

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

209

CRREF No.1 of 2016

Date of Decision: August 23rd, 2022

Court on its own motion

...Applicant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Sunil Chadha, *Amicus Curiae*
with Ms. Devyani Sharma, Advocate.

Ms. Rajni Gupta, Additional Advocate General, Haryana.

Mr. Satya Pal Jain, Additional Solicitor General of India
with Mr. Arun Gosain, Senior Government Counsel,
for UOI.

Mr. R.S. Dhaliwal, Advocate
for Mr. Rajeev Anand, Advocate
for U.T. Chandigarh.

AUGUSTINE GEORGE MASIH, J. (ORAL)

This reference dated 31.03.2016 has been received from the learned Sessions Judge, Rewari, wherein while referring to provisions of Sections 375 and 377 IPC, it has been stated that there appear to be a clash head on when the parties are husband and wife as Section 375 IPC excluded sexual acts i.e. penile non-vaginal intercourse from the definition of rape if the person performing the act is husband of the wife. However, Section 377 IPC makes the same act punishable as unnatural offence. It is on this basis that the reference was made by observing as follows:-

“It has to be borne in mind that section 375 IPC is gender specific while section 377 IPC is gender neutral. When the scope of section 375 IPC has been enlarged as to encompass penile non-vaginal intercourse and a man

committing such an act with his wife has been exempted from penal consequences irrespective of the fact whether the sexual act was consensual or not, to make the same act punishable under section 377 IPC can, by no stretch of imagination, be said to be logical.

7. *In the light of the foregoing this court is of the opinion that after the amendment of section 375 of IPC by section 9 of Act 13 of 2013, the provisions of section 377 IPC in so far as they make the penile non-vaginal intercourse between the husband and his wife punishable are invalid but, the same have not been so declared by the Hon'ble High Court or by the Hon'ble Supreme Court. Since the facts of the instant case involve the question as to the validity of the provision to that extent, it is submitted that the reference be entertained."*

Learned *amicus* has referred to the order passed by the Hon'ble Supreme Court in ***Navtej Singh Johar Versus Union of India 2018 (10) SCC 1***, wherein the review application has been entertained and thereafter the Five Judges Bench of the Hon'ble Supreme Court has held Section 377 to be unconstitutional except to the extent of animals. Learned *amicus*, therefore, contends that the present reference has been rendered infructuous.

Counsel for the respondents are *ad idem* with the contention of learned *amicus* and, therefore, we dispose of the present reference in the light of the order passed in *Navtej Singh Johar's case (supra)*.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

August 23rd, 2022
Puneet

**(ALOK JAIN)
JUDGE**

Whether speaking/reasoned: Yes
Whether Reportable: No