

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 CRIMINAL WRIT PETITION NO.200 OF 2021

BAPU S/O POPAT CHOR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Shaikh Ashraf Patel h/f
Avhad Abhijeet P.

APP for Respondents : Mr. S J Salgare

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CORAM : V.K. JADHAV & M. G. SEWLIKAR, JJ.

Dated : March 03, 2021

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PER COURT :- (Per M.G.Sewlikar, J.)

1. This writ petition is filed under Article 226 and 227 of the Constitution of India for directions to register crime against respondent no.3, who is a police constable for commission of offence under section 497 of IPC.

2. Facts giving rise to this writ petition are that the petitioner got married to one Gauri d/o Devidas Lendkar. It is further alleged that during the subsistence of marriage with the petitioner, respondent no.3 established illicit relations with the wife of the petitioner i.e. Gauri d/o. Devidas Lendkar (Gauri w/o

Bapu Chor). The petitioner, therefore, is alleging that the offence under section 497 of IPC has been committed as these relations are established without consent of the husband. He had made complaint to the police station, but no cognizance of it was taken and, therefore, he has filed this writ petition.

3. Heard Shri Shaikh the learned counsel appearing for the petitioner and Shri Salgare the learned APP for the respondent-State.

4. Shri Shaikh, the learned counsel for the petitioner argued that he is seeking directions to initiate departmental inquiry against respondent no.3 for misconducting himself in view of rule 3 of the Maharashtra Civil Services Conduct Rules, 1979. He argued that the conduct of the petitioner is not befitting the Government employee. This conduct is unbecoming of a government servant. He, therefore, sought directions to initiate inquiry against respondent no.3.

5. So far as the offence under section 497 of the IPC is concerned, it has been struck down by the Hon'ble Supreme Court in the case of **Joseph Shine Vs. Union of India reported in 2018 (11) Scale 556**. Therefore, directions to register the crime under section 497 of the I.P.C. cannot be given. Moreover, Section 497 of IPC was a non-cognizable offence when it was on the Statute book. In non-cognizable offences, directions to register FIR cannot be given.

6. The directions to initiate inquiry against respondent no.3 cannot be given by this Court while exercising criminal jurisdiction. The petitioner can initiate appropriate proceedings before the appropriate Court. With these observations, writ petition is disposed off.

(M. G. SEWLIKAR, J.)

(V.K. JADHAV, J.)

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