Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1428 OF 2011
(Arising out of S.L.P. (Crl.) No. 6349 of 2010)

A. Subash Babu ...
Petitioner(s)

Versus

State of A.P.& Anr. ...Respondent(s)

J U D G M E N T

J.M. PANCHAL, J.

1. Leave granted.

2. This appeal by grant of Special Leave, questions the legality of Judgment dated 26.02.2010, rendered by

the learned Single Judge of the High Court of Judicature, Andhra Pradesh in Criminal Petition No. 2426 of 2005 by which the prayer made by the appellant, a Police Officer, to quash the proceeding in C.C. No. 820 of 1996 initiated for commission of offences punishable under Sections 498A, 494, 495, 417 and 420 IPC, has been partly allowed by quashing proceedings insofar as offence punishable under Section 498A IPC is concerned, whereas the proceedings relating to the offences punishable under Sections 494, 495, 417 and 420 IPC are ordered to continue against the appellant.

3. The appeal arises in the following circumstances:-

The respondent no. 2 is the original complainant. According to her, the petitioner who is Sub-Inspector of Police, cheated her and her parents by stating that his first wife had died after delivering two children who are studying and staying in a hostel, even though his first wife by name Sharda is very much alive and living with him at

Avanthinagar near Erragadda and thus by making false and fraudulent representation, the appellant married with her at Yadagirigutta on 09.10.1994. The case of the respondent no. 2 is that the appellant had collected total amount of Rs.28,000/- from her father towards hand loan on the false plea that he was constructing his own house at Borabanda and the appellant further demanded a sum of Rs.20,000/- from her father and when her father expressed inability to pay the amount, the appellant threatened the complainant and her father with dire consequences by showing his licensed revolver. According to the complainant, several times the appellant had tried to snatch away gold ornaments put on by her by threatening her with dire consequences and had demanded gold ornaments together with cash of Rs.15,000/- from her parents. The case of the respondent no. 2 is that when additional demand was not fulfilled the appellant had threatened her and her father again by saying that he would wipe out the evidence of his marriage with the complainant which had taken place at Yadagirigutta by destroying all the photographs and negatives and would walk

out of her life. Thus feeling aggrieved by the acts of the appellant in cheating her, committing bigamy and meting out cruelty to her for dowry, etc., the respondent no. 2 lodged FIR dated 26.05.1995 with Ranga Reddy Police Station, Balanagar and prayed to take appropriate action against the appellant for alleged commission of offences under Sections 498A and 420 IPC.

4. The Investigating Officer, investigated the FIR lodged by the respondent no. 2 and submitted charge sheet in the Court of learned Judicial Magistrate, First Class, Hyderabad, West and South Court, R.R.District at Kothapet, Sarunagar for commission of offences punishable under Sections 494, 495, 417, 420 and 498A IPC. On receipt of the charge sheet the learned Magistrate took cognizance of the offences and summoned the appellant. The record shows that earlier Criminal Petition No. 812 of 2001 was filed by the appellant before the High Court to quash the proceedings initiated pursuant to C.C. No. 820 of 1996 pending on the file of the learned Judicial Magistrate. However, the said petition was

withdrawn by the appellant and therefore the petition was dismissed by the High Court vide order dated 09.04.2005 reserving liberty to the appellant to file a fresh petition in case of necessity. After few days thereof, the appellant filed Criminal Petition No. 2426 of 2005 in the High Court for quashing the proceedings in the Criminal Case pending before the learned Magistrate. The record does not indicate as to why Criminal Petition No. 812 of 2001 filed by the appellant in which similar reliefs as claimed in Criminal Petition No. 2426 of 2005, were claimed, was withdrawn and which were the new/additional circumstances/grounds which prompted the appellant to file Criminal Petition No. 2426 of 2005. The said petition was filed mainly on the ground that the proceedings against the appellant were registered for commission of above mentioned offences on the basis of charge sheet submitted by the Sub-Inspector of Police, Women Police Station, Amberpet, R.R. District and not on the basis of complaint made by the aggrieved person within the meaning of Section 198 of the Code. According to the appellant the person aggrieved by alleged commission of

offences under Sections 494 and 495 is his wife and cognizance of those offences could have been taken only on the basis of the complaint filed by his wife in the Court or by someone on her behalf as contemplated by Section 198A (1)(c) of the Code, and therefore, the learned Magistrate could not have taken cognizance of those offences on the basis of submission of charge sheet by Sub-Inspector of Police on the basis of the investigation into the FIR lodged by the respondent No. 2 who is not the aggrieved person within the meaning of Section 198 of the Code. It was pleaded that there was no averment that pursuant to deception or fraudulent or dishonest inducement made by the appellant, there was any delivery or destruction of property belonging to the original complainant and therefore Section 420 IPC was not attracted. It was the case of the appellant that the provision of Section 498A was also not attracted because the respondent no. 2 was not the wife of the appellant. It was also the case of the appellant that Section 417 IPC merged into offence under Section 495 IPC which is a graver offence than Section 417 and as there were no allegations

constituting offence under Section 417 IPC, the proceedings initiated for alleged commission of the offences should be quashed.

