*** THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

+ CRL.P.Nos.554 & 1198 OF 2011

% 19.09.2014

Crl.P.No.554 of 2011

\# Miriyala Divya & 5 Others

Petitioners

VERSUS

$ Govt. of A.P. rep. by Public Prosecutor
Through the inspector of Police, Mangalagiri
And another.

Respondents

Crl.P.No.1198 of 2011

\# Eesa Srinivasarao & Another

Petitioners

VERSUS

$ Govt. of A.P. rep. by Public Prosecutor
Through the inspector of Police, Mangalagiri
And another.

Respondents

! Counsel for Petitioner : Sri M. Chalapathi Rao

^ Counsel for the 1st respondent : Public Prosecutor

^ Counsel for the 2nd respondent : Sri B. Nalin Kumar

<GIST:

> HEAD NOTE:

? Cases referred

[1] 2006 Cri. L. J. 3323 (1)
2 AIR 1992 SC 604
3 1965 Crl.L.J. 376
4 2006 Cri. L. J. 3323 (1)
5 2004 Cri.L.J. 2329
6 2003 (1) ALD (Crl.) 387 (AP)
7 2000 (2) ALD (Crl.) 184
8 1999 (2) ALD (Crl.) 951 = 2000 (1) ALT (Crl.) 265 (AP)
9 2005 (2) ALD (Crl.) 713 (AP)

[10] 2007 (1) ALD (Crl.) 13 (AP)
[11] 2010 (2) ALT (Crl.) 56 (A.P)
[12] (1996) 6 SCC 435
[13] AIR 2011 SC 3031
[14] AIR 2014 SC 525 = 2014(2) ALD 89 (SC)
[15] (1996) 6 SCC 435
[16] AIR 1979 SC 848
[17] (1995) 3 SCC 635

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THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION Nos.554 and 1198 of 2011

COMMON ORDER:

1 Accused Nos.1, 2, 3, 4, 6, 7, 8, 9 in C.C.No.147 of 2010 on the file of VII Additional Sessions Judge (FTC), Guntur have filed these two Criminal Petitions seeking to quash the proceedings against them.

2 Since both the criminal petitions arise out of the same calendar case, I am inclined to dispose of these petitions by this common order.

3 The factual background leading to filing of these two petitions is, briefly, as follows:

4 Eesa Agnes (hereinafter referred to as 'the deceased') married A.1 against the will and wish of her parents. She died on 10.08.2008. On 16.11.2008 the mother of the deceased by name Smt. Kattepogu Indira Devi (hereinafter referred to as 'the de-facto complainant') lodged a complaint with the Station House Officer, Mangalagiri Police Station, alleging that A.1 married A.2 on 04.07.2008 during the subsistence of valid marriage of A.1 with the deceased. It is further alleged that on 14.10.2008, A.1 obtained second marriage certificate with an intention to screen away the evidence in relation to the marriage of A1 with A2 performed on 04.07.2008. It is further alleged that the deceased was subjected to cruelty for additional dowry. Thereupon, the Station House Officer, Mangalagiri Town Police Station registered a case in Cr.No.271 of 2008 for the offences punishable under Sections 498-A, 494, 420 and

201 r/w 34 of IPC against the petitioners. After completion of investigation, the investigating officer laid charge sheet against the petitioners under 468, 201, 498-A, 494 and 420 r/w 34 of IPC. The learned Additional Judicial Magistrate of I Class, Mangalagiri, after careful scrutiny of the material available on record, has taken cognizance of the offences under Sections 498-A, 494, 468, 201 and 420 read with 34 of IPC against the petitioners and numbered the charge sheet as C.C.No.147 of 2010. Subsequently, the matter was transferred to the VII Additional Sessions Judge Court (FTC), Guntur as per the orders of the District Court, Guntur.

5 The predominant contention of the learned counsel for the petitioners, Sri M.Chalapati Rao, is two fold viz., 1) The learned Magistrate has taken cognizance of the offences against the petitioners under Sections 494 and 498-A of IPC in violation of Section 198 Cr.P.C. in general and Section 198 (1) (c) in particular, 2) the allegations made in the charge sheet do not constitute the offences alleged to have been committed by the petitioners under Sections 494 and 498-A of IPC.

