C.R.R. 741 of 2013

Sri Amitava Ghosh & Ors.
vs.
The State o West Bengal & Anr.

Mr. Debasis Kar   …   for the petitioners

Mr. Subir Banerjee   …   for the State

The sole ground on which the impugned proceeding being Baranagar Police Station Case No.238/11 dated 14.06.2011 under section 498A/406 of the Indian Penal Code has been assailed is that the marriage between the parties was declared a nullity on the ground of non-consummation under section 25(1) of the Special Marriage Act.

Mr. Kar, learned counsel appearing for the petitioners submitted that the defacto-complainant/wife appeared in the matrimonial proceeding and contested the same by filing written statement. It is his submission that after considering the evidence on record the civil court passed a decree of nullity of marriage on the ground of non-consummation. He further submitted that in view of section 41 of the Special Marriage Act a decree passed in the matrimonial proceeding is a judgement in rem which binds all parties and shall render the continuation of the impugned proceeding and abuse of process of Court. He relied on *Inderjit Singh Grewal vs. State of Punjab & Anr.(2011 (12)SCC 588), Syed Askar Hadi Ali Augustine Vs. State (Delhi Admbn.) & Anr.(2009 (5)SCC 528 and Sisir Kumar Kundu vs. Smt. Sabita Rani Mandal (AIR 1972 CAL 4*)in support of his submission. Accordingly, he prayed for quashing of the impugned proceeding.

Mr. Banerjee, learned Additional Public Prosecutor submitted that a marriage is a voidable one on account of non-consummation under section 25(1) of the Special Marriage Act. A voidable marriage subsists by and between the parties. It is declared void pursuant to an order passed by a Court of competent jurisdiction. In the instant case, marriage was declared void. Charge sheet had been filed prior to such date i.e. 31st October, 2011. He accordingly prayed for dismissal of the revisional petition.

I have considered the rival submissions of the parties.

It is true that the marriage between the parties had been void on the ground of non-consummation. There is also no controversy that a decree passed in matrimonial proceeding is a judgment *in rem* and binds the world at large. The impact of such a decree of nullity of the marriage under section 25 sub-section (1) of the Special Marriage Act on the ground of non-consummation and, therefore, required to be seen in respect of the impugned proceeding. It is settled law that a voidable marriage subsists till such marriage is declared to be void by a competent court of law. There is no dispute that the alleged offences occurred prior to the date when decree was passed by the Civil Court. Accordingly, the marital tie was subsisting at the material point of time when the alleged acts of torture and misappropriation of property took place. Hence, the decree of nullity on the ground of non-consummation would not result in exclusion of jurisdiction of the criminal court to try the alleged offences. It has been strenuously argued that evidence has come on record that the parties never resided together in the matrimonial home. Admittedly, the opposite party no.2 did not depose the matrimonial proceeding. Failure to lead evidence in the collateral matrimonial proceeding cannot preclude her to establish such the allegations in the criminal court.

I am unable to accede the submission of the learned counsel appearing for the petitioners that the subsequent decree declaring the matrimonial tie a void one on the ground of non-consummation of marriage would render the allegations of commission of offence punishable under section 498A of the Indian Penal Code otiose.

The revisional petition is therefore, dismissed.

The petitioner shall be at liberty to agitate all defences available to him in the course of trial of the proceeding, if so advised. The learned Trial Court is directed to expedite the proceeding and conclude the trial preferably within a period of six months from the date of communication of this order.

(Joymalya Bagchi, J)