5. The High Court considered the submissions advanced at the Bar as well as the provisions of Sections 198(1)(c) of the Code of Criminal Procedure, Section 494 and 495 IPC and the Judgment of Division Bench of Andhra Pradesh High Court in **Mavuri Rani Veera Bhadranna Vs. State of A.P. and Anr. 2007 (1) ALD (Crl.) 13 (A.P.)** and concluded that the Division Bench in **Mavuri Rani Veera Bhadranna (supra)** had taken note of the fact that the offence punishable under Section 494 IPC as amended by the State of Andhra Pradesh was made cognizable, and though there was no corresponding amendment to Section 198 of the Criminal Procedure Code, the investigating agency was entitled to investigate, and the Magistrate was not precluded from taking cognizance of the said offence on report filed by the police. Having so concluded the Division Bench proceeded to quote part of the Judgment in **Mavuri Rani**

Veera Bhadranna (supra) and after noting contentions on behalf of the parties proceeded to consider the decision in the case of **S.Radhika Sameena Vs. Station House Officer, 1997 Criminal Law Journal 1655** and held that the decision of the Division Bench in **Mavuri Rani Veera Bhadranna (supra)** was holding the field with regard to competency of the police to file charge sheet and competency of the Magistrate to take cognizance of the offences punishable under Sections 494 and 495 IPC on the report filed by the police. The High Court further concluded that taking cognizance of the offences punishable under Sections 417, 420, 494 and 495 IPC was in accordance with law, but the victim i.e. the respondent no. 2 in the present case was second wife and therefore prima facie marriage between appellant and the second respondent was void and therefore, offence under Section 498A IPC was not made out against the appellant.

6. In view of the above mentioned conclusions, the learned Single Judge of the High Court by the impugned Judgment

partly accepted the petition filed by the appellant under Section 482 of the Code of Criminal Procedure by quashing the proceedings in C.C.No. 820 of 1996 on the file of the learned Judicial Magistrate, First Class, West and South, Kothapet, R.R.District, insofar as offence punishable under Section 498A IPC is concerned, whereas the prayer made by the appellant to quash the proceedings insofar as the offences punishable under Sections 494, 495, 417 and 420 IPC, are concerned, is rejected, giving rise to the instant appeal.

7. The learned Counsel for the appellant argued that the learned Magistrate could not have taken cognizance of offences under Sections 494 and 495 IPC on the basis of the police report submitted by the Investigating Officer because though the State legislation amended the First Schedule to the Code of Criminal Procedure, 1973 by making the offences under Section 494 ad 495 IPC cognizable, the legislation made by the Parliament in respect of Section 198 of the Code of Criminal Procedure remained the same and in the event of

any repugnancy between the two legislations, the legislation made by the Parliament would prevail. It was emphasized that Section 198 A inserted by Section 5 of the Act 46 of 1983 with effect from 25.12.83 provides that no Court shall take cognizance of an offence punishable under Section 498A of the Indian Penal Code except upon a police report of facts which constitute such offences or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's, her mother's, brother or sister or with the leave of the Court by any other person related to her by blood, marriage or adoption, but no provision is made to enable a court to take cognizance of offences punishable under Sections 494 and 495 of the Indian Penal Code upon police report and therefore the proceedings pending before the learned Magistrate in respect of those offences should have been quashed. Referring to Section 198(1)(c) which *inter alia* provides that no Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by a person aggrieved, where the person

aggrieved by an offence punishable under Section 494 or Section 495 of the Indian Penal Code, is the wife etc., it was pleaded that in the instant case no complaint was made to the Court but was made to the police and on the basis of charge sheet, the Magistrate had taken cognizance of the offences which is contrary to Section 198 of the Code and is illegal. What was asserted was that the High Court failed to notice that under Section 198(1)(c) of the Criminal Procedure Code only a legally wedded wife or someone on her behalf as mentioned in the said Section can make a complaint to Magistrate for the offences under Section 494 and 495 IPC and as admittedly the complaint was made by the respondent no. 2 who is claiming to be second wife of the appellant herein and that too to the police and not in the Court, the proceedings initiated for alleged commission of those offences should have been quashed. In support of above stated contentions, the learned Counsel for the petitioner placed reliance on the decision in **Mavuri Rani Veera Bhadranna (Supra).**

