

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 721 OF 2008

Arun S/o Yeshwantrao Hatwar,
 Aged about 44 years, occ. Teacher
 R/o :- Shivvarpan Colony, Walgaon Road,
 Amravati. **APPELLANT**

// **VERSUS** //

1] Chhatrapati S/o. Suryabhan
 Gabhane, aged 42 years,
 occupation- Teacher, R/o Ahtha
 Vinayak Colony, Saturna, Back side
 M.I.D.C. Badnera Road, Amravati.

2] State of Maharashtra **RESPONDENTS**

 Shri A.J. Thakkar, Advocate for appellant.
 Shri P.R. Agrawal, Advocate for respondent No.1
 Shri H.D. Dubey, A.P.P. for respondent No.2/State.

CORAM : **N.B. SURYAWANSHI, JJ.**
DATE : **08/02/2021.**

ORAL JUDGMENT: [PER: N.B. SURYAWANSHI, J.]

1. Heard learned Advocate for the appellant and the learned Advocate for the respondents. This appeal is filed under Section 378(4) of the Code of Criminal Procedure challenging the judgment of the learned Judicial Magistrate First Class, Amravati in

Regular Criminal Complaint Case No.68 of 2000, whereby a private complaint filed for the offences alleging commission of offences under Section 497 r/w 34 of the Indian Penal Code with 448 of the Indian Penal Code filed by the appellant/original complainant against the respondents was dismissed and the respondents were acquitted.

2. Leave to file appeal was granted by this Court and the appeal came to be admitted on 08/10/2009. Today, the appeal is listed for final hearing.

3. When the appeal was called out for final hearing, the learned Advocate for the respondent pointed out a Pursis St. No. 4504 of 2019 filed by him wherein it is mentioned that Section 497 of the Indian Penal Code has been held to be unconstitutional by the Hon'ble Supreme Court in *Joseph Shine Vs. Union of India* reported in *2019 (3) SCC 39* and in view of the said decision, the present appeal against acquittal is liable to be dismissed. In the pursis, he has placed reliance on the decision of this Court in the case of *Rupesh Vs. Shri Charandas and others* reported in *2019 (1) AIR Bom. R(Cri.) 570*, wherein the learned Single Judge of this Court

has held that since adultery is not an offence, in view of the Supreme Court decision, the conviction was liable to be set aside.

4. The learned Advocate for the appellant fairly concedes to the legal position.

5. Admittedly, the Hon'ble Supreme Court in the case of *Joseph Shine* (*supra*) has held that Section 497 of the Indian Penal Code is unconstitutional. In *Maj. Genl. A.S. Gauraya and another Vs. S.N. Thakur and another* reported in *AIR 1986 SC 1440* the Apex Court held that the law laid down by the Supreme Court applies to all the pending proceedings even with the retrospective effect. By relying on these two judgments, in *Rupesh* (*supra*) this Court set aside conviction under Section 497 of the Indian Penal Code.

6. In view of the settled legal position referred above, the appeal is liable to be dismissed and the same is accordingly dismissed.

JUDGE