

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-47495-M-2017(O&M)
Date of Decision: February 28, 2019**

Chetan Kumar

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

--

Present: - Mr.J.S.Bedi, Senior Advocate with
Mr.Sehaj Bir Singh, Advocate
for the petitioner.

Ms.Sunint Kaur, AAG, Punjab.

Ms.Isha Goel, Advocate
for respondent No.2.

-

HARINDER SINGH SIDHU, J.

This is a petition praying for quashing the complaint bearing No.62-25515/13 dated 31.5.2014 (Annexure P-1) instituted by respondent No.2 against the petitioner on the allegations of adultery. The petitioner has also prayed for quashing the order dated 17.5.2016 (Annexure P-3) whereby, he has been summoned to face trial in the complaint under Section 497 of IPC and the order dated 19.9.2017 (Annexure P-5), whereby, his revision against that order has been dismissed.

The complaint was filed under Sections 420, 497, 506/34 IPC. The learned JMIC Amritsar vide order dated 17.5.2016 found sufficient ground to proceed against the petitioner only for the offence under Section 497 IPC. The complaint under Section 420, 506/34 IPC was dismissed.

Learned counsel for the petitioner has contended that Hon'ble Supreme Court in **Joseph Shine vs. Union of India, 2018(11) Scale 556** has struck down Section 497 of the Indian Penal Code as unconstitutional being violative of Articles 14, 15 and 21 of the Constitution. As per the decision of Hon'ble Supreme Court in **Maj. Genl. A.S.Gauraya and another vs. S.N.Thakur and another, (1986) 2 SCC 709**, a declaration of law by the Supreme Court applies to all pending proceedings even with retrospective effect. In view thereof, it is contended that the complaint and the subsequent proceedings against the petitioner for offence under Section 497 IPC are liable to be quashed.

Learned counsel for respondent No.2 – complainant has not been able to dispute the aforesaid contention of learned counsel for the petitioner.

In view thereof, this petition is allowed. The complaint (Annexure P-1) under Section 497 of the IPC, the summoning order and the subsequent proceedings arising therefrom are quashed.

February 28, 2019

gian

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No