8. On the other hand, the learned Counsel for the respondents argued that by Code of Criminal Procedure (Andhra Pradesh Second Amendment) Act, 1992, the offences under Sections 494 and 495 have been made cognizable in the State of Andhra Pradesh, and therefore the respondent

No. 2 who is aggrieved person so far as commission of offences punishable under Sections 494 and 495 IPC are concerned, was justified in lodging FIR with the police and the police after investigation, was justified in submitting charge sheet on the basis of which proceedings are pending before the learned Magistrate in respect of alleged commission of offences by the appellant under Section 494, 495, 417, 420 and 498A IPC. The contention by the learned Counsel for the respondents was that 198(1)(c) of the Code of Criminal Procedure will have to be read in the light of the amendment made in the Code by the State Legislature and therefore the learned Magistrate did not commit any error in taking cognizance of the offences on the basis of charge sheet submitted by the Investigating Officer.

9. This Court has heard the learned Counsel for the parties at length and also considered the documents forming part of the appeal.

10. The contention that the respondent no. 2 is not an aggrieved person so far as commission of offences punishable under Sections 494 and 495 IPC is concerned, has no substance and cannot be accepted. Section 494 of IPC reads as under:-

> "Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Whereas Section 495 of the IPC is as follows:-

> "Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

As far as Section 494 IPC is concerned, the criminality attaches to the act of second marriage either by a husband or by a wife who has a living wife or husband, in a case in which second marriage is void by reason of its taking place during the life of such husband or wife. When a law, such as Section 11 of Hindu Marriage Act, 1955 declares that a second marriage by a husband, who has living wife, with another woman is void, for breach of Section 5 (i) of the said Act, it brings/attaches several legal disabilities to the woman with whom second marriage is performed. Say for example, she would not be entitled to claim maintenance from her husband even if she is inhumanly treated, subjected to mental and physical cruelty of variety of kinds etc. and is not able to maintain herself. Law of inheritance would prejudicially operate against her. She herself would suffer outrageous, wrong and absurd social stigma of being another woman in the life of the male who contracts second marriage with her. The members of the cruel society including her kith and kin like parents, brother, sister etc. would look down upon her and she would be left in lurch by one and all.

When a Court of law declares second marriage to be void on a petition presented by husband who contracts the second marriage on the ground that he has a spouse living at the time of marriage, it only brings untold hardships and miseries in the life of the woman with whom second marriage is performed apart from shattering her ambition to live a comfortable life after marriage.

Having noticed the agony, trauma etc. which would be suffered by the woman with whom second marriage is performed, if the marriage is declared to be void, let us make an attempt to ascertain the purpose of enacting Section 494 IPC. This Section introduces monogamy which is essentially voluntary union of life of one man with one woman to the exclusion of all others. It enacts that neither party must have a spouse living at the time of marriage. Polygamy was practiced in many sections of Hindu society in ancient times. It is not a matter of long past that in India, hypergamy brought forth wholesale polygamy and along with it misery, plight and ignominy to woman having no parallel in the world. In post vedic India a King could take and generally

used to have more than one wife. Section 4, of Hindu Marriage Act nullifies and supersedes such practice all over India among the Hindus. Section 494 is intended to achieve laudable object of monogamy. This object can be achieved only by expanding the meaning of the phrase "aggrieved person". For variety of reasons the first wife may not choose to file complaint against her husband e.g. when she is assured of re-union by her husband, when husband assures to snap the tie of second marriage etc. Non-filing of the complaint under Section 494 IPC by first wife does not mean that the offence is wiped out and monogamy sought to be achieved by means of Section 494 IPC merely remains in statute book. Having regard to the scope, purpose, context and object of enacting Section 494 IPC and also the prevailing practices in the society sought to be curbed by Section 494 IPC, there is no manner of doubt that the complainant should be an aggrieved person. Section 198(1)(c) of the Criminal Procedure Code, amongst other things, provides that where the person aggrieved by an offence under Section 494 or Section 495 IPC is the wife,

complaint on her behalf may also be filed by her father, mother, sister, son, daughter etc. or with the leave of the Court, by any other person related to her by blood, marriage or adoption. In **Gopal Lal Vs. State of Rajasthan (1979) 2 SCC 170** this Court has ruled that in order to attract the provisions of Section 494 IPC both the marriages of the accused must be valid in the sense that the necessary ceremonies required by the personal law governing the parties must have been duly performed. Though Section 11 of the Hindu Marriage Act provides that any marriage solemnized, if it contravenes the conditions specified in Clause (i) of Section 5 of the said Act, shall be null and void, it also provides that such marriage may on a petition presented by either party thereto, be so declared. Though the law specifically does not cast obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the Court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose

of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent Court, the woman with whom second marriage is solemnized continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband.

