

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 1081 of 2013

August Kumar Mehta, son of Lalan Mehta, resident
of Village- Lohra, P.O. & P.S.- Lesliganj, District-
Palamau

... .. Petitioner

-Versus-

The State of Jharkhand

... .. Opp. Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Amit Kumar Das, Advocate

For the State-Opp. Party : Mrs. Vandana Bharti, A.P.P.

Through Video Conferencing

09/23.06.2021

1. Heard Mr. Amit Kumar Das, the learned counsel appearing for the petitioner.
2. Heard Mrs. Vandana Bharti, the learned A.P.P. appearing on behalf of the State-Opposite Party.
3. The present criminal revision petition is directed against the Judgement dated 01.10.2013 passed by the learned Additional Sessions Judge-VII, Palamau at Daltonganj in Criminal Appeal No. 90/2008 whereby the learned appellate court affirmed the Judgment of conviction and the order of sentence of the petitioner under Section 497 of the Indian Penal Code passed by the learned trial court and dismissed the criminal appeal.
4. The learned trial court, vide Judgment of conviction and the order of sentence dated 17.07.2008 passed by the learned Judicial Magistrate, 1st Class, Daltonganj, Palamau in G.R. Case No. 33 of 2001 / Trial No. 165 of 2008 (arising out of Lesliganj P.S. Case No. 01/2001), had convicted the petitioner for the offence under Section 497 of the Indian Penal Code and had sentenced him to undergo Rigorous Imprisonment for two years under Section 497 of the Indian Penal Code.

Arguments on behalf of the petitioner

5. Learned counsel appearing for the petitioner, at the outset, submitted that the petitioner has been convicted under Section 497 of the Indian Penal Code which has been declared unconstitutional by the Hon'ble Supreme Court in the case of *Joseph Shine -versus- Union of India* decided on 27.09.2018 reported in (2019) 3 SCC 39 and therefore, once the Section itself has been declared ultra-vires to the Constitution, no conviction under Section 497 of the Indian Penal Code can be sustained.

6. Learned counsel for the petitioner also referred to the judgement passed by the Hon'ble Bombay High Court in the case of *Rupesh -versus- Shri Charandas* reported in 2018 SCC OnLine Bombay 6292 wherein the Judgment of the Hon'ble Supreme Court passed in the case of *Joseph Shine (Supra)* has been followed and the conviction and sentence under Section 497 of the Indian Penal Code has been set aside under revisional jurisdiction.

7. He further submitted that for securing the ends of justice, the conviction and sentence of the petitioner under Section 497 of Indian Penal Code is fit to be set aside.

8. The learned counsel for the petitioner further submitted that otherwise also, the petitioner has a good case on merit as evidences on record show that the petitioner has been convicted on the basis of hearsay evidence and on presumption and accordingly, the prosecution has not been able to prove the case beyond all reasonable doubt.

Arguments on behalf of the Opposite Party-State

9. Learned counsel appearing on behalf of the State, on the other hand, opposed the prayer and submitted that both the learned courts below have recorded concurrent findings of facts and accordingly, no interference is called for in the present case under revisional jurisdiction. However, it is not in dispute that Section 497 of the Indian Penal Code has been declared

unconstitutional by the Hon'ble Supreme Court in the case of *Joseph Shine -versus- Union of India*.

Findings of this Court

10. After hearing the learned counsel for the parties and going through the impugned judgments and the lower court records of the case, this Court finds that the prosecution case is based on the written report dated 06.01.2001 lodged by the Informant namely, Arun Kumar Mehta (P.W.-8) alleging inter-alia that the Informant's wife namely, Nirmala Devi was absent in his house since 25.12.2000 at about 06:00 P.M. and he was informed by his sister's son (Bhagina) that on the same day, the Informant's wife has fled away from the house towards south with the petitioner and when he saw her and asked her as to where she is going, then they scolded him and told him not to disclose to anyone and after showing an arm, the petitioner threatened to kill him. It was further alleged that there was illicit relationship between Nirmala Devi and the petitioner.

11. On the basis of the written report, the case was registered as Lesliganj P.S. Case No. 01/2001 dated 06.01.2001 under Sections 497/380 of the Indian Penal Code against the petitioner and Nirmala Devi.

12. After completion of investigation, the Investigating Officer submitted charge-sheet under the same sections against the petitioner and Nirmala Devi. Accordingly, the learned I/C, C.J.M., Palamau at Daltonganj took cognizance of the offence under the same sections against them on 24.04.2001.

