

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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**Criminal Petition No.11937 of 2017**

**Between:**

Bandhana Deepika.

... Petitioner/Accused No.3

AND

The State of Andhra Pradesh

Rep. by its Public Prosecutor,

High Court of Judicature at Hyderabad,

For the State of Telangana and the State of Andhra Pradesh

and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 28.06.2018

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

1. Whether Reporters of Local Newspapers  
may be allowed to see the judgments?

Yes / No

2. Whether the copies of judgment may be  
marked to Law Reporters / Journals?

Yes / No

3. Whether Their Lordship wish to  
see the fair copy of the Judgment?

Yes / No

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**U. DURGA PRASAD RAO, J**

**\* THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

**+ Criminal Petition No.11937 of 2017**

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... Respondents

**! Counsel for Petitioner : M/s. G. Rama Gopal**

**^ Counsel for Respondent No.1 : Public Prosecutor (AP)**

**^ Counsel for Respondent No.2 : Sri R. Satyanarayana Murthy**

**< Gist:**

**> Head Note:**

**? Cases referred:**

1) AIR 2012 SC 497

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO****Criminal Petition No.11937 of 2017****ORDER:**

In this petition filed under Section 482 Cr.P.C., the petitioner/A3 seeks to quash the proceedings in Cr.No.652 of 2017 on the file of Pendurthy PS, Visakhapatnam City registered for the offences under Sections 498A, 497 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961 (for short "DP Act").

2a) The complainant is the wife of A1. A2 is the mother of A1. In the complaint, the complainant made a long narration of cruelty meted out by her husband and mother-in-law. Thus, police registered crime and investigating into.

b) We are not much concerned with the accusations made against A1 and A2. Petitioner/A3 is concerned, the allegations precisely are that while complainant and A1 were residing in Balaji Apartment, Simhapuri layout as tenants, A1 developed illicit intimacy with the daughter of house owner i.e. A3 who is their distant relation and both of them used to have sexual intercourse. A3's husband was working in Dubai leaving his wife and children at Visakhapatnam. When questioned, A1 threatened with dire consequences. Investigation is under way.

3) Heard.

4a) Severely fulminating her inclusion as Accused No.3 in the FIR, learned counsel for petitioner/A3 would argue that none of the offences under Sections 498A, 497 IPC and Sections 3 and 4 of DP Act can be attributed against petitioner/A3 even if the complaint allegations are accepted to be true for, the petitioner is a stranger. He would argue that offences under Section 498A IPC is concerned, though the complainant is the daughter-in-law of petitioner's uncle—Seshavataram, except alleging that A1 and A3 had illicit connection there is no allegation that petitioner/A3 had caused any harassment to the complainant. Hence, the offence under Section 498A has no application.

b) The offence under Section 497 IPC is concerned, he would argue A3 under law is only a victim and she cannot be arrayed as an accused. Only A1 will be liable for punishment under Section 497 IPC if the adultery charge is established.

c) Then, with regard to the offence under Sections 3 and 4 of DP Act, he would submit that absolutely the said charge is not applicable against petitioner/A3. He thus prayed to allow the petition.

5) Learned Additional Public Prosecutor opposed the petition stating that petitioner/A3 is liable under Section 498A IPC though not for other offences.

6) The point for determination is:

*“Whether there are merits in the Criminal Petition to allow?”*

7) **POINT**: The offence of adultery is concerned, Section 497 IPC reads thus:

*“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.”*

A close scrutiny of the Section would manifest that it is only a male person who is guilty of sexual intercourse with the wife of another person without the consent or connivance of the husband of that woman and if such intercourse does not amount to offence of rape, shall be punished for the offence of adultery. The section specifically excludes the wife being an abettor. As already argued by learned counsel for petitioner, even if the FIR allegations are true, still petitioner/A3 cannot be held guilty for the charge under Section 497 IPC. Law in this aspect is no more res integra.

8) In similar circumstances, the Apex Court in ***W.Kalyani vs. State tr. Inspector of Police and another***<sup>1</sup> held thus:

*“Para-7: ..The provision is currently under criticism from certain quarters for showing a strong gender bias for it makes the position of a married woman almost as a property of her husband. But in terms of the law as it stands, it is evident from a*

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<sup>1</sup> AIR 2012 SC 497

*plain reading of the Section that only a man can be proceeded against and punished for the offence of adultery. Indeed, the Section provides expressly that the wife cannot be punished even as an abettor. Thus, the mere fact that the Appellant is a woman makes her completely immune to the charge of adultery and she cannot be proceeded against for that offence.”*

Therefore, there can be no demur petitioner/A3 cannot be charged under Section 497 IPC.

9) Sofaras offence under Section 498A IPC is concerned, no doubt, the petitioner/A3 is a distant relative of A1. She is the daughter-in-law of complainant's uncle—Seshavataram. As per Section 498A, the husband or relative of husband of a woman shall be guilty of the charge under Section 498A if they subject her to cruelty. In the instant case, petitioner/A3 is concerned, the allegations are mostly aimed at picturising the illicit intimacy between A1 and A3 and we do not find any specific allegation of petitioner/A3 causing harassment to the complainant within the sphere of Section 498A IPC. So, in my view, the offence under Section 498A is also not attracted against petitioner/A3.

10) Then, offence under Sections 3 and 4 of DP Act is concerned, it is needless to emphasize that the said offence cannot be attributed to the petitioner/A3.

11) So, at the outset, none of the offences are maintainable against petitioner/A3 even if the FIR allegations are accepted on their face value.

Therefore, continuation of FIR and investigation against petitioner/A3 amount to sheer abuse of process of Court.

12) In the result, Criminal Petition is allowed and proceedings in Cr.No.652 of 2017 of Pendurthy PS, Visakhapatnam are quashed sofaras petitoenr/A3 is concerned.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 28.06.2018

**Note:** L.R.Copy to be marked Yes /No

Murthy

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**U. DURGA PRASAD RAO, J**