Even otherwise, as explained earlier, she suffers several legal wrongs and/or legal injuries when second marriage is treated as a nullity by the husband arbitrarily, without recourse to the Court or where declaration sought is granted by a competent Court. The expression "aggrieved person" denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant. Section 494 does not restrict right of filing complaint to the first wife and

there is no reason to read the said Section in a restricted manner as is suggested by the learned Counsel for the appellant. Section 494 does not say that the complaint for commission of offence under the said section can be filed only by wife living and not by the woman with whom subsequent marriage takes place during the life time of the wife living and which marriage is void by reason of its taking place during the life of such wife. The complaint can also be filed by the person with whom second marriage takes place which is void by reason of its taking place during the life of first wife.

A bare reading of the complaint together with statutory provisions makes it abundantly clear that the appellant having a wife living, married with the respondent no. 2 herein by concealing from her the fact of former marriage and therefore her complaint against the appellant for commission of offence punishable under Section 494 and 495 IPC is, maintainable and cannot be quashed on this ground.

To hold that a woman with whom second marriage is performed is not entitled to maintain a complaint under Section 494 IPC though she suffers legal injuries would be height of perversity.

11. Section 495 IPC provides that if a person committing the offence defined in Section 494 IPC conceals from the person with whom subsequent marriage is contracted, the fact of the former marriage, the said person is liable to punished as provided therein. The offence mentioned in Section 495 IPC is an aggravated form of bigamy provided in Section 494 IPC. The circumstance of aggravation is the concealment of the fact of the former marriage to the person with whom the second marriage is contracted. Since the offence under Section 495 IPC is in essence bigamy, it follows that all the elements necessary to constitute that offence must be present here also. A married man who by passing himself off as unmarried induces an innocent woman to become, as she thinks his wife, but in reality his mistress, commits one of the grossest forms of frauds known to law

and therefore severe punishment is provided in Section 495 IPC. Section 495 begins with the words "whoever commits the offence defined in the last preceding Section....." The reference to Section 494 IPC in Section 495 IPC makes it clear that Section 495 IPC is extension of Section 494 IPC and part and parcel of it. The concealment spoken of in Section 495 IPC would be from the woman with whom the subsequent marriage is performed. Therefore, the wife with whom the subsequent marriage is contracted after concealment of former marriage, would also be entitled to lodge complaint for commission of offence punishable under Section 495 IPC. Where second wife alleges that the accused husband had married her according to Hindu rites despite the fact that he was already married to another lady and the factum of the first marriage was concealed from her, the second wife would be an aggrieved person within the meaning of Section 198 Cr. P.C. If the woman with whom the second marriage is performed by concealment of former marriage is entitled to file a complaint for commission of offence under Section 495 IPC, there is no reason why she

would not be entitled to file complaint under Section 494 IPC more particularly when Section 495 IPC is extension and part and parcel of Section 494 IPC.

For all these reasons, it is held that the woman with whom second marriage is contracted by suppressing the fact of former marriage would be entitled to maintain complaint against her husband under Sections 494 and 495 IPC.

12. The argument that the learned Magistrate could not have taken cognizance of offence punishable under Sections 494 and 495 IPC on the basis of the police report i.e. charge sheet, as those offences are non- cognizable and therefore, the relief claimed in the petition filed before the High Court under Section 482 of the Code should have been granted is devoid of merits.

13. In this regard, it would be, relevant to notice the provisions of Article 246 of the Constitution. Article 246 deals with subject matter of laws made by the Parliament

and by the legislatures of State. Clause (1) of Article 246 *inter alia* provides that notwithstanding anything contained in Clauses (2) and (3) of Article 246, the Parliament has exclusive power to make laws with respect to any of the maters enumerated in List 1 in the Seventh Schedule. Sub-Clause 2 of the said Article provides that notwithstanding anything in Clause (3), Parliament and subject to Clause (1), the legislature of any State also have power to make laws with respect to any of the matters enumerated in List 3 in the Seventh Schedule, whereas, Clause (3) of Article 246 amongst other things provides that subject to Clauses (1) and (2), the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List 2 in the Seventh Schedule. Entry 2 in List 3 i.e. Concurrent List in the Seventh Schedule mentions "Criminal Procedure, including in matters included in the Code of "Criminal procedure, at the commencement of this Constitution". Thus there is no manner of doubt that Parliament and subject to Clause (1), the legislature of any State also has power to make laws with

