while permitting the Magistrate to proceed with the trial against the petitioners for the offence under Section 494 IPC.

9. Accordingly, the Criminal Petition is allowed in part quashing the proceedings in C.C.No.120 of 2017 on the file of VII Metropolitan Magistrate, Visakhapatnam, against the petitioners/A1 and A2, for the offence punishable under Section 497 IPC only. Miscellaneous petitions, if any, pending in this petition shall stand closed.

13th June, 2018
sj

M. SATYANARAYANA MURTHY, J