

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

F.A. 119 of 2022

Santanu Roy
Vs.
Pinki Das

For the appellant : Mr. Ujjal Ray

For the respondent : Mr. Abhra Mukherjee
Mr. Somen Bose
Mr. Sauradeep Dutta
Mr. Arpayan Mukherjee
Mr. Himadree Ghosh

Heard on : March 5, 2025

Judgment on : March 5, 2025

Sabyasachi Bhattacharyya, J.:

1. Although the matter is appearing under the heading 'To be Mentioned', on consent of parties, in view of the short conspectus of the challenge, the appeal itself is treated to be on the day's list and taken up for hearing.

2. By the impugned judgment and decree, the suit filed by the respondent-wife seeking a decree of nullity of the marriage between the parties was granted, thereby declaring the marriage null and void.
3. Learned counsel for the appellant submits that the appellant has no issue with such portion of the decree.
4. However, in addition, the learned trial Judge, in the self-same decree, has observed that the appellant has committed the offence under Section 494 of the Indian Penal Code and has sentenced the appellant to suffer a simple imprisonment for a period of three years and to pay a fine of Rs.5,000/-, in default to suffer further simple imprisonment for a period of six months for the offence under Section 494 of the Indian Penal Code in view of the provision under Section 43 of the Special Marriage Act, 1954.
5. Upon a perusal of the said provision, that is, Section 43 of the Special Marriage Act, 1954, we find that the same merely provides that every person who, being at the time married, procures a marriage of himself or herself to be solemnized under the said Act shall be deemed to have committed an offence under Section 494 or Section 495 of the Indian Penal Code as the case may be and the marriage so solemnized shall be void.

6. However, the Special Marriage Act does not contemplate of a criminal prosecution and is in the nature of a civil code governing marriages contracted under the Special Marriage Act, 1954.
7. As such, the utmost effect of Section 43 would be that the marriage so performed would be deemed to be void, which is, after all, a civil consequence.
8. However, in the absence of any penal provision and without any criminal proceeding being initiated against the appellant, the learned trial Judge, while deciding a matter under the Special Marriage Act, 1954, acted palpably without jurisdiction and *de hors* the law in directing punishment against the appellant under Section 494 of the Indian Penal Code.
9. Moreover, as contemplated in a criminal trial, there has to be a hearing given on the yardstick of a criminal proceeding, that is, beyond reasonable proof, and opportunity has to be granted to the parties to prove their respective cases in consonance with such yardstick.
10. Only upon such hearing being given to the parties, as rightly pointed by learned counsel for the respondent as well, a conviction is first to be handed out and only thereafter sentencing can be done.

11. Thus, the said portion of the impugned decree, as already observed above, is *de hors* the law and has to be set aside.
12. Accordingly, FA 119 of 2022 is allowed in part, thereby setting aside only the second portion of the impugned judgment and decree whereby the appellant has been observed to have committed an offence under Section 494 of the Indian Penal Code and punishment has been meted out to the appellant on such count.
13. However, we make it clear that we are not interfering with the other part of the decree whereby the marriage between the parties has been declared to be null and void, since the appellant does not press the appeal in that regard.
14. Let a decree be drawn up accordingly.
15. There will be no order as to costs.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)