respect to Code of Criminal Procedure. Section 2(c) of the Code of Criminal Procedure, 1973 defines the phrase "Cognizable Offence" to mean an offence for which and "Cognizable Case" means a case in which, a Police Officer may, in accordance with the First Schedule or under any other law for the time being in force arrest without warrant. Part I of the First Schedule to the Code of Criminal Procedure, 1973 relating to offences under the Indian Penal Code *inter alia* mentions that Section 494 and 495 are non-cognizable. Section 154 of the Criminal Procedure Code relates to information in cognizable cases and provides *inter alia* that every information relating to the commission of a cognizable offence, if given orally to an Officer in charge of a Police Station, shall be reduced to writing by him and be read over to the informant. Section 156 of the Code provides that any Officer in charge of a Police Station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over a local area within the limits of such station would have power to enquire into or try under provisions of Chapter XIII of Criminal Procedure Code.

As Sections 494 and 495 are made non-cognizable, a Police Officer would not have power to investigate those cases without the order of a Magistrate, having a power to try such cases or commit such cases for trial as provided under Section 155(2) of the Code.

However, this Court finds that the Legislative Assembly of the State of Andhra Pradesh enacted the Code of Criminal Procedure (Andhra Pradesh Second Amendment) Act, 1992. By the said Amending Act, the First Schedule to Central Act 2 of 1974 i.e. the Code of Criminal Procedure, 1973 came to be amended and against the entries relating to Section 494 in column 4 for the word "Ditto", the word "Cognizable" and in column 5 for the word "Bailable" the word "Non-bailable" were substituted. Similarly, against the entries relating to Section 495 in column 4, for the word "Ditto" the word "Cognizable" and in column 5 for the word "Ditto", the word "Non-bailable" were substituted. What is relevant to be noticed is that the Code of Criminal Procedure (Andhra Pradesh Second Amendment) Act, 1992 was reserved by the Governor of Andhra Pradesh on the 21st October, 1991 for

consideration and assent of the President. The Presidential assent was received on 10th February, 1992 after which the Code of Criminal Procedure (Andhra Pradesh Second Amendment) Act, 1992 was published on the 15th February, 1992 in the Andhra Pradesh Gazette Part IV-B (Ext.). Thus there is no manner of doubt that Sections 494 and 495 IPC are cognizable offences so far as State of Andhra Pradesh is concerned.

14. Having noticed the amendment made by the Legislative Assembly of the State of Andhra Pradesh regarding Section 494 and 495 IPC, this Court proposes to consider the effect of assent given by the President on 10th February, 1992 to the Code of Criminal Procedure (Andhra Pradesh Second Amendment) Act, 1992. Article 254 of the Constitution reads as under:-

> "254 Inconsistency between laws made by Parliament and laws made by the Legislatures of States:-
> (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any

> provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.
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> (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has bee reserved for the consideration of the President and has received his assent, prevail in that State.

Provided that nothing in this clause shall prevent Parliament from enacting a law adding to, amending, varying or repealing the law made by the legislature of the State".

There is no manner of doubt that Amending Act of 1992 is on the subject which is already in existence in the Code of Criminal Procedure, 1973. However, in view of Clause (2) of Article 254 of the Constitution, an undoubted power to legislate, of course subject to assent of the President on the

subject already in existence, is available to the State Legislature. Clause (1) of Article 254 is operative subject to provisions of Clause (2). If a law passes a test of Clause (2), it will make Clause (1) inapplicable to it. To the general rule laid down in Clause (1), Clause (2) engrafts an exception, viz., that if the President assents to a State Law which has been reserved for his consideration as required by Article 200, it will prevail notwithstanding its repugnancy to an earlier law of Union. Clause (2) provides for curing of repugnancy which would otherwise invalidate a State law which is inconsistent with a Central law or an existing law. The clause provides that where the State law has been reserved for the consideration of the President and has received his assent, the State law would prevail in the particular State notwithstanding its repugnancy to a Central law or an existing law. Clause (2) comes into play only when (1) the two laws in question deal with a matter in Concurrent List (2) the State law has been made with the consent of the President and (3) the provision of law made by Parliament was earlier. When all these three conditions are satisfied,

the law made by the State Legislature will prevail. Where there is inconsistency between laws made by Parliament and laws made by the State Legislature, the law made by the Parliament shall prevail. If the State makes law enumerated in Concurrent List which contains provisions repugnant to the provision of an earlier law made by the Parliament, the law so made by the State if it receives assent of President will prevail in the State. When the State Act prevails under Article 254(2) over a Central Act, the effect is merely to supersede the Central Act or to eclipse it by the State Act. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union Law relating to a concurrent subject would be that the State Act will prevail in that State and overrule the provisions of the Central Act, in that State.

