PETITIONER:
V. REVATHI

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT25/02/1988

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
DUTT, M.M. (J)

CITATION:
1988 AIR 835 1988 SCR (3) 73
1988 SCC (2) 72 JT 1988 (1) 419
1988 SCALE (1)420

ACT:
Constitution of India, 1950: Art. 14-Constitutional validity of ss. 198(1) and 198(2) Cr. P.C.-Adultery-Right to prosecute husband not extended to the wife of the adulterer-Whether amounts to hostile discrimination on the ground of sex.

Criminal Procedure Code, 1973. Sections 198(1) and 198(2)-Adultery-Right to prosecute husband not extended to the wife of the adulterer-Whether hostile discrimination violative of Art. 14 of the Constitution of India.

HEADNOTE:
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The constitutional validity of Section 198 Cr.P.C. has been called into question by a wife by way of the present petition under Article 32 of the Constitution of India.

The petitioner wife contended that whether or not the law permits a husband to prosecute his disloyal wife, the wife cannot be lawfully disabled from prosecuting her disloyal husband. The petitioner asserted that in so far as and to the extent Section 198(2) of the Code of Criminal Procedure operates as a fetter on the wife in prosecutising her adulterer husband, the relevant provisions is unconstitutional on the ground of abnoxious discrimination,

Dismissing the petition, this Court,
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HELD: 1. Admittedly under the law, the aggrieved husband, whose wife has been disloyal to him, has no right under the law to prosecute his wife, inasmuch as by the very definition of the offence, only a man can commit adultery, not a woman. As between the husband and the wife social good will be promoted by permitting them to 'make up' or 'break up' the matrimonial tie rather than to drag each other to the criminal court. They can either condone the offence in a spirit of 'forgive and forget' and live together or separate by approaching a matrimonial court and snapping the matrimonial tie by securing divorce. They are not enabled to send each other to jail. Perhaps the children are saved from the trauma of one of their parents being jailed
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at the instance of the other parent. [77E-G]

2. Section 497 does not confer any right on the wife to prosecute the husband who has committed adultery with another woman. Section 497 of the Indian Penal Code and section 198(1) read with section 198(2) of the Criminal Procedure Code go hand in hand and constitute a legislative packet to deal with the offence committed by an outsider to the matrimonial unit who invades the peace and privacy of the matrimonial unit and poisons the relationship between the two partners constituting the matrimonial unit. The community punishes the 'outsider' who breaks into the matrimonial home and occasions the violation of sanctity of the matrimonial tie by developing an illicit relationship with one of the spouses subject to the rider that the erring 'man' alone can be punished and not the erring woman. [77H; 78A-B]

Sowmithri Vishnu v. Union of India & Anr., [1985] Suppl. SCC 137, referred to.

3. Section 198 Cr.P.C. is not vulnerable to the charge of hostile discrimination against a woman. While the outsider who violates the sanctity of the matrimonial home is punished a rider has been added that if the outsider is a woman she is not punished. There is thus reverse discrimination in 'favour' of the woman rather than 'against' her. The law does not envisage the punishment of any of the spouses at the instance of each other. Thus there is no discrimination against the woman in so far as she is not permitted to prosecute her husband. A husband is not permitted because the wife is not treated an offender in the eye of law. The wife is not permitted as Section 198(1) read with section 198(2) does not permit her to do so. The law has meted out even-handed justice to both of them in the matter of prosecuting each other or securing the incarceration of each other. [78C-E]

JUDGMENT:

CIVIL ORIGINAL JURISDICTION: Writ Petition (Crl.) No. 562 of 1986

(Under Article 32 of the Constitution of India.)

Ms. Geetha Ramaseshan and Ms. Seita Vaidilingam for the Petitioner.

D.N. Dwivedi, Ashok K. Srivastava and S. Suri for the Respondents.

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The Judgment of the Court was delivered by

THAKKAR, J. Not only the option to 'make up' or 'break up' but also the right to 'haul up' the erring husband before a Criminal Court, is claimed by the aggrieved wife irrespective of the fact that the husband of an erring wife does not have a corresponding right. Or else the conscience of the 'EQUALITY' clause will not be appeased is the plea made by the anguished wife.

Accordingly, a constitutional gun has been pointed at the provision which in its effect permits only the husband of the adulteress to prosecute the adulterer but does not permit the wife of the adulterer to do so. True it is, neither of the spouses can prosecute each other. But the aggrieved wife complains that to deny her the right to prosecute her offending husband for the offence of adultery punishable under Section 497 of the Indian Penal Code is to violate the Constitution by discriminating against her on the ground of her sex.

The provision which disables the wife from prosecuting the husband for such an offence is embodied in Section

198(1) read with Section 198(2)i of the Code of Criminal Procedure, 1973 which carves out an exception to the general rule that any one can set the criminal law in motion. The constitutional validity of this provision which disables the wife from prosecuting the husband, has been called into question by a wife by way of the present petition under Article 32 of the Constitution of India.

Be it realised that Section 497 of the Indian Penal Code is so designed that a husband cannot prosecute the wife for defiling the sanctity of the matrimonial tie by committing adultery. Thus the law

1. "198. Prosecution for offence against marriage-

(1) No Court shall take congnizance 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) xxxxx

(b) xxxxx

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under Section 497 or Section 498 of the said Code; Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf."