13. On 21.09.2001, the charges under Sections 497/380 of the Indian Penal Code were framed against the petitioner and Nirmala Devi which were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

14. In course of trial, the prosecution examined altogether 08 witnesses to prove its case. P.W.-1 is Girja Devi, P.W.-2 is Anirudh Mehta, P.W.-3 is Nathuni Mahto, P.W.-4 is Anup

Mahto, P.W.-5 is Rupwant Kumar, P.W.-6 is Ram Kumar Mehta, P.W.-7 is Basisth Kumar Mehta and P.W.-8 is Arun Kumar Mehta who is the Informant himself. The prosecution exhibited the written report of the Informant as Exhibit-1.

15. On 07.04.2008 and 26.04.2008, the statements of the petitioner and Nirmala Devi were recorded under Section 313 of Cr.P.C. wherein the petitioner denied the incriminating evidences put to him and claimed to be innocent. The petitioner did not adduce any oral evidence in his defence, but exhibited certified copy of order dated 06.05.2003 passed by the District Judge, Palamau in Matrimonial Case No. 5/2001 as Exhibit-A.

16. The learned trial court considered the oral and documentary evidences adduced on behalf of the prosecution and the documentary evidence adduced on behalf of the petitioner as well as the arguments advanced on behalf of the parties and convicted the petitioner for the offence under Section 497 of the Indian Penal Code and sentenced him to undergo Rigorous Imprisonment for two years. However, the learned trial court acquitted Nirmala Devi from the charges under Sections 497 and 380 of the Indian Penal Code and also acquitted the petitioner from the charge under Section 380 of the Indian Penal Code.

17. This Court further finds that the learned appellate court also considered the evidences adduced on behalf of the parties and the arguments advanced on their behalf and affirmed the conviction and sentence of the petitioner under Section 497 of the Indian Penal Code passed by the learned trial court.

18. After going through the judgment passed by the Hon'ble Supreme Court in the case of *Joseph Shine (supra)* decided on 27.09.2018, this Court finds that the Hon'ble Supreme Court has struck down Section 497 of the Indian Penal Code as unconstitutional being violative of Articles 14, 15 and 21 of the Constitution of India; Section 198(2)

Cr.P.C., which contains the procedure for prosecution under Chapter XX IPC was also held to be unconstitutional only to the extent that it is applicable to the offence of adultery under section 497 IPC AND decision passed in the case of *Sowmithri Vishnu versus Union of India (reported in 1985 Supp SCC 137)*, *V. Revathi versus Union of India [reported in (1988)2 SCC 72]* and *W. Kalyani versus State [reported in (2012) 1 SCC 358]* were overruled.

19. As per Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court is binding on all the courts within the territory of India and the law laid down by the Hon'ble Supreme Court applies to all pending proceedings. Upon perusal of the aforesaid decision of the Hon'ble Supreme Court, there is no indication that the same would apply prospectively and there is nothing like any prospective operation of law laid down by the Hon'ble Supreme Court. In this regard, reference may be made to the case of *Maj. Genl. A.S. Gauraya and Another -versus- S.N. Thakur*, reported in (1986) 2 SCC 709.

20. This Court finds that the present revision petition was admitted on 06.12.2013 and the petitioner was directed to be released on bail. During the pendency of the revision petition, the section in which the petitioner was ultimately convicted i.e Section 497 IPC, has been declared to be unconstitutional in the case of *Joseph Shine -versus- Union of India decided on 27.09.2018 reported in (2019) 3 SCC 39*. The said judgement is a binding precedent under Article 141 of the Constitution of India.

21. In view of the aforesaid Judgment passed by the Hon'ble Supreme Court, the conviction and sentence of the petitioner under Section 497 of the Indian Penal Code passed by the learned trial court and affirmed by the learned appellate court

is legally not sustainable and accordingly, both the impugned judgments call for interference under revisional jurisdiction to prevent miscarriage of justice to the petitioner.

22. Accordingly, the impugned Judgment dated 01.10.2013 passed by the learned Additional Sessions Judge-VII, Palamau at Daltonganj in Criminal Appeal No. 90/2008 as well as the conviction and sentence of the petitioner under Section 497 of the Indian Penal Code passed by the learned Judicial Magistrate, 1st Class, Daltonganj, Palamau vide Judgment of conviction and the order of sentence dated 17.07.2008 in G.R. Case No. 33 of 2001 / Trial No. 165 of 2008 (arising out of Lesliganj P.S. Case No. 01/2001) is hereby set-aside. Consequently, the petitioner is discharged from the liability of his bail bond.

23. Accordingly, this criminal revision petition is hereby **allowed**.

24. The office is directed to send back the Lower Court Records to the court concerned.

25. Let a copy of this Judgment be communicated to the court concerned through 'FAX / email'.

(Anubha Rawat Choudhary, J.)