

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49355 of 2014

Arising Out of Case No.-3012 Year-2013 Thana - PURNIA COMPLAINT CASE District-
Purnia

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Devraj Dev Son of Sri Ram Chandra Bhagat, Resident of Village-
Banmankhi, Sonar Path, Police station- Banmankhi in the district of Purnea,
Presently posted as Commissioner of Disciplinary Proceedings, Coimbatore
Tmt. N. Geetha (DRO) in the State of Tamilnadu

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Manish Kumar Son of Sri Baijnath Chaudhary, Resident of Flat no. 713 B,
Wing, Samarth Angan, 2- Adarsh Nagar, Oshiwara, Andheri Link Road
Mumbai, Police Station- Andheri in the Maharashtra

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhu Narayan Sharma, Advocate
For the State	:	Mr. Md. Arif, APP
For the O. P. No. 2	:	Mr. Saket Tiwary with Mr. Saket Gupta, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 02-04-2019

Heard learned counsel for the petitioner; learned A.P.P.

for the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 (hereinafter referred to as
the 'Code') for the following relief:

*“ That this is an application for quashing the order
dated 22nd September, 2014 passed by Sri Sanjay
Kumar, learned Sessions Judge, Purnea in Cr. Revision
No. 499 of 2013, by which processes were ordered to be
issued against Opp. Party no. 2 in Compliant Case No.
3012 of 2013 to face trial for offence punishable under
Section 497 of the Indian Penal Code.”*



3. The petitioner had filed Complaint Case No. 3012 of 2013 against the opposite party no. 2 alleging adultery with his wife in which the Chief Judicial Magistrate, Purnea had issued summons under Section 497 of the Indian Penal Code by order dated 21.10.2013. Challenge to the same by the opposite party no. 2 before the Sessions Judge, Purnea in Criminal Revision No. 499 of 2013 resulted in the order impugned dated 22.09.2014 by which the order of cognizance has been set aside.

4. At the very outset, learned counsel for the parties fairly submitted that the said issue is no more *res integra* for the reason that a Constitution Bench of the Hon'ble Supreme Court has held Section 497 of the Indian Penal Code to be unconstitutional and has also declared Section 198 of the Code, which deals with the procedure for filing complaint in relation to an offence of adultery, as unconstitutional.

5. In view of the aforesaid, once Section 497 of the Indian Penal Code itself has been held to be unconstitutional and Section 198 of the Code which allows for filing of complaint also meeting the same fate, cognizance against the opposite party no. 2 under Section 497 of the Indian Penal Code cannot be sustained



and rightly it has been interfered by the Sessions Judge, Purnea by the impugned order dated 22.09.2014.

6. In view of the aforesaid, the application is dismissed. Further, the entire criminal proceeding arising out of Complaint Case No. 3012 of 2013, including all orders passed therein, stands quashed.

(Ahsanuddin Amanullah, J)

Anjani/-

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