6 *Per* contra, the learned counsel for the de-facto complainant Sri B. Nalin Kumar submitted that the trail Court has not committed any illegality or irregularity while taking cognizance of the offences against the petitioners in view the A.P. State Amendment to Section 494 I.P.C. He further submitted that the allegations made in the charge sheet are prima facie sufficient to proceed further against the petitioners.

7 The learned Public Prosecutor submitted that this is not a fit case to quash the proceedings, at this stage, viewed from the factual and legal angles. He further submitted that in view of availability of alternative remedy, the present petition is liable to be dismissed.

8 The learned counsel for the petitioners submitted that this Court, while exercising inherent jurisdiction under Section 482 Cr.P.C can quash the proceedings. In support of first contention, he has drawn my attention to the following decisions:

i. **Suraj Lal Jaiswal Vs. State of U.P.**,[1] wherein the Hon'ble apex Court held as under:

> 9. I have gone through all those statements. There is none of the witnesses who could say that marriage with Smt. Meena Jaiswal was performed in his presence and any ritual as provided in the Hindu Law for a valid marriage, had taken place. Consequently, by the evidence collected by the investigating officer the second marriage is not proved nor there is even a prima facie evidence regarding the said marriage.
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> 10. Consequently, the application is liable to be allowed and it is hereby allowed. The proceedings under charge sheet in question under Section 494 I.P.C (case No. 2859/1989 pending in the court of Chief Judicial Magistrate, Allahabad State v. Suraj Lal Jaiswal, police station Attarsuiya, district Allahabad) are hereby quashed.

ii. **State of Haryana Vs. Bhajan Lal**[2], wherein the Hon'ble apex Court held as under:

> 1. 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.
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> 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> 4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.
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> 5. Where the allegations made in the FIR 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.
>
> 6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
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> 7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9 Let me consider the facts of the case on hand in the light of the principle enunciated in the cases cited supra.

10 It is needless to say that Chapter XX of IPC deals with offences relating to marriage. A perusal of Section 198 Cr.P.C. clearly demonstrates that the court can take cognizance of offences enumerated under Chapter XX of IPC basing on the complaint made by the aggrieved person. As per Section 198(1)(c) Cr.P.C., when a wife is

aggrieved of the offence under Section 494 or 495 IPC, the complaint may be made by herself, or on her behalf by her father, mother, brother, sister, son or daughter, or by her father's or mother's brother or sister.

11 It is not in dispute that the mother of deceased lodged the complaint to the police on 16.11.2008. By any stretch of imagination, it cannot be presumed that the *de facto* complainant submitted the report to the police with the consent of the deceased as she died on 10.08.2008. The fact remains that the *de facto* complainant has not followed the procedure prescribed under Section 198 Cr.P.C. On this point, the learned counsel for the petitioners has drawn my attention to the following decisions:

i. **State Vs. Gangamma**[3], wherein the Hon'ble Apex Court held at as follows:

> 17. "For the reasons mentioned above, the authority conferred under Section 198 Cr.P.C on a relative specified in the explanation to that section to file a complaint on her behalf, must be understood as being one that could be exercised only when she is alive and not after her death. In the present case, admittedly, Jayalakshmiyamma had died by the time her elder brother filed the complaint. Therefore, the complaint cannot be regarded as one made by a person authorised under Section 198 Cr.P.C. and the learned Magistrate could not take cognizance of the offence."

ii. **Suraj Lal Jaiswal Vs. State of U.P.,**[4] wherein the Hon'ble Apex Court held at as follows:

> 7. Thus, it clearly lays down that complaint should be made by the aggrieved person to the Magistrate, who shall follow the procedure laid down in Section 200 Cr.P.C. onwards and it does not include a police report, i.e. report under Section 173(2) Cr.P.C. No doubt, in the Explanation to Section 2(d) a report by police officer, which discloses a non cognizable offence, shall be deemed to be a complaint but this explanation is not applicable in cases under Chapter XXII of the Indian Penal Code. Thus, there was no complaint in the present case and charge sheet itself is not maintainable.

12 As per the principle enunciated in the cases cited supra, the Magistrate has no power to take cognizance of offence under Section 494 IPC even if there is slight deviation of the procedure contemplated under Section 198 Cr.P.C. The complaint under Section 198 Cr.P.C. is not permissible after the death of the aggrieved person (wife).

