

COL. RAJNISH BHANDARI, VSM

A

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 3204 of 2019)

AUGUST 02, 2019

B

**[R. F. NARIMAN AND SURYA KANT, JJ.]**

*Ranbir Penal Code, 1932:*

*s. 497 – Constitutional validity of – Held: The provision u/s. 497 is pari materia provision to s. 497 IPC, which has been declared as unconstitutional in \*Joseph Shine case – Therefore, the provision (s. 497 of RPC) is held violative of part III of the Constitution – Nothing survives against the accused on the charges relatable to s. 497 – Appeal allowed – Penal Code, 1860 – s. 497 – Constitution of India – Part III.*

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*Army Act, 1950:*

*s. 63 – Prosecution under – Accused already acquitted, subject to confirmation – Judgment of Armed Forces Tribunal is set aside – Confirmation proceedings may go on and reach its logical conclusion – Appeal allowed.*

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**\*Joseph Shine v. Union of India (2019) 3 SCC 39 :  
[2018] 11 SCR 765 – followed.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3204 of 2019

F

From the Judgment and Order dated 08.01.2019 of the Armed Forces Tribunal, Regional Bench, Srinagar at Jammu in Original Application No. 450 of 2017

Ms. Meenakshi Arora, Sr. Adv., Ms. Neela Gokhale, Ms. Sahrdha Agarwal, Elam Pradi, R. P. Chhibber, Ms. Kamakshi S. Mehlwal, Advs. for the Appellant.

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R. Balasubramanian, Sr. Adv., Bharat Singh, Arvind Kumar Sharma, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

**R. F. NARIMAN, J.**

B 1. Having heard learned counsel for both the parties and having  
perused Section 497 of the Ranbir Penal Code, 1932, applicable to the  
State of Jammu and Kashmir, we are of the view that, given our judgment  
in *Joseph Shine v. Union of India* (2019) 3 SCC 39, the *pari materia*  
provision contained in Section 497 of the Ranbir Penal Code be also  
declared as violative of Part III of the Constitution of India. The sentence  
“In such case the wife shall be punishable as an abettor”, which does  
not occur in Section 497 of the Indian Penal Code, 1860, cannot stand by  
C itself in view of the fact that the expression used is ‘In such case’. The  
entire Section is, therefore, declared to be unconstitutional. The fact  
that this statement of law in the Ranbir Penal Code is the exact opposite  
of the statement of law, so far as the wife is concerned, of that contained  
in the Indian Penal Code, 1860, is of no consequence.

D 2. We are, therefore, of the view that nothing survives against the  
appellant on charges relatable to Section 497 Penal Code. So far as  
Section 63 of the Army Act, 1950, is concerned, the appellant has already  
been acquitted, subject to confirmation. The Armed Forces Tribunal  
judgment dated 08.01.2019 is, therefore, set aside. The appeal stands  
E allowed.

3. However, it is made clear that the confirmation proceedings, so  
far as the offence under Section 63 of the Army Act, 1950, is concerned,  
may go on and reach its logical conclusion.

Kalpana K. Tripathy

Appeal allowed.