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CrI.O.P.No. 5697 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.5697 of 2025 and
CrI.M.P.No.3692 of 2025

Jenovia Jesi Kala

... Petitioner

Vs

1.State rep by Inspector of Police,
W5, All Women Police Station,
Vepery, Chennai.
Crime No.8 of 2024.

2.F.Anitha

... Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating in Crime No.8 of 2024 dated 13.12.2024 on the file of the first respondent police herein and quash the same.

For Petitioners : Mr.R.Amizhdhu

For R1 : Mr.R.Vinothraja,
Government Advocate (CrI.side)



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ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.8 of 2024 pending on the file of the first respondent registered for the offence punishable under Section 494 of IPC.

2. The first accused is the husband of the second respondent. After their marriage, they got separated due to various allegations. The petitioner filed a petition for divorce in O.P. No. 1642 of 2014 before the VII Additional Family Court, Chennai and it is pending. In the meanwhile, the second respondent lodged a complaint against the first accused and was registered for the offences under Sections 498-A, 406, and 506(ii) of IPC. After completion of the investigation, the final report was taken cognizance of in C.C. No. 2628 of 2015 on the file of XIII Metropolitan Magistrate, Egmore, Chennai. The first accused was convicted and sentenced. Aggrieved by the same, the first accused preferred an appeal and it is pending. Thereafter, the second respondent filed another private complaint and filed a petition in CrI. M.P. No. 580 of 2024 before the Metropolitan Magistrate, Additional Mahila Court



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alleging that the first accused and the petitioner herein were married and had two male children and the learned Magistrate issued a direction under Section 156(3) of the Cr.P.C. On the direction, the first respondent registered the First Information Report for the offence punishable under Section 494 of IPC. The offence under Section 494 of IPC is a non-cognizable and bailable offence. Further, the learned Magistrate mechanically directed the first respondent to register the First Information Report against the accused.

3. The learned counsel for the second respondent submitted that already the first accused had been imposed punishment for the offence punishable under Sections 498-A, 406, and 506(ii) of IPC. Thereafter, he got married to petitioner and committed an offence under Section 494 of IPC.

4. Heard the learned counsel for both sides and perused the materials available on record.



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5. Admittedly, the offence under Section 494 of IPC is a non-cognizable offence and a bailable one. Therefore, the first respondent has no jurisdiction to register any case against the petitioner for the offence punishable under Section 494 of IPC. Further, it is relevant to extract the provision under Section 198(1) of Cr.P.C as follows:-

198. Prosecution for offences against marriage.—(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence :Provided that -

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the



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provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under [section 494 or 495] of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father-s or mother-s brother or sister or, [with the leave of the Court, by any other person related to her by blood, marriage or adoption.]

Accordingly, no Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence.

6. Therefore, the first respondent has no jurisdiction to register any First Information Report for a non-cognizable offence without any prior permission or direction from the concerned Jurisdictional Magistrate.

7. In view of the above, the impugned First Information Report cannot be sustained and is liable to be quashed. Therefore, the FIR in



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Crime No.8 of 2024, dated 13.12.2024, on the file of the first respondent herein is hereby quashed. However, the second respondent is at liberty to lodge a private complaint against the petitioner in the manner known to law, if she is so advised.

8. Accordingly, this Criminal Original Petition stands allowed.

Consequently, the connected miscellaneous petition is closed.

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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To

1. The Inspector of Police,
W5, All Women Police Station,
Vepery, Chennai.

2. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J,

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