

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3925 OF 2017

Vivek Gangadhar Padhye .. Petitioner
Versus
Dr.Shekhar Parshuram Padhye and Anr. .. Respondents

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Mr.Sagar A. Mane, Advocate for the Petitioner.
Mr.Ramchandra K. Mendadkar, Advocate for Respondent No.1.
Mr.A.D. Kamkhedkar, APP for the Respondent No.2-State.

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CORAM : PRAKASH D. NAIK J.

DATED : JUNE 20, 2022.

P.C. :

The petitioner is aggrieved by the order dated 29th October, 2015, passed by learned J.M.F.C. Rajapur below Exhibit-45 in Regular Criminal Case No.49 of 2009, and, the order dated 5th April, 2017, passed by the Sessions Judge, Ratnagiri in Criminal Revision Application No.1 of 2016.

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2 Respondent no.1 is prosecuted for offence punishable under Section 497 of IPC on the basis of the complaint filed by the petitioner. The petitioner preferred an application before the trial Court seeking directions for conducting D.N.A. tests *qua* respondent

no.1 and petitioner's daughter. The application was rejected by the trial Court, which order was subsequently confirmed by the Sessions Court.

3 Learned counsel for the petitioner submitted that the trial Court was empowered to issue directions for conducting D.N.A. tests. The main charge levelled against respondent no.1 is based on the result of the said test conducted. The petitioner has relied upon the decisions of the Supreme Court in the case of *Dipanwita Roy vs. Ronobroto Roy*¹ and *Nandlal Wasudeo Badwaik Vs.Lata Nandlal Badwik & Anr.*², and various other decisions.

4 In fairness, however, it was brought to the notice of this Court that the Apex Court in the case of *Joseph Shine Vs. Union of India*³ has struck down Section 497 of IPC on the ground that it was unconstitutional. This Court in the case of *Rupesh Vs. Charandas and Others*, delivered on 14th December, 2018 in Criminal Revision Application No.2 of 2018, as referred to the aforesaid decision and held that the decisions of the Apex Court (Supra) is having retrospective effect.

1 2015(1)SCC 365

2 AIR 2014 (SCw) 506

3 2019 (3) SCC 39

5 Learned counsel for respondent no.1 submitted that since Section 497 of IPC has been struck down by the Apex Court, the relief prayed in this application does not survive. Even the proceedings before the trial Court does not survive.

6 The Supreme Court in the case of *Joseph Shine Vs. Union of India* (Supra) has categorically held that Section 497 is unconstitutional. By subsequent order dated 14th December, 2018, the Nagpur Bench of this Court has observed that the decision would have retrospective effects.

7 In the light of the aforesaid decisions, the relief prayed in this application cannot be granted.

:: ORDER ::

- (i) Writ Petition No.3925 of 2017, stands dismissed and disposed of accordingly.

(PRAKASH D. NAIK, J.)