

(1999) 04 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4688-M of 1998

Ravinder Singh

APPELLANT

Vs

Balbir Kaur

RESPONDENT

Date of Decision : 06-04-1999

Acts Referred:

Citation : (1999) 2 AICLR 675 : (1999) 2 RCR(Criminal) 497

Hon'ble Judges : R.L.Anand, J

Advocate : Manjinder Singh, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. No body has given appearance on behalf of the respondent. No reply has been filed on behalf of the respondent.
2. I am disposing of this petition with the assistance rendered by the learned counsel for the petitioner.
3. Some facts can be noticed in the following manner :

A criminal complaint was filed by Smt. Balbir Kaur wife of Ravinder Singh against her husband Ravinder Singh and Mohinder Kaur under section 497/34 IPC primarily on the allegations that her husband Ravinder Singh is having extra marital relations with Mohinder Kaur accused No. 2. This complaint was filed in the court of Sub Divisional Judicial Magistrate, Phul who took cognizance of the matter and issued summons to the accused. Aggrieved by the filing of the complaint and issuance of the order by the Judicial Magistrate, petitioner Ravinder Singh has filed the present petition under section 482 Cr.P.C. for the quashment of the criminal complaint No. 39 dated 25.7.1995 under section 497/34 IPC as well as the summoning order under section 197 Cr.P.C. Learned counsel for the petitioner submits that there is complete bar under section 198(1) Cr.P.C. which lays down that no Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon the complaint

made by some person "aggrieved" by the offence which has been defined in subsection 2 of Section 198 which lays down that "for the purpose of subsection (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." Learned counsel submitted that in this case the complaint was only competent either by the husband of respondent No. 2 in case she is married or by some person who had care of the woman at the time of commission of the offence. In support of his contention learned counsel for the respondent has invited my attention to the judgment of the Hon'ble Supreme Court in V. Revathi v. Union of India, AIR 1988 SC 835 where it has been laid down that though the husband of adulteress given right to prosecute adulterer, wife of adulterer not given that right to prosecute her husband in view of the bar under section 198(2) Cr.P.C. and this action is not even discriminatory. I agree with the contention raised by the learned counsel for the petitioner in view of the specific bar laid down by Section 198(2) Cr.P.C. The complaint filed by Smt. Balbir Kaur was not competent in the eyes of law and the learned Magistrate could not take cognizance into the matter and therefore the complaint and the consequential proceedings are liable to be struck down and I order accordingly.

4. Before I part with this order, I have gone through the provisions of Section 198 Cr.P.C. minutely and even gone through the judgment of the Hon'ble Supreme Court. In the considered opinion of this court there is yawning gap as contained in the provisions of Section 198 Cr.P.C. This yawning gap can be only filled by the Legislature. When a woman goes for wedding knot she expects some love and affection including sexual pleasure at the hands of her husband. So far as sexual pleasure is concerned it is the absolute right of a legitimate wife to share bed with her husband and this love and affection cannot be shared by any person. The extract of pure Hindu Law also states that it is the absolute right of the woman to get the maximum love and affection including the sexual intercourse from her husband because woman offers herself before the husband not for the purpose of sexual intercourse, her purpose is two folds besides that she gets some enjoyment, she also submits herself with a purpose to achieve a family so that the generation of her husband may continue in future. In view of this court, it is the right of the wife alone to get all love and affection from her husband including sexual pleasure. That right cannot be and should not be shared by any person. Protection should be given to the aggrieved wife whose husband has become disloyal to her and started indulging in extra marital affairs. In view of this court the right should be conferred on the wife so as to move a legitimate complaint under section 497 or 498 I.P.C. against her husband who had betrayed and had withdrawn from her society and company by becoming disloyal to her. This type of yawning gap has become more necessary to fill up when humanity is thinking to give due rights to the women with the passage of

time. Let a copy of this order be sent to the Law Ministry to ponder over this matter so as to make proper amendment in Section 198 Cr.P.C. A copy of the order be also sent to the National Commission for Women, New Delhi with a request to take up this matter with the law department so as to examine this aspect whether suitable amendment can be brought about in Section 198 Cr.P.C. Be that as it may be the present petition stands allowed and the complaint and the incidental proceedings stand quashed.