

IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 5<sup>TH</sup> DAY OF JUNE, 2014

**BEFORE:**

THE HON'BLE MR. JUSTICE K.N. PHANEENDRA

CRIMINAL PETITION NO. 100413/2014

BETWEEN:

Smt. Geeta W/o Channappa Hosmani,

Age: 30 years, Occ: Household,

R/o Arhal-583 227,

Taluka: Gangavati, Dist. Koppal. ... Petitioner

(By Sri. M.G. Naganuri, Adv.)

AND:

1. Shri. Channappa  
S/o Pitambarappa Hosmani,  
Age: 33 years, Occ: Business &  
Agriculture, R/o Dombar Oni,  
Gopankoppa,  
Hubli-580 020, Dist. Dharwad.
2. Shri. Sahadevappa  
Doddasiddappa Hosmani,  
Age: 33 years, Occ: Agriculture,  
R/o Dombar Oni, Gopankoppa,  
Hubli-580 020, Dist. Dharwad.

3. State of Karnataka,  
Represented by Addl. S.P.P.,  
Office, High Court of Karnataka,  
Dharwad Bench. ... Respondents

(By Sri. Rajashekar R. Gunjalli, Adv. for R-1,  
Sri. Santosh D. Naragund, Adv. for R-2,  
Sri. V.M. Banakar, Add. S.P.P. for R-3)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN PC 252/2013 ON THE FILE OF JMFC-II, HUBLI AND THE ORDER OF ISSUE OF PROCESS DATED 25.09.2013 PASSED BY THE JMFC-II, HUBLI IN PC 252/2013 (CC NO.1171/2013) FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 494 AND 497 OF I.P.C.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION, THIS DAY THE COURT MADE THE FOLLOWING:

### ORDER

Heard the learned Counsel for the petitioner and as well as the respondents. The respondent No.1 Channappa lodged a private complaint in PC 252/2013 against this petitioner and respondent No.2 alleging the offences under Sections 494 and 497 of I.P.C. The

learned Counsel for the petitioner strenuously contends that even the averments in the complaint at this stage is translated into evidence, there is absolutely no allegations that the petitioner and as well as the 2<sup>nd</sup> respondent have married each other, thereby violating the Marriage tie between the petitioner and the respondent No.1. Therefore, the cognizance taken by the learned Magistrate for the offences under Sections 494 and 497 of I.P.C. is not maintainable against the petitioner.

2. I have carefully perused the complaint averments. It is alleged by the complainant – Channappa that the accused No.1 Smt. Geeta is the legally wedded wife and it is specifically stated that she had some illicit intimacy with the 2<sup>nd</sup> respondent and they have been living as if husband and wife in a common residence. They have also taken up photographs together. At page 3 it is categorically stated that accused Nos. 1 and 2 have got

illicit relationship with each other knowing fully well that the marriage between the complainant and the 1<sup>st</sup> accused is still in existence and no divorce had been taken place. Only on these reasons, the complainant has requested the Court to take cognizance for the offences punishable under Sections 494 and 497 of I.P.C.

3. So far as Section 494 of I.P.C. is concerned, there is absolutely no pleading in the complaint. The complainant even not at all stated that the accused Nos.1 and 2 have married each other as they have not even given any specific date or any other materials to show that the accused Nos.1 and 2 have married each other and accused No.1 particularly married the 2<sup>nd</sup> respondent without taking divorce from the complainant. When the allegations made in the complaint are not sufficient to constitute an offence under Section 494 of I.P.C., in my opinion, such

complaint can't be allowed to be continued or proceeded with. Even on meticulous reading of the complaint, not even a single sentence is stated that accused Nos.1 and 2 have married each other during the subsistence of the marriage between the complainant and the 1<sup>st</sup> petitioner.

4. Coming to the second point, so far as the offence under Section 497 of I.P.C. is concerned, it is worth to note a decision of the Apex Court reported between **V. Revathi Vs. Union of India and others (AIR 1988 SC 835)** wherein the Apex Court observed that :

*“Section 497 of 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 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 wife are disabled from striking each other with the weapon of criminal law”.*

Coupled with the above said Judgment of the Apex Court, Section 497 of I.P.C. reads thus:

*“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, and thereby he is guilty of the offence of adultery”.*

It gives a meaning that a third party who intervenes with the relationship between the husband and wife by developing sexual activity with the wife that third person is only liable for punishment under Section 497 as said by the Apex Court, neither the husband nor the wife can be brought into the books under Section 497 of I.P.C.

5. Looking to the above said factual and legal aspects, in my opinion, the learned Magistrate has committed serious error in taking cognizance for the above said offences.

6. In ***State of Haryana and others Vs. Bhajan Lal and others the Apex Court in 1992 Supp (1) SCC 335*** has categorically held that :

*“Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused ; and*

*Where the allegations in the first information report or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused”.*

Under such circumstances, the proceedings are liable to be quashed. In view of the above said facts and the law laid down by the Apex Court, this petition deserves to be allowed.

7. Accordingly, the petition is allowed and the proceedings in C.C. No. 1171/2013 pending on the file of J.M.F.C. II Court, Hubli so far it relates to the petitioner is concerned are hereby quashed.

Sd/-  
JUDGE

Rbv