

Court No.
33
Item 18
Ali
18.08.2022

CRR 2717 of 2016

Sabita Debnath
-Vs-
The State of West Bengal & Anr.

In re: An application under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973.

Mr. Anirban Dutta
Ms. P. Mukherjee
....for the petitioner.

Mr. Saswata Gopal Mukherjee, Ld. PP
Mr. Imran Ali
Ms. Debjani Sahu
.....for the State

The petitioner has preferred the present revisional application for quashing of the proceedings being G.R. case No. 1002 of 2012 (arising out of Chakdaha Police Station Case No. 465 of 2012 dated 06.07.2012) under Section 498A/34 of the Indian Penal Code.

The brief fact of the case is that the opposite party No. 2 lodged a written complaint before the Inspector-in-Charge, Chakdaha Police Station alleging, inter alia, of torture upon her in the matrimonial home by the petitioner being the mother-in-law and husband and other in-laws. On such basis, the FIR came to be registered against the petitioner and others. Upon completion of investigation, police authority submitted charge-sheet against the petitioner and three others under Section 498A/34 of the Indian Penal Code.

Being aggrieved by and dissatisfied with the said proceeding, the petitioner has preferred the present revision.

Mr. Anirban Dutta, learned advocate appearing on behalf of the petitioner submits that the opposite party No. 2 defacto complainant was a married woman having two children at the time when she entered into marital tie with the son of the petitioner, which was intentionally suppressed her. The petitioner filed Matrimonial Suit being No. 57 of 11 before the District Judge, A & N Islands at Port Blair under Section 11 of the Hindu Marriage Act for declaring the said marriage as null and void on the ground of subsistence of previous marriage of the complainant. The aforesaid Matrimonial Suit was decreed ex-parte on 17th November, 2011. He submits that after a lapse of eight months the petitioner, on false and frivolous allegation, lodged written complaint on 06.07.2012. The defacto complainant filed an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex-parte decree passed on 17.11.2011 in the Matrimonial Suit alongwith an application under Section 5 of the Limitation Act. The learned District Judge on 08.08.2013 allowed the application under Section 5 of the Limitation Act and fixed date for hearing of application under Order 9 Rule 13 of the Code of Civil Procedure. The aforesaid order of District Judge was assailed in revision before the Hon'ble High court in Civil Revision No. 28 of 2013. The aforesaid order of the learned District Judge dated 08.08.2013 was set aside in revision on 20.11.2013 and Accordingly the ex-parte decree of nullity passed in the matrimonial suit reached finality and the

marriage stood null and void in the eye of law. Referring to Section 41 of the Indian Evidence Act, he submits that such judgement passed by a competent Court in matrimonial jurisdiction is exclusively proof of legal character that no such marriage subsisted by and between the complainant and the son of the petitioner. He further submits that Section 498A of the Indian Penal Code lies against the husband, in-laws and relatives of the husband and which manifests that there has to be a pre-requisite existence of marriage. However, as there is no such marriage by and between the complainant and the son of the petitioner offence under Section 498A of the Indian Penal Code is not attracted in the facts and circumstances of present case. He further refers to the statement of the witnesses recorded under Section 161 of the CrPC wherein he indicates that there are no such allegations to attract Section 498A of the Indian Penal Code as against the petitioner. In the light of his aforesaid, he prays for quashing of the proceedings against the petitioner.

Ms. Debjani Sahu, learned advocate for the State, replying to the contentions raised on behalf of the petitioner, submits that as per the statement of witnesses there are several allegations of torture against the petitioner being the mother-in-law. However, she fairly submits that the complainant did not disclose in her written complaint about the ex parte decree of nullity of marriage between her and the son of the petitioner.

Having heard the learned advocate of both sides, the question that has fallen for consideration before the Court is whether there was any subsisting valid marriage by and between the parties during the alleged period of torture or whether the provision of Section 498A of the Indian Penal Code is attracted in the facts and circumstances of the case. At page no 42 of the petition, it is found that decree as has been passed on 17.11.2011 declaring the marriage solemnized on 12th Day of July, 2006 between the defacto complainant and the son of the petitioner as null and void under Section 11 of the Hindu Marriage Act. The complainant filed an application under Order 9 Rule 13 of the Code of Civil Procedure under Section 5 of the Limitation Act. The learned District Judge allowed the application under Section 5 of the Limitation Act and fixed the date for hearing of application under Order 9 Rule 13 of the Civil Procedure Code. The son of the petitioner, namely, Sujit Debnath assailed such order in Civil Revision being No. 28 of 2013 before the Hon'ble High Court. The impugned order of the learned District Judge dated 08.08.2013 was set aside in the revision. Thus, the ex-parte decree declaring the marriage between the defacto complainant and the son of the petitioner as null and void reached finality. I concur with the submissions made on behalf of the petitioner referring to Section 41 of the Indian Evidence Act postulates such a decree passed by a competent court a conclusive proof of the legal character of the said marriage being null and void.

Now the question arises whether in the aforesaid circumstances penal provisions under Section 498A of the Indian Penal Code is attracted.

At this juncture it will be profitable to refer to Section 498A of the Indian Penal Code, which runs thus:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purposes of this section, ‘cruelty’ means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet demand.”

On bare reading of the aforesaid penal provision of the law under Section 498A of the India Penal Code it is seen that it is attracted against the husband or relatives of the husband of the women. As it is found that the marriage by and between the parties has been declared null and void by a competent court of law, hence Section 498A of the Indian Penal Code does not attract in the facts and circumstances of the case. For the aforesaid reasons, I recuse from making any observation with regard the outcome of the statement of the witnesses recorded under Section 161 of the CrPC as indicated by learned advocate for the petitioner.

In the aforesaid backdrop the proceeding being G.R. case No. 1002 of 2012 (arising out of Chakdaha Police Station Case No. 465 of 2012 dated 06.07.2012) under Section 498A/34 of the Indian Penal Code is quashed against the petitioner.

The present revisional application stands allowed.

All connected applications stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

Let a copy of this order be sent to the learned trial Court for information.

(Bivas Pattanayak, J.)