

05.09.2022
Item no.4.
Court No.35.
I.T

CRR No.282 of 2016

**Sri Prakash Chandra Hazra & Ors
-Vs.-
State of West Bengal & Anr.**

Mr. Gopal Ch. Ghosh,

.....for the Petitioners.

The petitioners, who are the husband and in-laws of the opposite party no.2/complainant/wife, have preferred this criminal revision application under Section 482 of Cr.P.C, 1973, to pray for an order quashing the proceedings being G.R. Case No.729 of 2009, arising out of Goghat Police State Case No. 158 of 2009, dated 11th November, 2009 under Sections 498A/34 of the I.P.C, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1961, now pending in the court of Judicial Magistrate, Additional Court, Arambagh, Hooghly.

Admittedly, petitioners No.1 and opposite party no.2 were married couple. However, petitioner no.1 states that due to some physical disablement of the opposite party no.2, i.e, her not having some vital female organs, their marriage could not be consummated and no conjugal relationship could be established.

According to the petitioner no.1 he lodged a matrimonial suit in the court of appropriate jurisdiction being MAT Suit No. 106 of 2009, with the prayer for declaration of his marriage with opposite party no.2 as a nullity. On 31st March, 2012, the suit

was decreed in favour of petitioner no.1 and the court of appropriate jurisdiction has passed a judgment and order operative portion of which is quoted below:-

ORDERED

“that the case u/s 12(1) (a) of the Hindu Marriage Act, 1955 is thus disposed of on contest against the respondent.

There will be no order of cost.

The petitioner do get a decree of nullity of marriage solemnized with the respondent. Let the copy of this judgment and order be supplied to the parties free of cost.”

Petitioner has further contended that the wife/opposite party no.2 challenged the verdict of the court vide the said judgment and decree dated 31st March, 2012, in MAT Suit No. 106 of 2009 by filing appeal no. FAT 202 of 2012 in the Hon’ble High Court, at Calcutta. The said appeal was dismissed by the Division Bench of the Hon’ble Court, vide order dated 3rd August, 2015, being devoid of any merit. The operative portion of the Hon’ble courts order dated 3rd August, 2015, in FAT 202 of 2012 is quoted as herein below:-

“After hearing the learned counsel for the husband/respondent and after going through the evidence so adduced and after going through the judgment so passed by the learned Additional District Judge, we do not find any illegality or materials irregularity in the judgment impugned under appeal.

Therefore, the appeal is devoid of any merit and the same is, accordingly, dismissed.”

It is stated that in the meantime the wife moved the court of Learned judicial Magistrate, Additional Court, Arambagh, with malafide and ulterior motive with her petition under Section 156(3) Cr.P.C, 1973, to pray for an order to

register a regular criminal case, against the accused persons named in her said petition, i.e, the present petitioners. While conceding to her prayer, the trial court has passed an order as necessary and a specific police case being Goghat Police Case No. 158/2009 dated 11.11.2009 under Sections 498A/34 I.P.C, 1860 and Sections 3 and 4 of Dowry Prohibition Act, 1961, was started.

The same case was investigated and ultimately resulted into submission of final report by police on 31.12.2009 with none of the accused persons being sent up for trial, in absence of any cogent material. The ld. Advocate on behalf of the petitioners have pointed out to the relevant portion of the final report dated 31st December, 2009, to show that on behalf of the investigating authority a prayer for discharge of the accused person has been made in the said final report.

However, the matter did not to end there and pursuant to an order of the court police has re-investigated in the case and again submitted Charge Sheet No.148/2010 dated 30th September, 2010, under Sections 498A/406 I.P.C, 1860, against the accused persons, i.e, the present petitioners.

Pursuant to the same, G.R. Case No.729 of 2009 was initiated and is not pending in the trial court.

By filing the present revision, the petitioners have prayed for an order of this court quashing the entire proceeding in connection with the said G.R. Case No.729 of 2009.

Mr. Gopal Ch. Ghosh, Id. Advocate on behalf of the petitioners have emphatically submitted that the instant criminal case is only malicious and baseless. According to him, his clients are only being victim of vengeance and grudge of the opposite party no.2 and there is no substantive material against any of the petitioners to proceed against them with the charges as mentioned above.

It is submitted further that after the decree of annulment of marriage by the competent court of law dated 31st March, 2012 and subsequent confirmation of the same by the Division Bench of this Hon'ble court, vide order dated 3rd August, 2015, there would be no cogent ground available to the state to proceed against the present petitioners in the said criminal case.

Heard Mr. Ghosh, appearing on behalf of the petitioners. None appears on behalf of the opposite parties.

Record reveals that according to the direction of this court administrative notice was served duly upon the opposite party no.2. Needless to say that the petitioners have also being served with the notice of court. The report of the Ld. Registrar Administration (L & OM) dated 3rd August, 2022 to that effect is available in the record.

Accordingly, there is no doubt that service of notice is complete and sufficient in this matter.

Facts of the case as has elaborately been discussed above, leaves no scope of any doubt that the marriage between petitioner no.1 and opposite party no.2 has already been

declared a nullity by dint of a decree of competent court, dated 31st March, 2012. Such judgment and decree though was challenged but affirmed by the Hon'ble High Court, vide order dated 3rd August, 2015. Though chronologically the criminal case was initiated prior to the date of decree of nullity of marriage, still the decree as mentioned above would definitely affect the criminal proceedings based on allegations during the period of marriage, particularly when the marriage itself has been declared to be a nullity. Order of the court to that effect has reached to its finality and is binding on the parties. Furthermore one cannot ignore the fact that after investigation in the said criminal case the police submitted final report at the first instance (dated 31.12.2009) by not sending up any of the accused persons. Though a later stage upon re-investigation charge sheet was submitted under Sections 498A/406 I.P.C, 1860 (dated 30.09.2010).

Considering the entire facts and circumstances and the discussions and reasons as enumerated above, I am of the opinion that there would be no sufficient ground or reason to proceed in G.R. Case No.729 of 2009 pending in the court of the Judicial Magistrate, Additional Court, Arambagh, Hooghly. Accordingly this revision application should succeed.

Hence, it is ordered that the Criminal Revision being C.R.R 282 of 2016 is allowed, ex-parte.

All proceedings and/or further proceedings in G.R. Case No.729 of 2009 pending in the court of Judicial Magistrate, Additional Court is hereby quashed.

There shall be no order as to costs.

Urgent photostat Certified Copy of this order, if applied for, be given to the parties, on priority basis.

C.R.R 282 of 2016 is disposed of.

(Rai Chattopadhyay, J.)