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permits neither the husband of the offending wife to prosecute his wife nor does the law permit the wife to prosecute the offending husband for being disloyal to her. Thus both the husband and the wife are disabled from striking each other with the weapon of criminal law. The petitioner wife contends that whether or not the law permits a husband to prosecute his disloyal wife, the wife cannot be lawfully disabled from prosecuting her disloyal husband. And that in so far as and to the extent Section 198(2) of the Code of Criminal Procedure operates as a fetter on the wife in prosecuting her adulterer husband, the relevant provisions is unconstitutional on the ground of obnoxious discrimination, she asserts.

This very argument came to be debated before a Bench of this Court in Sowmithri Vishnu v. Union of India & Anr., [1985] Suppl. SCC 137 in the context of a challenge to the constitutionality of Section 4972 of the Indian Penal Code by an adulterer who had been prosecuted for the offence of adultery under Section 497 of the Indian Penal Code by the husband of the adultress. Three grounds were pressed into service in support of the challenge rooted in Article 14 of the Constitution of India in Sowmithri Vishnu's case (supra). Ground No. 2 was in the following terms:

"Section 497 does not confer any right on the wife to prosecute the husband who has committed adultery with another woman.

This ground of challenge has been dealt with by this Court in para 8 of the said judgment wherein Chandrachud, CJ. spoke thus on behalf of the Court:

"In so far as the second of the three grounds is concerned, Section 497 does not envisage the prosecution of the wife by the husband for 'adultery'. The offence of adultery as defined in that section can only be committed by a man, not by a woman. Indeed the section provides, expressly that the wife shall not be punishable even as an

abettor. No grievance can then be made that the section does not allow

2. "497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor."

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the wife to prosecute the husband for adultery. The contemplation of the law, evidently is that the wife, who is involved in an illicit relationship with another man, is a victim and not the author of the crime. The offence of adultery as defined in Section 497 is considered by the legislature as an offence against the sanctity of the matrimonial home, and act which is committed by a man, as it generally is. Therefore, those men who defile that sanctity are brought with the net of the law. In a sense, we revert to the same plint. Who can prosecute who for which offence depends firstly, on the definition of the offence and, secondly, upon the restrictions placed by the law of procedure on the right to prosecute."

Thus this very argument has already been repulsed by this Court, albeit, in the context of the challenge to Section 497 of the Indian Penal Code. The same bullet has now been fired in order to assail Section 198(2) of the Criminal Procedure Code in so far as it confines the right to prosecute the adulterer to the aggrieved husband of the adulteress. The argument in support of the challenge is that whether or not the husband has the right to prosecute the disloyal wife, the wife must have the right to prosecute the disloyal husband. Admittedly under the law, the aggrieved husband whose wife has been disloyal to him has no right under the law to prosecute his wife, in as much as by the very definition of the offence, only a man can commit it, not a woman. The philosophy underlying the scheme of these provisions appears to be that as between the husband and the wife social good will be promoted by permitting them to 'make up' or 'break up' the matrimonial tie rather than to drag each other to the criminal court. They can either condone the offence in a spirit of 'forgive and forget' and live together or separate by approaching a matrimonial court and snapping the matrimonial tie by securing divorce. They are not enabled to send each other to jail. Perhaps it is as well that the children (if any) are saved from the trauma of one of their parents being jailed at the instance of the other parent. Whether one does or does not subscribe to the wisdom or philosophy of these provisions is of little consequence. For, the Court is not the arbiter of the wisdom or the philosophy of the law. It is the arbiter merely of the constitutionality of the law.

Section 497 of the Indian Penal Code and Section 198(1) read with Section 198(2) of the Criminal Procedure Code go hand in hand and constitute a legislative packet to deal with the offence committed

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by an outsider to the matrimonial unit who invades the peace and privacy of the matrimonial unit and poisons the relationship between the two partners constituting the matrimonial unit. The community punishes the 'outsider' who

breaks into the matrimonial home and occasions the violation of sanctity of the matrimonial tie by developing an illicit relationship with one of the spouses subject to the rider that the erring 'man' alone can be punished and not the erring woman. It does not arm the two spouses to hit each other with the weapon of criminal law. That is why neither the husband can prosecute the wife and send her to jail nor can the wife prosecute the husband and send him to jail. There is no discrimination based on sex. While the outsider who violates the sanctity of the matrimonial home is punished a rider has been added that if the outsider is a woman she is not punished. There is thus reverse discrimination in 'favour' of the woman rather than 'against' her. The law does not envisage the punishment of any of the spouses at the instance of each other. Thus there is no discrimination against the woman in so far as she is not permitted to prosecute her husband. A husband is not permitted because the wife is not treated an offender in the eye of law. The wife is not permitted as Section 198(l) read with section 198(2) does not permit her to do so. In the ultimate analysis the law has meted out even handed justice to both of them in the matter of prosecuting each other or securing the incarceration of each other. Thus no discrimination has been practised in circumscribing the scope of Section 198(2) and fashioning it so that the right to prosecute the adulterer is restricted to the husband of the adulteress but has not been extended to the wife of the adulterer.

The provision in question is therefore not vulnerable to the charge of hostile discrimination against a woman and cannot be successfully assailed from that platform. The petition must therefore fail and be dismissed.

G.N. Petition dismissed

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