13 At this juncture, the learned counsel for the petitioners placed

reliance on **Parminder Kaur and Others Vs. Joginder Kaur and another**[5] wherein the Hon'ble apex Court held as follows:

> 10. A perusal of this section shows that under this section, the complaint can be filed only by an "aggrieved person". In the Law Lexicon with legal maxims, the exact meaning of word "aggrieved person" is as under :-- "Aggrieved person. -- A person can be said to be aggrieved, if apart from the general interest such a person, as a member of the public, may have, he has a particular or special interest in the subject matter supposed to be wrongly decided."
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> 11. Further in the Judicial Dictionary, 13th Edition by K.J. Aiyar, the expression "Aggrieved person" means a person who has got a legal grievance, i.e. a person is wrongfully deprived of anything to which he is legally entitled and not merely a person who suffered some sort of disappointment. In view of this definition, any fanciful or sentimental grievance does not suffice. There must be injuria or a legal grievance.
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> 12. But under Sub-clause (c) of Section 198 Cr. P.C. there is an exception that when the wife is the aggrieved person, the complaint can be filed on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister or with the leave of the Court by any person related to her by blood, marriage or adoption but in the case of husband, no other person, except the husband, is, the aggrieved person. The other person may have a sentimental grievance but legally he/ she is not an aggrieved person as has been laid down in G. Narasimhan v. T. V. Chokkappa, AIR 1972 SC 2609 : (1973 Cri LJ 52). In Raxaben v. State of Gujarat, 1992 Cri LJ 2946 (Guj), it has been held that husband is the only aggrieved person who can file a complaint and the Court cannot take cognizance of the offence and if the Court takes the cognizance, the same is without any jurisdiction.

14 As per the principle enunciated in the case cited supra, the de-facto complainant will fall within the definition of 'aggrieved person' as set out in Section 198 Cr.P.C.

15 This Court had an occasion to consider the scope of Section 198 Cr.P.C. so far as it relates to offence under Section 494 IPC and held that the Magistrate has no power to take cognizance of offence under Section 494 IPC basing on a Police report/charge sheet, even after the offence under Section 494 IPC is made cognizable in **Mamidala Ramesh Vs. State**[6], **K.Vijaya Lakshmi Vs. K.Lakshminarayana**[7] and **Darla Srinivas Vs. Darla Sri Devi**[8].

16 In **Radharapu Ravinder v State of A.P.**[9], while taking a contrary view, it was held as follows:

> However, insofar as the offence under Section 494 IPC in

the State of Andhra Pradesh is concerned, it is a cognizable offence and even if the offence is committed under Section 494 IPC alone upon a report of such facts by the Police, the Magistrate is empowered to take cognizance under Section 190(1)(b) of the Code. Under Section 190(1((b) of the Code the Magistrate of First Class is empowered to take cognizance of the offence in respect of any cognizable case upon a police report of such facts.

17 A Division Bench of this Court, in **Mavuri Rani Veerabhadramma @ Kandarpa Prameela @ Mavuri Prameela v State of A.P.**[10] after analysing the entire case-law on the point, in para 23, held as under:

23. The reference is answered with the following conclusions:

1. If a complaint is filed under Section 200 Cr.P.C. for the offence under Section 494 I.P.C. before a Magistrate, he may take cognizance of the offence or postpone the issue of process either by making enquiry into the case by himself or direct an investigation to be made by the Police Officer or other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground to proceed. If the complaint is referred to the police for investigation and if the police files either the charge-sheet showing that there is *prima facie* material to proceed against the accused or that there is no case to take cognizance of the offence, the Magistrate is empowered to take cognizance of the offence irrespective of the result of the investigation and it amounts to sufficient compliance of Section 198 of Cr.P.C.

2. The police may also receive a complaint for the offence under Section 494 of I.P.C. and register a crime. As per the amendment of the schedule, Section 494 of I.P.C. is made cognizable and the police are empowered to investigate the case. But the Magistrate is precluded from taking cognizance of the offence under Section 198 of Cr.P.C. on the charge-sheet filed by the police, when a complaint is not presented before the Magistrate for taking cognizance of the offence.

