

Dr. Tapendro Mullick Vs. Purnendra Mullick

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Court : Kolkata

Decided On : May-20-1997

Reported in : I(1999)DMC523

Judge : Surya Kumar Tiwari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 195 and 195(1); ;
[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 193 and 199; ;[Special Marriage Act, 1954](#) - Sections 9 and 45

Appeal No. : Criminal Revision No. 2364 of 1994

Appellant : Dr. Tapendro Mullick

Respondent : Purnendra Mullick

Advocate for Def. : Amit Talukdar, ;P. Basu and ;Swapan Dutta, Advs.

Advocate for Pet/Ap. : Pradip Kr. Ghosh and ;Tapandeb Nandi, Advs.

Disposition : Application allowed

Judgement :

Surya Kumar Tiwari, J.

1. The revisional application is directed against the order dated 21.12.1993 passed by the learned S.D.J.M., Alipore on Complaint Case No. 2121 of 1992. The

opposite party No. 1 filed a petition of complaint in the Court below. The petitioner is the son of opposite party No. 1. According to complaint, petitioner and accused No. 3 Smt. Ruby Mullick filed an application before the Registrar of Marriages for registration of their marriage under the Special Marriage Act. Accused No. 2 Manisha Mullick is the daughter of the sister of the petitioner who has been made accused No. 3 in the case. Accused Nos. 1 and 2 are within the prohibited degrees and are direct blood relations. On 26th April, 1991, the accused persons applied to the Registrar of Marriages and filed a false declaration that they do not come within the prohibited degree. The marriage was duly registered by the Registrar of Marriages on the basis of the false declaration given by the accused persons. Hence, the accused persons have committed offences punishable under Sections 199, 193/34, Indian Penal Code, read with Section 45 of the Special Marriage Act.

2. The accused persons challenged the maintainability of the complaint on the ground that the Trial Court was not competent to take cognizance of the offences in view of the provisions of Section 195, Criminal Procedure Code. The learned Magistrate rejected the contention. Hence, this application.

3. The learned Counsel for the petitioner has invited my attention to Section 9 of the [Special Marriage Act, 1954](#) which runs thus :

'(1) For the purpose of any inquiry under Section 8, the Marriage Officer shall have all the powers vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely,

(a) Summoning and enforcing the attendance of witnesses and examining them on oath,

(b) discovery and inspection;

(c) compelling the production of documents;

(d) reception of evidence on affidavits; and

(e) issuing commissions for the examination of witnesses; and any proceeding before the Marriage Officer shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code, (45 of 1980).'

4. In the light of the aforesaid section, it is clear that any proceeding before the Marriage Registrar shall be deemed to be a judicial proceeding within the meaning of Section 193, Indian Penal Code. Section 45 of the said Act provides that every person making false declaration shall be liable to be punished under Section 199, Indian Penal Code.

5. The learned Counsel for the opposite party No. 1 has argued that since the learned Marriage Registration Officer is not a Court and he does not pass any judgment to determine the rights of parties, the provisions of Section 195 shall not be attracted. He has cited a case, reported in 1984 Cr. LJ 1534, Smt. Kanaklata Sinha v. Nanigopal Sinha Burman and Ors. In this case, it has been held that the Registrar of Firms is not a Court and hence, no complaint by the Registrar is necessary if offences are alleged to be committed in relation to the proceedings before the Registrar. The learned Counsel has also placed reliance on Jagannath Prosad v. State of U.P., reported in AIR 1960 SC 416, where the Court held that Sales Tax Officer is not a Court. Hence, Section 195, Criminal Procedure Code does not apply.

6. The Apex Court in case of Lalji Haridas v. States of Maharashtra, : 1964 CriLJ249 , held that under Section 37(4) and Section 23 of the Income Tax Act, 1922 being judicial proceedings, the prosecution of a person under Section 193, Indian Penal Code shall be governed by the provisions of Section 195(1)(b), Criminal Procedure Code. I have already observed that Section 9 of the Special Marriage Act has made the proceeding before the Marriage Officer a judicial proceeding and Section 45 of the same Act clearly says that any false declaration will be punished under Section 199, Indian Penal Code. It is, therefore, clear that if a false declaration has been made regarding the status of the bride and bridegroom, Section 195 would be attracted. Since all the alleged offences are covered by the provisions of Section 195(1)(b) of Criminal Procedure Code, I hold that the learned Magistrate was not competent to take cognizance of the offences

on the basis of complaint lodged by the opposite party.

7. The application is allowed and the prosecution is quashed.

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