

1954

Sri Sri Sri
Kishore Chandra
Singh Deo
v.

Babu Ganesh
Prasad Bhagat
and Others.

Venkatarama
Ayyar J.

representatives who are prosecuting them. The property mortgaged is an estate governed by the Madras Impartible Estates Act II of 1904. The plaintiffs alleged in their plaint that the mortgage was binding on the estate under section 4 of the Act. Issue 6 was framed with reference to this allegation, and the finding of the trial court was that it was not binding on the estate. But on appeal, the High Court held that the question could not be gone into in a suit laid against the mortgagor. It accordingly discharged the finding, and left the question open to be determined in other and appropriate proceedings. In view of this, we direct that the parties do bear their own costs in this court.

Appeals dismissed

YUSUF ABDUL AZIZ

v.

THE STATE OF BOMBAY AND
HUSSEINBHOY LALJEE.

1954

March 10.

[MEHR CHAND MAHAJAN C. J., MUKHERJEA,
S. R. DAS, VIVIAN BOSE and GHULAM HASAN. JJ.]

Constitution of India, arts. 14 and 15—Section 497 of the Indian Penal Code (Act XLV of 1860)—Whether ultra vires the Constitution.

Held, that s. 497 of the Indian Penal Code does not offend arts. 14 and 15 of the Constitution.

CRIMINAL APPELLATE JURISDICTION : Case No. 349 of 1951.

Appeal under article 132(1) of the Constitution of India from the Judgment and Order dated the 26th June, 1951, of the High Court of Judicature at Bombay (Chagla C. J. and Gajendragadkar J.) in Criminal Application No. 345 of 1951.

A. A. Peerbhoy, Jindra Lal and I. N. Shroff for the appellant.

M. C. Setalvad, Attorney-General for India, and C. K. Daphtary, Solicitor-General for India (Porus A. Mehta, with them) for respondent No. 1.

J. B. Dadachanji and Rajinder Narain for respondent No. 2.

1954. March 10. The Judgment of the Court was delivered by

BOSE J.—The question in this case is whether section 497 of the Indian Penal Code contravenes articles 14 and 15 of the Constitution.

The appellant is being prosecuted for adultery under section 497 of the Indian Penal Code. As soon as the complaint was filed he applied to the High Court of Bombay to determine the constitutional question mentioned above under article 228 of the Constitution. The High Court decided against him but granted him a certificate under articles 132 (1) and 134 (1) (c).

Under section 497 the offence of adultery can only be committed by a man but in the absence of any provision to the contrary the woman would be punishable as an abettor. The last sentence in section 497 prohibits this. It runs—

“In such case the wife shall not be punishable as an abettor.” It is said that this offends articles 14 and 15.

The portion of article 15 on which the appellant relies is this:

“The State shall not discriminate against any citizen on grounds only of.....sex.”

But what he overlooks is that that is subject to clause (3) which runs—

“Nothing in this article shall prevent the State from making any special provision for women.....”

The provision complained of is a special provision and it is made for women, therefore it is saved by clause (3).

It was argued that clause (3) should be confined to provisions which are beneficial to women and cannot be used to give them a licence to commit and abet crimes. We are unable to read any such restriction into the clause; nor are we able to agree that a

1954

Yusuf Abdul Aziz

*The State of
Bombay and
Husseinbhai
Laljee.*

Bose J.

1954

Yusuf Abdul Aziz

v.

The State of
Bombay and
Husseinbhai
Laljee.\ Bose J.

provision which prohibits punishment is tantamount to a licence to commit the offence of which punishment has been prohibited.

Article 14 is general and must be read with the other provisions which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two articles read together validate the impugned clause in section 497 of the Indian Penal Code.

The appellant is not a citizen of India. It was argued that he could not invoke articles 14 and 15 for that reason. The High Court held otherwise. It is not necessary for us to decide this question in view of our decision on the other issue.

The appeal is dismissed.

Appeal dismissed.

Agent for respondent No. 1 : R. H. Dhebar.