

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.11932 of 2011

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C., by the petitioners/A.1 to A.8, A.10 to A.15, A.17 to A.23 seeking to quash the proceedings against them in C.C.No.336 of 2009 on the file of Judicial Magistrate of First Class, Vikarabad, registered for the offences punishable under Sections 494 and 497 IPC.

2. The allegations in the charge sheet are that A.1, who is wife of the *de facto* complainant, married A.2, while the marriage between herself and *de facto* complainant is subsisting, and thereby committed an offence punishable under Section 494 IPC. The allegations pertaining to the offence punishable under Section 497 IPC are made only against A.2, since he had sexual relations with A.1, who is wife of the *de facto* complainant.

3. Now, learned counsel for the petitioners submits that so far as the allegations pertaining to Section 497 IPC are concerned, it can no longer be continued in view of judgment of the Apex Court in **Josheph Shine v. Union of India**¹ by virtue of which, the Court struck down Section 497 IPC as unconstitutional and violative of Articles 14, 15 and 21 of the Constitution of India and hence, the proceedings against A.2 for the offence under Section 497 IPC cannot be continued. So far as the offence under Section 494 IPC is concerned, the complaint needs to be quashed against petitioners 9 to 21 as their relationship with A.1 is not stated in the complaint. The allegation is that they have only attended the marriage. When their role is not mentioned with regard to the

¹ WP (Crl.) 194 of 2017

marriage of A.1 with A.2 and when there is no allegation that they were aware of subsistence of the marriage between A.1 and the *de facto* complainant, they cannot be prosecuted for the offence punishable under Section 494 IPC.

4. So far as petitioners 3 to 8/A.3 to A.8 are concerned, petitioner No.3 is father, petitioner No.7 is mother and petitioner No.8 is brother of petitioner No.1 and petitioners Nos.4 to 6 are brothers of petitioner No.3, who would have knowledge about the marriage between A.1 and the *de facto* complainant. Considering the fact that there are specific allegations against petitioners 1, 3 to 8 and marriage is registered and photographs are filed with regard to the marriage between A.1 and A.2, the further proceedings against the petitioners 1 to 8 cannot be quashed, but, however, in view of judgment of the Apex Court referred to above, the proceedings against petitioner No.2/A.2 in so far as an offence punishable under Section 497 IPC can be quashed. So far as the offence under Section 494 IPC is concerned, A.2 cannot be permitted to face the said charge as the complaint does not disclose that he is a married person. The allegations are against A.1 that she, being married to the *de facto* complainant, married A.2, thereby committed the offence punishable under Section 494 IPC.

5. Accordingly, the Criminal Petition is partly allowed quashing the proceedings against the petitioners/A.2, A.10 to 15, 17 to 21 in so far as the offences punishable under Section 494 and 497 IPC are concerned, in C.C.No.336 of 2009 on the file of Judicial

Magistrate of First Class, Vikarabad. The petition is dismissed in so far as the petitioners/A.1, A.3 to A.8 are concerned.

Miscellaneous petition, if any, pending in this petition shall stand closed.

T. RAJANI, J

SEPTEMBER 28, 2018

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Date:28.09.2018

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