

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FA 46 of 2026
IA No: CAN 1 of 2026

Goyram Barman
Vs.
Madhumita Barman

For the appellant : Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder,
Ms. Bipasha Bhattacharyya
For the respondent : Mr. Rudranil Das (via VC),
Mr. Souvik Das
Heard on : 20.07.2026
Judgment on : 20.07.2026

Sabyasachi Bhattacharyya, J.:-

1. The aAffidavit-of-service filed today be kept on record.
2. In view of the short ambit of the appeal, we take up the appeal itself for hearing along with the application on consent of the parties.
3. By the impugned judgment, an application under Section 13B of the Hindu Marriage Act, 1955 filed by the parties for divorce by mutual consent was dismissed on the ground that the marriage between the

parties was solemnized in violation of the Prohibition of Child Marriage Act, 2006. Not stopping there, the learned Trial Judge directed a copy of the order to be sent to the Officer-in-Charge of the Bhagwanpur Police Station to treat the same as an information in terms of Section 19 of the Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO Act”) and register a case on the basis of the same and take appropriate action in accordance with law.

4. Learned counsel for the appellant argues that it was entirely beyond the jurisdiction of the Trial Court to pass such directions while sitting over an application for mutual consent divorce under Section 13B of the Hindu Marriage Act.
5. That apart, on merits as well, no offence under the POCSO Act having been made out, it is doubtful as to whether the Court could be construed to be “any person” liable to report such a non-existent offence within the contemplation of Section 19 of the said Act. Moreover, even under the Prohibition of Child Marriage Act, 2006, child marriages are voidable at the option of the contracting party, being a child. In the present case, since none of the parties sought a declaration to that effect, the learned Trial Judge, it is submitted, transgressed his jurisdiction in passing the impugned judgment.
6. Moreover, it is argued that the provision of Section 13B of the Hindu Marriage Act does not permit such a course of action to be taken.

7. Learned counsel for the respondent adopts the arguments of the appellant and agrees to the impugned judgment being set aside and the mutual consent divorce petition to be decided on merits.
8. On a bare perusal of the impugned judgment, it is evident that the same is palpably contrary to law. First, the Court taking up an application under Section 13B of the Hindu Marriage Act is governed by the parameters of the said provision and at best, the provisions of the said Act as a whole. Within such limited conspectus, the learned Trial Judge acted *de hors* jurisdiction in passing the directions regarding registration of a criminal case under the POCSO Act against the appellant/husband.
9. Under Section 13B of the Hindu Marriage Act, the Court was only to ascertain whether the yardsticks and tests laid down therein are satisfied and, upon such satisfaction, to pass a decree of divorce by mutual consent.
10. Secondly, there is no provision within the four corners of the Hindu Marriage Act, 1955 for declaring an under-age marriage to be either void or voidable. As such, within the four corners of the said statute, under which the application before the Trial Court was filed, the learned Trial Judge did not have jurisdiction to adjudicate on the said issue at all.
11. Thirdly, even under Section 3 of the Prohibition of Child Marriage Act, 2006, a child marriage is merely voidable at the option of the contracting party, being a child. In the present case, since none of

the parties sought for a declaration of the marriage to be void, rather, both having sought a divorce, thereby implicitly admitting that there was a valid marriage, the marriage between them could not be held even to be voidable.

12. Even otherwise, we do not find from the four corners of the petition under Section 13B of the Hindu Marriage Act that even any semblance of any offence under POCSO Act was alleged by any of the parties against the other. In the absence thereof, the learned Trial Judge acted *de hors* jurisdiction in taking it upon himself to act as “any person” within the contemplation of Section 19(1) of the POCSO Act and reporting such non-existent offence to the concerned Officer-in-Charge and directing the registration of a criminal case in that regard.
13. That apart, no case under Section 219 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has also been made out in the present case.
14. We also take note of the joint submissions of learned counsel for the parties that the learned Trial Judge himself has been functioning as the POCSO Court in the concerned District and, as such, by directing a complaint to be registered under the said Act, the Trial Court would be instrumental in ensuring that he himself would be the complainant in a case which would ultimately be brought before him for adjudication. Such factor vitiates the directions of the learned Trial Judge, being *de hors* the cardinal tenets of natural justice that a person cannot be the judge of his or her own cause. If the

complainant himself becomes the judge adjudicating on the merits of such complaint, it would be a travesty of justice and the judge himself would be acting as judge, jury, executioner, all rolled into one.

15. Hence, the impugned judgment is bad in law on such count as well.
16. In view of the above findings, this Court is of the opinion that the impugned judgment cannot be sustained for a minute.
17. Hence, FA 46 of 2026 is allowed on consent, thereby setting aside the impugned Order No. 03 dated December 23, 2025 and the judgment of even date passed by the learned Additional District Judge, First Court at Contai, District: Purba Medinipur in Matrimonial Suit No. 117 of 2025 and remanding the application filed by the parties under Section 13B of the Hindu Marriage Act, 1955 for a fresh adjudication on its own merits in accordance with law in the light of the above observations.
18. The learned Trial Judge, while so adjudicating, shall adhere to the timelines stipulated in Section 13B of the Hindu Marriage Act.
19. Any action, if taken in the meantime pursuant to the impugned judgment, including registration of a case and/or complaint in terms of the same, stands hereby revoked and cancelled and shall be reversed by the concerned authorities by acting on the server copy of this judgment, without insisting upon prior production of a certified copy thereof.
20. CAN 1 of 2026 is accordingly disposed of as well.

21. There will be no order as to costs.
22. Urgent certified copies of this judgment, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)