3. If a complaint for the offence under Section 494 of I.P.C. is lodged along with other cognizable offences before the police and if the police files a charge-sheet, the Court can take cognizance of the offence under Section 494 of I.P.C. also along with other cognizable offences by virtue of Section 155(4) of Cr.P.C.

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18 As per the principle enunciated in this case, the Magistrate can take cognizance of offence under Section 494 IPC basing on the police report, when the crime is consisting of a cognizable and non-cognizable offences.

19 The ratio laid down in the above case is followed by this Court in **A. Subhash Babu Vs. State of A.P and another**[11].

20 Section 2 (c) Cr.P.C defines 'cognizable offence', which reads as follows:

> (c) "Cognizable Offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under and other law for the time being in force, arrest without warrant."

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21 A fascicular reading of Section 2(c) Cr.P.C. and Section 156 Cr.P.C., clearly manifests that the Investigating Officer can investigate into cognizable offences without prior permission of the concerned Magistrate. A perusal of Section 155(4) Cr.P.C. at a glimpse clearly manifests that if a crime consists of both cognizable and non-cognizable offences, non-cognizable offence can be treated as cognizable offence, because of the legal fiction enshrined therein. My view is fortified by the decision in **State of Orissa v Sharat Chandra Sahu**[12] wherein the Hon'ble Supreme Court held as under:

> 12. Sub-section (4) of Section 155 is a new provision introduced for the first time in the Code in 1973. This was done to overcome the controversy about investigation of non-cognizable offences by the police without the leave of the Magistrate. The statutory provision is specific, precise and clear and there is no ambiguity in the language employed in Sub-section (4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in Sub-section (4) provides that even non-cognizable case shall, in that situation, be treated as cognizable.

22 In the instant case, the crime consists of both cognizable and non-cognizable offences. The Court has to take into consideration this aspect also while appreciating the contention of the petitioners.

23 Learned counsel for the petitioners submitted that as per Section 320 Cr.P.C., the offence under Section 494 I.P.C. is compoundable at the instance of the husband or wife of the person so married. Without corresponding amendment to Section 320 Cr.P.C., and Section 198

Cr.P.C., the court cannot take cognizance of offence under Section 494 I.P.C. basing on the police report.

24 Learned counsel for the second respondent strenuously submitted that Section 494 I.P.C. was made cognizable in the State of Andhra Pradesh with effect from 15.2.1992; therefore the Court can take cognizance of offence under Section 494 I.P.C. basing on the police report or charge sheet. To substantiate the contention, learned counsel for the second respondent has drawn my attention to **A. Subhash Babu Vs. State of A.P.** [13] wherein the Hon'ble apex Court held as follows:

> 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.
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> 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.

(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.

25 As per the principle enunciated therein, the Court can take cognizance of offence under Sections 494 and 495 I.P.C basing on the police report even without corresponding amendment to Sections 320 and 198 Cr.P.C.. Learned counsel for the petitioners submitted that the ratio laid down in **A. Subhash Babu** is not applicable to the facts of the case on hand. To substantiate the argument, he has drawn my attention to **Arasmeta Captive Power Co. Pvt. Ltd., Vs. Lafarge India Pvt. Ltd.**[14], wherein it was held as follows:

> 31. In ***Krishena Kumar* v. *Union of India and Ors.*** (1990) 4 SCC 207, the Constitution Bench, while dealing with the concept of ratio decidendi, has referred to ***Caledonian Railway Co.* v. *Walker's Trustees*** (1882) 7 App Cas 259 : 46 LT 826 (HL) and Quinn (supra) and the observations made by Sir Frederick Pollock and thereafter proceeded to state as follows:
>
> > The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th edn., Vol. 26, para 573)
> >
> > The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi.
> >
> > (Emphasis added)
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> 38. Before parting with this part of our ratiocination we may profitably reproduce the following words of *Lord Denning* which have become *locus classicus*:
>
> > Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

26 As per the principle enunciated in Krishna Kumar Case above, the ratio decidendi of the previous case alone has the force of law and became a binding precedent. In A. Subhash Babu case, the apex Court interpreted the scope of Section 198 Cr.P.C. with reference to the A.P.

