

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**  
राजस्थान उच्च न्यायालय

---

**HON'BLE MR. JUSTICE BIRENDRA KUMAR**

**Judgment**

1. Respondent no.2 Ranveer in S.B. Criminal Misc. Petition No.3946/2022 has brought this application under Section 482 Cr. P.C., for recalling of order dated \_\_\_\_\_ passed in S.B. \_\_\_\_\_, whereby this Court had quashed \_\_\_\_\_ under Section 366 IPC registered with \_\_\_\_\_

---



2. Contention of the applicant is that he is informant of the aforesaid FIR. Though, he was party respondent no.2 in

however, he could not appear and contest the said case as he was in jail in some other case.

It is a fact that respondent no.2 had not appeared and contested the proceedings when order dated \_\_\_\_\_ was passed in



3. A brief background is that applicant \_\_\_\_\_ had lodged the aforesaid FIR alleging therein that his wife was abducted by the accused persons, who were petitioners in

The wife was respondent no.3 in the said criminal misc. petition. She appeared in court alongwith an affidavit wherein she specifically stated that no one had abducted her, rather she was in live-in relationship voluntarily with Sanjiv, one of the accused.

4. This Court considered the dictum in **Navtej Singh Johar Vs. Union of India (2018) 10 SCC 1** and **Safi Jahan Vs. Asokan K.M. 2018(6) SCC 368**, wherein the Hon'ble Supreme Court reiterated that constitutional morality ought to have precedence over societal morality. Hon'ble Supreme Court had elaborately discussed right of privacy of an individual and its extent.

5. The victim herself stated before the court that she was not abducted by anyone to go, therefore, this Court was of the view that offence under Section 366 IPC was not made out and accordingly quashed the FIR.

---

---



6. Learned counsel for the applicant contends that a married lady had admitted that she was in extra-marital relationship in the nature of live-in-relationship with one of the petitioner Sanjiv, therefore, offence under Sections 494 and 497 IPC are made out. Moreover, to protect social morality and not to protect any extra-marital relationship by a married person the court should exercise jurisdiction accordingly. Learned counsel has relied upon the judgment of Punjab & Haryana High Court in **Manjot Singh & Anr. Vs. State of Punjab & Ors.**, decided on 25.01.2023 vide Criminal Writ Petition No.158/2023.

7. It is evident that the judgments of Hon`ble Supreme Court referred above were not placed before the Punjab & Haryana High Court in the aforesaid case.

8. In **S. Khushboo Vs. Kanniammal & Ors.**, reported in AIR 2010 SC 3196; decided on 28.04.2010, Hon`ble Supreme Court stated the law in para-21 as follows :-

"21. While it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of `adultery' as defined under [Section 497 IPC](#). At this juncture, we may refer to the decision given by this Court in [Lata Singh Vs. State of U.P. & Anr.](#), AIR 2006 SC 2522, wherein it was observed that a live-in relationship between two consenting adults of heterogenic sex does not amount to any offence (with the obvious exception of `adultery'), even though it may be perceived as immoral. A major girl is free to marry anyone she likes or "live with anyone she likes". In that case, the petitioner was a woman who had married a man belonging to another caste and had begun cohabitation with him. The petitioner's brother had filed a criminal complaint accusing her husband of



offences under Sections 366 and 368 IPC, thereby leading to the commencement of trial proceedings. This Court had entertained a writ petition and granted relief by quashing the criminal trial. Furthermore, the Court had noted that 'no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court'. “



9. Thereafter in **Joseph Shine Vs. Union of India reported in (2019) 3 SCC 39**, a Constitution Bench of Hon'ble Supreme Court declared Section 497 IPC as violative of Articles 14, 15 and 21 of the Constitution of India and struck it down. Section 494 IPC reads as follows :-

**“494 IPC. Marrying again during life-time of husband or wife -**

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.

*Exception.*—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”

10. Evidently as noticed in *S. Khushboo Vs. Kanniammal & Ors., (supra)*, no statutory offence takes place when adults willingly engage in sexual relations outside the marital setting. Exception was adultery under Section 497 IPC, which has already been struck down. Likewise, offence under Section 494 IPC is not made out as it is not the case of the parties that anyone has

---



remarried during the lifetime of husband or wife. Unless marriage is pleaded and proved only marriage like relationship such as living-in-relationship would not come within the mischief of Section 494 IPC.



11. Wife of the applicant alongwith other accused persons has jointly filed reply in this matter, wherein she has consistently stated that she voluntarily left the house and she is in relationship with Sanjiv.

12. In the result, this Court does not find any merit in the prayer of the applicant. Accordingly, the same stands dismissed.

**(BIRENDRA KUMAR),J**

Sanjay

---