



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 425 of 2020**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Approved for Reporting	Yes	No

MANSUKHBHAI DHANJIBHAI MAKWANA

Versus

STATE OF GUJARAT & ORS.

Appearance:

HCLS COMMITTEE(4998) for the Applicant(s) No. 1

MR NEERAJ SONI(3433) for the Applicant(s) No. 1

MEHUL A SURATI(7870) for the Respondent(s) No. 2,3,4,5,6

MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 16/03/2026

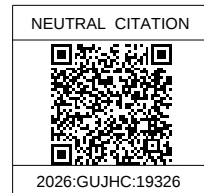
ORAL JUDGMENT

1. By way of the present revision application, the applicant has sought the following reliefs:

(A) To quash and set aside the judgment and order dated 19.11.2019 passed by the learned Additional City Sessions Judge, Ahmedabad in Criminal Appeal No.465 of 2019.

(B) To quash and set aside the order dated 27.05.2019 passed by the learned Additional Chief Metropolitan Magistrate, Court No.4, Ahmedabad in Criminal Case No.911 of 2015.

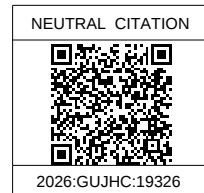
2. Heard the learned advocates for the respective parties.



3. Learned advocate for the applicant submitted that both the courts below have committed an error in discharging the accused. It is submitted that the revisionist was married to respondent No.2 according to Hindu rites and rituals on 13.12.1994 and out of the wedlock, a daughter was born in the year 1999. It is further submitted that in the year 1999, respondent No.2 left the matrimonial home and went to reside with her parents and thereafter did not return to the matrimonial home despite several efforts made by the husband.

4. It is further submitted that due to matrimonial discord between the parties, in February 2010, the complainant allegedly saw respondent No.2 in the company of one Maheshbhai Paljibhai Chhashiya, who is respondent No.3 herein, which came as a shock to him. The complainant thereafter approached respondent No.2 and requested her to return to the matrimonial home along with their daughter. According to the complainant, respondent Nos.2 and 3 were not legally married; however, respondent No.3 allegedly showed certain photographs indicating marriage with respondent No.2 and respondent No.2 was residing with respondent No.3.

5. In view of the aforesaid circumstances, the complainant filed a private complaint alleging the offence of adultery under Section 497 of the Indian Penal Code against respondent No.3. It was also alleged that the complainant was abused and threatened, and therefore offences under Sections 495, 496, 497, 294B, 504, 506 read with Section 114 of the IPC were invoked. The said complaint was initially registered as Inquiry Case No.6

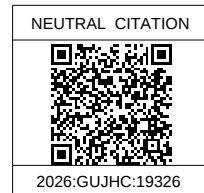


of 2014, which subsequently culminated into Criminal Case No.911 of 2015. After the inquiry, process came to be issued for the offences punishable under Sections 497 and 114 of the IPC.

6. Thereafter, the accused preferred an application under Section 245 of the Code of Criminal Procedure seeking discharge. The learned trial court allowed the discharge application, mainly in view of the fact that Section 497 of the IPC had been declared unconstitutional by the Hon'ble Supreme Court. Being aggrieved by the said order dated 27.05.2019, the complainant preferred Criminal Appeal No.465 of 2019, which also came to be dismissed by the learned Additional City Sessions Judge, Ahmedabad by judgment dated 19.11.2019, confirming the order of discharge passed by the trial court.

7. Assailing the aforesaid orders, learned advocate for the applicant mainly contended that though Section 497 of the IPC was declared unconstitutional by the Hon'ble Supreme Court on 27.09.2018, the said declaration ought to be treated as prospective in operation and therefore the complaint filed prior to the said declaration should be allowed to proceed.

8. Perusing the record, it appears that the constitutional validity of Section 497 of the IPC has been struck down by the Hon'ble Supreme Court as being unconstitutional and violative of Articles 14, 15 and 21 of the Constitution of India. In the present complaint, except for the allegation of adultery, no other consequence or independent offence—such as abetment of



suicide or any other criminal offence—has been alleged. Therefore, merely on the basis of an alleged adulterous act, the person cannot be prosecuted further. In this regard, reference may be made to ***Joseph Shine v. Union of India, (2019) 3 SCC 39***. In view of the above, both the courts below have not committed any error and, in the absence of any perversity, this Court does not find any reason to interfere with the findings recorded by the courts below. Once the very provision under which the accused were sought to be prosecuted has been declared unconstitutional, the question of continuing the criminal prosecution on the basis of such allegation does not arise.

9. In the present case, both the courts below have considered the legal position and have rightly held that the accused cannot be prosecuted for an offence under a provision which has been declared unconstitutional by the Hon'ble Supreme Court. While exercising revisional jurisdiction, this Court cannot re-appreciate or re-evaluate the evidence on record unless there is a clear jurisdictional error, perversity, or illegality in the findings recorded by the courts below.

10. In the opinion of this Court, no such perversity or jurisdictional error is pointed out. The contention that the judgment of the Hon'ble Supreme Court has only prospective application cannot be accepted in the facts of the present case.

11. In view of the above, this Court finds that the orders



passed by the learned courts below do not suffer from any illegality or perversity warranting interference in exercise of revisional jurisdiction. Accordingly, the present revision application stands **dismissed**.

ALI

(HASMUKH D. SUTHAR,J)