State amendment to Section 494 IPC. The point urged and decided by the Hon'ble apex Court is identical to the facts of the case on hand. The ratio laid down by the Hon'ble apex Court is binding on all the courts subordinate to it in view of Article 141 of the Constitution of India. The judicial discipline mandates that the Courts subordinate to the Hon'ble apex Court should invariably follow the principle laid down by the Hon'ble apex Court. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, the ratio laid down in Subhash Babu case is squarely applicable to the facts of the case on hand.

27 Learned counsel for the second respondent placed reliance on **State of Orissa Vs. Sharat Chandra Sahu**[15] wherein the Hon'ble apex Court held as follows:

> 2. The Women's Commission sent the complaint to police station where G.R.Case No.418 of 1993 was registered against respondent No.1. The police investigated the case and filed a charge-sheet in the court of Sub-Divisional Judicial Magistrate, Anandpur, who, after perusal of the charge-sheet, framed charges against respondent No.1 under Section 498A as also under Section 494 IPC.
>
> 13. This Court in Preveen Chandra Mody vs. State of M.P. AIR 1965 SC 1185 has held that while investigating a cognizable offences and presenting a charge-sheet for it, the police are not debarred from investigation any non- cognizable offence arising out of the same facts and including them in the charge-sheet.
>
> 14. The High Court was thus clearly in error in quashing the charge under Section 494 I.P.C. on the ground that the Trial Court could not take cognizance of that offence unless a complaint was filed personally by the wife or any other near relation contemplated by Clause (c) of the Proviso to Section 198(1).

28 As per the ratio laid down in the case cited supra, the court can take cognizance of offences under Sections 494 and 498-A IPC basing on the report submitted by Women Commission.

29 Having regard to the facts and circumstances of the case and also the various case law cited supra, I am unable to accede to the contention of learned counsel for the petitioners that the trial Court committed error while taking cognizance of offences against the petitioners under sections 494 and 498-A IPC basing on the police report filed under Section 173 (2) Cr.P.C.

30 Learned counsel for the petitioners submitted that the allegations made in the complaint *prima facie* do not satisfy the basic ingredients of Section 494 I.P.C. To substantiate the argument, the learned counsel for the petitioners has drawn my attention to the decision reported in **Lingari Obulamma Vs. L. Venkata Reddy and others**[16] wherein the Hon'ble apex Court held as follows:

> "Whether there was absolutely no evidence to prove that any of the two essential ceremonies i.e. Datta Homa and Saptapadi had been performed at the time of second marriage and the existence of the custom in the community to put the 'Yard Thread' instead of 'Mangal Sutra' was neither mentioned in the complaint nor proved in the evidence, the conviction under S.494 IPC could not be sustained."

31 As seen from the record, A.2 is the alleged 2nd wife of A.1. A.3 and A.4 are parents of A.1. A.5 and A.6 are the alleged attestors of marriage certificate. A.7 is the sister and A.8 is the brother-in-law of A.1 who alleged to have instigated A.1 to contact 2nd marriage with A.2. A.9 is the Pastor, who purported to have performed the marriage of A.1 and A.2 and issued marriage certificates.

32 The gist of the allegations made in the complaint is that the petitioners have played some role in performance of marriage between A.1 and A.2 during the subsistence of the valid marriage between A.1 and the deceased. As per the allegations made in the complaint the marriage of A.1 with A.2 was performed in a Church. When the marriage was performed in a Church, question of observation of the rituals of a valid Hindu marriage, prima facie, does not arise. While deciding the petition filed under Section 482 Cr.P.C. the Court has to take into consideration whether there is any prima facie material to proceed further against the accused or not. At this juncture, the learned counsel for the second respondent has drawn my attention to **Sarla Mudgal (Smt), President, Kalyani and others Vs. Union of India and Others**[17] wherein the Hon'ble apex Court held as follows:

> 2. "The questions for our consideration are whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnise second marriage? Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua the first wife who

> continue to be Hindu? Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?"
>
> 39. Answering the questions posed by us in the beginning of the judgment, we hold that the second marriage of a Hindu- husband after conversion to Islam, without having his first marriage dissolved under law, would be invalid. The second marriage would be void in terms of the provisions of Section 494 IPC and the apostate-husband would be guilty of the offence under Section 494 IPC."