In view of the above settled legal position, this Court has no doubt that the amendment made in the First Schedule to the Code of Criminal Procedure, 1973 by the Code of Criminal Procedure (Andhra Pradesh Second Amendment) Act, 1992, shall prevail in the State of Andhra

Pradesh, notwithstanding the fact that in the Criminal Procedure Code, 1973 offences under Section 494 and 495 are treated as cognizable offences. The reasoning given by the Division Bench of High Court of Andhra Pradesh in **Mavuri Rani Veera Bhadranna (supra)** that though the State Legislation amended the Schedule making the offence under Section 494 IPC cognizable, the legislation made by the Parliament i.e. Section 198 of the Criminal Procedure Code remains and in the event of any repugnancy between the two legislations, the legislation made by the Parliament would prevail, because, Section 198 of the Criminal Procedure Code still holds the field despite the fact that the State Legislation made amendment to the Schedule of Criminal Procedure Code, with respect, is erroneous and contrary to all cannons of interpretation of statute. Once First Schedule to the Code of Criminal Procedure, 1973 stands amended and offences punishable under Sections 494 and 495 IPC are made cognizable offences, those offences will have to be regarded as cognizable offences for all purposes of the Code of Criminal Procedure, 1973 including for the

purpose of Section 198 of the Criminal Procedure Code. Section 198(1)(c), after the Amendment made by the Code of Criminal Procedure(Andhra Pradesh Second Amendment) Act, 1992 cannot be interpreted in isolation without referring to the fact that offences under Sections 494 and 495 IPC have been made cognizable so far as the State of Andhra Pradesh is concerned. Therefore, the provision made in Section 198(1)(c) that no Court shall take cognizance of an offences punishable under Chapter XX of the IPC except upon a complaint made by some person aggrieved will have to be read subject to the amendment made by the Legislative Assembly of the State of Andhra Pradesh in 1992. Once, it is held that the offences under Section 494 and 495 IPC are cognizable offences, the bar imposed by operative part of sub-section 1 of Section 198 of the Criminal Procedure Code beginning with the words "No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence" gets lifted so far as offences punishable under Sections 494 and 495 IPC are concerned.

As those offences have been made cognizable offences in the State of Andhra Pradesh since 1992, the same will have to be dealt with as provided in the Section 156 which *inter alia* provides that any officer in charge of a Police Station, may without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Chapter XIII. Even without the authorization under Section 155(2) or Section 156(3) of Criminal Penal Code, offences under Sections 494, 495 and 496 having been rendered cognizable and non-bailable by virtue of the Criminal Procedure Code (Amendment Act, 1992) can be investigated by the Police and no illegality is attached to the investigation of these offences by the police. If the Police Officer in charge of a Police Station is entitled to investigate offences punishable under Section 494 and 495 IPC, there is no manner of doubt that the competent Court would have all jurisdiction to take cognizance of the offences after receipt of report as contemplated under Section 173(2) of the Code. Thus, this

Court finds that correct proposition of law was not laid down in **Mavuri Rani Veera Bhadranna (supra)** when the Division Bench of the Andhra Pradesh High Court in the said case held that as Section 198 of Criminal Procedure Code still holds the field despite the amendment made by State Legislature, the Court would have no jurisdiction to take cognizance of an offence punishable under Section 494 IPC on the basis of report submitted by the Investigating Officer. Even if it is assumed for the sake of argument that in view of Section 198(1)(c) of the Code of Criminal Procedure, the Magistrate is disentitled to take cognizance of the offences punishable under Sections 494 and 495 IPC despite the State amendment making those offences cognizable, this Court notices that in **Mavuri Rani Veera Bhadranna (supra)**, the Division Bench has considered effect of Section 155(4) of the Criminal Procedure Code and thereafter held that the bar under Section 198 would not be applicable as complaint lodged before police for offence under Section 494 IPC also related to other cognizable offences and if police files a charge sheet, the Court can take cognizance also of offence

under Section 494 along with other cognizable offences by virtue of Section 155 (4) of the Criminal Procedure Code.

