

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**CRR 4174 of 2022
With
CRAN 2 of 2023
(This CRAN not found with the file)**

**Rajiv Sarkar and Others
Vs.
The State of West Bengal and Anr.**

Mr. Amarta Ghose
Mr. Sourav Chatterjee
Mr. Ayan Bhattacharjee
Mr. Sharequl Haque
Mr. Soumya Nag
Mr. Anuj Singh
Mr. Biswajib Ghosh
Mr. Souryadeep Ghosh
Mr. Sumitava Chakraborty
..for the petitioners

Mr. Tanmoy Kumar Ghosh
Ms. Pritha Paul
..for the State

Item No. 09.

Heard & Judgment on: 11.05.2023

Bibek Chaudhuri, J.

Affidavit of service be kept with the record.

On perusal of the affidavit of service I find that the private opposite party received the notice of the instant proceeding but she has not turned up. Considering such circumstances, there is no predicament in taking up the hearing of the instant revision on merit.

I have heard Mr. Ghosh and Mr. Chatterjee, learned advocates on behalf of the petitioners. The petitioners have prayed for quashing of the proceeding being Case No. AC/2341 of 2022 pending before the learned Judicial Magistrate, 5th Court, Alipore as well as the order dated 17th August, 2022 passed by the learned Additional Chief Judicial Magistrate, Alipore taking cognizance of offence on the basis of the aforesaid complaint filed by the opposite party No.2.

Suffice it to record that on the basis of initial evidence of the complainant upon a Court complaint the learned Additional Chief Judicial Magistrate, Alipore issued process against the petitioner under Sections 420/494/120B of the Indian Penal Code. It is alleged by the opposite party No.2 that the petitioner No.1 is her legally married husband. During the subsistence of her marriage with the petitioner No.1 he indulged in committing offence of bigamy and thereby cheated the complainant by way of criminal conspiracy.

From the materials on record it is clear that the marriage of the petitioner No.1 and the opposite party No.2 is declared to be a nullity

on the ground that the opposite party No.2 had a subsisting marriage with another person on the date of her marriage with the petitioner No.1. It was the allegation of the opposite party No.1 that the petitioner No.1 practised deception upon the opposite party No.2. As a result of which the opposite party No.2 is led to believe that she is lawfully married to him whereas in fact she is not lawfully married to him. This allegation does not arise at all because the opposite party No.2 herself claimed that she is the lawful wife of the petitioner. A legally married wife cannot maintain a charge of bigamy against her husband. A married male having a relationship with a lady other than his wife may be proceeded against for adultery and not bigamy.

Where bigamy fails, remaining charges under Sections 420/120B will automatically fail.

Under such circumstances, I do not find any merit in the complaint case filed by the opposite party No.2 and accordingly the revisional application is allowed. Criminal proceeding being AC/2341 of 2022 pending before the learned Additional Chief Judicial Magistrate at Alipore against the petitioners be quashed.

(Bibek Chaudhuri, J.)