33 The facts of the case on hand are similar to the facts of the case cited supra. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, it is premature to decide the legality of the marriage of A.1 and A.2 at pre-trial stage.

34 The learned counsel for the petitioners further submitted that the allegations made in the charge sheet do not constitute the alleged offence punishable under Section 498-A of IPC, leave apart, competency of the de-facto complainant to set the criminal law in motion.

35 Section 498-A of IPC is a cognizable offence. It is needless to say that any person who came to know about the commission of a cognizable offence can set the criminal law in motion. Section 198 A Cr.P.C enables the father, mother, brother, sister, paternal or maternal aunts or uncles of the aggrieved wife to lodge a complaint to the police. Section 198 A Cr.P.C. does not mandate to take the consent of the aggrieved person by the persons referred therein before reporting of the matter to the police unlike in Section 198 (1) (c) Cr.P.C. The Parliament in its wisdom enlarged the scope of Section 498-A IPC by making enactment to section 198 A Cr.P.C. Therefore, the contention of the learned counsel for the petitioners that the second respondent herein is not competent to lodge the report to the police is legally not tenable.

36 The learned counsel for the petitioners submitted that registration of two crimes against the first petitioner for the same offence is nothing but gross violation of Article 20 (2) of the Constitution of India. The first petitioner is facing trial in C.C.No.147 of 2010 for the offences punishable under sections 498-A, 494, 468 and 201 IPC, whereas, he is facing trial for the offence under sections 302 and 201 IPC in the Sessions Case. It is not the case of the first petitioner that a charge is framed against him

under section 498-A of IPC in the Sessions Case also, so as to press into service Article 20 (2) of the Constitution of India. The material placed before the Court prima facie establishes that the offences alleged in both the cases are not one and the same. Therefore, the contention of the learned counsel for the petitioners has no legs to stand on this aspect.

37 As per the allegations made in the complaint and the charge sheet, after the death of the deceased the de-facto complainant while verifying and searching the sarees of her daughter, found a letter written by her daughter containing 17 pages wherein the illegal acts of the first petitioner were mentioned. The allegations made in the complaint and the charge sheet, would prima facie, constitute the offences alleged to have been committed by the first petitioner punishable under section 498-A of IPC. Therefore, I am unable to accede to the contention of the learned counsel for the petitioners that the allegations made in the complaint do not satisfy the basic ingredients of Section 498-A of IPC.

38 The learned counsel for the petitioners submitted that in view of the transfer of the matter from one Court to another Court, the petitioners are facing much difficulty to attend the Court on each and every date of judgment. No doubt, the petitioners may face difficulty to attend the Court on each and every date of adjournment. There is no dispute with regard to the identity of the petitioners. Even if the presence of the petitioners is dispensed with, no prejudice will be caused to the second respondent – defacto complainant. Having regard to the facts and circumstances of the case, I am inclined to dispense with the presence of the accused Nos.3, 4, 6, 7, 8 and 9 in C.C.No.147 of 2010 on the file of the Court of VII Additional Sessions Judge, Guntur on each and every date of adjournment. However, they shall appear before the trial Court as when their presence is so required.

39 In the result, the Criminal Petitions are dismissed. As a sequel, the miscellaneous petitions, pending in these Criminal Petitions, if any, shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 19.09.2014.
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B/o Kvsn

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[1] 2006 Cri. L. J. 3323 (1)
[2] AIR 1992 SC 604
[3] 1965 Crl.L.J. 376
[4] 2006 Cri. L. J. 3323 (1)
[5] 2004 Cri.L.J. 2329
[6] 2003 (1) ALD (Crl.) 387 (AP)
[7] 2000 (2) ALD (Crl.) 184
[8] 1999 (2) ALD (Crl.) 951 = 2000 (1) ALT (Crl.) 265 (AP)
[9] 2005 (2) ALD (Crl.) 713 (AP)
[10] 2007 (1) ALD (Crl.) 13 (AP)
[11] 2010 (2) ALT (Crl.) 56 (A.P)
[12] (1996) 6 SCC 435
[13] AIR 2011 SC 3031
[14] AIR 2014 SC 525 = 2014(2) ALD 89 (SC)
[15] (1996) 6 SCC 435
[16] AIR 1979 SC 848
[17] (1995) 3 SCC 635