15. Section 155(4) of the Code *inter alia* provides that:-

> "Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable"

Here in this case in the charge sheet it is mentioned that the appellant has also committed offence punishable under Section 420 of the Indian Penal Code which is cognizable and therefore this is a case which relates to two or more offences of which at least one is cognizable and therefore the case must be deemed to be cognizable case notwithstanding that the other offences are non- cognizable. This is not a case in which the FIR is exclusively filed for commission of offences under Sections 494 and 495 IPC. The case of the respondent no. 2 is that the appellant has committed offences punishable under Sections 417, 420, 494, 495 and 498A of the IPC. A question may arise as to

what should be the procedure to be followed by a complainant when a case involves not only non- cognizable offence but one or more cognizable offences as well. It is somewhat anomalous that the aggrieved person by the alleged commission of offences punishable under Sections 494 and 495 IPC should file complaint before a Court and that the same aggrieved person should approach the police officer for alleged commission of offences under Sections 417, 420 and 498A of the Indian Penal Code. Where the case involves one cognizable offence also alongwith non-cognizable offences it should not be treated as a non- cognizable case for the purpose of sub-section 2 of Section 155 and that is the intention of legislation which is manifested in Section 155(4) of the Code of Criminal Procedure. Therefore, the argument that the learned Magistrate could not have taken cognizance of the offences punishable under Sections 494 and 495 IPC on the basis of submission of charge sheet, cannot be accepted and is hereby rejected.

16. This Court finds that the High Court has quashed the proceedings pending before the learned Magistrate under Section 498A of IPC on the spacious ground that the marriage of the appellant with the respondent no. 2 is void and as respondent no. 2 is not the wife, she was not entitled to lodge first information report with the police for commission of offence u/s. 498A IPC and on the basis of police report, cognizance of the said offence against the appellant could not have been taken by the learned Magistrate. Such reasoning is quite contrary to the law declared by this Court in **Reema Aggarwal Vs. Anupam and others (2004) 3 SCC 199.** After examining the scope of Section 498A of the Indian Penal Code and holding that a person who enters into marital arrangement cannot be allowed to take shelter behind the smoke screen of contention that since there was no valid marriage the question of dowry does not arise, this Court speaking through Hon'ble Mr. Justice Arijit Pasayat, has held as under:-

"Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature "dowry" does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. The legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that the legislature which was conscious of the social stigma attached to children of void and voidable marriages closed its eyes to the plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship? If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction". It would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes

> enumerated in the relevant provisions-Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

17. In view of firm and clear law laid down on the subject, this Court is of the confirmed view that the High Court was not justified at all in quashing the proceedings initiated against the appellant under Section 498A of the Code on the ground that the respondent no. 2 was not wife within the meaning of Section 498A of the IPC and was not entitled to maintain complaint under the said provision. The question therefore which arises for consideration of the Court is whether the said finding recorded by the High Court can and should be set aside in the present appeal which is filed by

the husband. It was argued by the learned Counsel for the appellant that quashing of proceedings with reference to offence punishable under Section 498A of Indian Penal Code is neither challenged by the State Government nor by the original complainant before this Court and the same having attained finality, the same cannot be disturbed in an appeal filed by the husband appellant in which grievance is made regarding non-grant of relief in full by the High Court.

18. This Court does not find any substance in the above mentioned argument of the learned Counsel for the appellant. The law declared by this Court in case of **Reema Aggarwal (Supra)** was binding on all Court including the learned Single Judge of High Court of A.P. who decided the present case in view of salutary provisions of Article 141 of the Constitution. The learned Single Judge of the High Court could not have afforded to ignore the law declared by this Court in **Reema Aggarwal (Supra)** while considering the question whether proceedings initiated by the respondent no. 2 for commission of offence punishable under Section 498A

of IPC should be quashed or not. The High Court has completely misdirected itself in quashing the proceedings for the offence punishable under Section 498A of IPC. There is no manner of doubt that the finding recorded by the High Court that the respondent no. 2 is not the wife within the meaning of Section 498A of the Indian Penal Code runs contrary to law declared by this Court in case of **Reema Aggarwal (Supra).** There may be several reasons due to which the State might not have challenged that part of the Judgment of the learned Single Judge quashing the complaint filed by the respondent no. 2 under Section 498A of the Indian Penal Code. So also because of several reasons such as want of funds, distance, non-availability of legal advice, etc. the original complainant might not have approached this Court to challenge that part of the judgment of the learned Single Judge which is quite contrary to the law declared by this Court. However, this Court while entertaining an appeal by grant of special leave has power to mould relief in favour of the respondents notwithstanding the fact that no appeal is filed by any of the respondents

challenging that part of the order which is against them. To notice an obvious error of law committed by the High Court and thereafter not to do anything in the matter would be travesty of justice. This Court while disposing of an appeal arising out of grant of special leave can make any order which justice demands and one who has obtained illegal order would not be justified in contending before this Court that in absence of any appeal against illegal order passed by the High Court the relief should not be appropriately moulded by the Court or that the finding recorded should not be upset by this Court.

19. In **Chandrakant Patil Vs. State (1998) 3SCC 38,** even in absence of an appeal by Government specifically for that purpose and in absence of revisional power as is available to High Court and Sessions Court, under Criminal Procedure Code, this Court held that the Supreme Court has power under Article 142 read with Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 to enhance the sentence for doing complete justice in the matter that in

the circumstances of the case appeared to it, to be too inadequate. In the said case it was contended that the Supreme Court has no power to enhance sentence in the absence of an appeal by the Government presented specifically for that purpose more so because Supreme Court has no revisional powers which the High Court and Court of Sessions are conferred with by the Criminal Procedure Code. While negativating the said contention this Court has firmly ruled that powers of the Supreme Court in appeals filed under Article 136 of the Constitution are not restricted by the appellate provisions enumerated under the Code of Criminal Procedure or any other statute. What is held as firm proposition of law is that when exercising appellate jurisdiction the Supreme Court has power to pass any order. The power under Article 136 is meant to supplement the existing legal frame work. It is conceived to meet situations which cannot be effectively and appropriately tackled by the existing provisions of law. Though challenge was not made by any of the two respondents to the finding recorded by the learned Single Judge that the complaint lodged by the

respondent no. 2 for alleged commission of offence punishable under Section 498A of the Indian Penal Code is not maintainable because she is not a wife, this Court feels that absence of challenge either by State or by the original complainant should not persuade or prevent this Court from doing justice between the parties by restoring the complaint filed by the respondent no. 2 under Section 498A of the Indian Penal Code on the file of the learned Magistrate. The conclusion arrived at by the High Court is such as to shake the conscience and sense of justice and therefore it is the duty of this Court to strike down the finding recorded with respect to the offence punishable under Section 498A, irrespective of technicalities. The judgment of the High Court quashing the proceedings initiated by the learned Magistrate for commission of offence punishable under Section 498A is tainted with serious legal infirmities and is founded on a legal construction which is wrong. So the technical plea advanced by the learned counsel for the appellant that in absence of appeal by any of the respondents, quashing of proceedings with respect to the offence punishable under

Section 498A IPC, cannot be set aside, is hereby rejected. As held in **Ramakant Rai Vs. Madan Rail (2003) 12 SCC 395** following **Arunachalam Vs. P.S.R. Sadanatham (1979) 2 SCC 297 and P.S.R. Sadanatham Vs. Arunchalam (1980) 3 SCC 141,** the appellate power vested in the Supreme Court under Article 136 is not to be confused with the ordinary appellate power exercised by appellate Courts and appellate Tribunals under specific statutes. It is plenary power exercisable outside the purview of ordinary law to meet the demand of justice. Article 136 is a special jurisdiction. It is residuary power. It is extraordinary in its amplitude. The limits of Supreme Court when it chases injustice, is the sky itself. Further, the powers under Article 136 can be exercised by the Supreme Court, in favour of a party even suo motu when the Court is satisfied that compelling grounds for its exercise exist. Where there is manifest injustice, a duty is enjoined upon this Court to exercise its suo motu power by setting right the illegality in the judgment of the High Court as it is well settled that illegality should not be allowed to be perpetuated and failure by this Court to

interfere with the same would amount to allow illegality to be perpetuated. When an apparent irregularity is found by this Court in the order passed by the High Court, the Supreme Court cannot ignore substantive rights of a litigant while dealing with the cause pending before it. There is no reason why the relief cannot be and should not be appropriately moulded while disposing of an appeal arising by grant of special leave under Article 136 of the Constitution.

20. Therefore, that part of the impugned judgment by which the complaint filed by the respondent no. 2 under Section 498A of the Indian Penal code is quashed by the High Court will have to be set aside while disposing the appeal filed by the appellant.

21. For the foregoing reasons, the appeal filed by the appellant fails and therefore the same is hereby dismissed. The impugned Judgment quashing the complaint filed by the respondent no. 2 for alleged commission of offence by the

appellant under Section 498A IPC, is hereby set aside and the complaint lodged by the respondent no. 2 under Section 498A of the Indian Penal Code as well as charge sheet submitted by the Investigating Officer for the same shall stand restored/revived. Subject to above mentioned direction the appeal stands disposed of.

.....J.
[J.M. Panchal]

.....J.
[H.L. Gokhale]

New Delhi;
July 21, 2011.