

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 1153 of 2019

***Rahat Ali Khan*
-vs.-
*State of West Bengal.***

For the Petitioner : Mr. Niladri Sekhar Ghosh
Ms. Srimoyee Mukherjee

For the State : Mr. S. G. Mukherjee, Ld. P.P.,
Mr. Arijit Ganguly

Heard on : 29.01.2021 & 05.02.2021

Judgment on : 26.02.2021

Tirthankar Ghosh, J:-

The present revisional application has been preferred against the order dated 20.11.2018 passed by the Learned Additional Sessions Judge, 5th Court, Howrah in connection with G.R. Case No. 5020 of 2016 arising out of Jagacha Police Station case No. 152 of 2016 dated 06.08.2016, presently, registered as S.T. Case No. 67 of 2018 under Sections 417/376 of the Indian Penal Code, wherein the Learned Court was pleased to reject the prayer for discharge of the present petitioner and fixed date for framing of charge.

The prosecution case in brief is as follows:-

One Moumita Das (Bhattacharya) addressed a letter to the Officer-in-Charge, Jagacha Police Station narrating that her husband was missing for about a year and she was working at Country Vacations India Limited. While she was working at the said company, one Rahat Ali Khan introduced himself, got acquainted and after knowing that her husband was missing, proposed for marrying her. The petitioner, on or about April, 2016, requested the complainant to leave the service and stay as housewife. The complainant left the service and the petitioner also joined the service as a security guard at a nearby company and started residing at her house. The petitioner also introduced the complainant to all his relations who also approved their marriage and on such assurance, the petitioner had physical relationship with the complainant. The petitioner also on one plea or the other made representations for which the complainant handed over her gold ornaments with which the petitioner mortgaged with a financial company for obtaining money. The petitioner also took away the motor cycle of her husband. The complainant alleges that after enjoying her, taking away her belongings and using her, the petitioner refused to marry her by abusing her as a bad woman.

On completion of investigation, the Investigating Agency submitted charge-sheet under Sections 417/376 of the Indian Penal Code. In order to prove the case Investigating Officer relied upon 7 witnesses and number of documents. The Learned Magistrate on perusal of the charge-sheet was pleased to take cognizance of the offence and after compliance of the

provisions of Section 207 of the Code of Criminal Procedure was pleased to commit the case to the Court of Sessions. The proceeding, finally, was placed before the Learned Additional Sessions Judge, 5th Court, Howrah, wherein the present petitioner preferred an application for discharge.

The revisional application, as preferred before this Court, was solely on the contention that the Learned Sessions Judge failed to appreciate the provisions of law and according to the petitioner the allegations in the F.I.R. and the charge-sheet if taken to be true, would fail to make out any offence warranting further continuance of the proceedings. Here, it is pertinent to state that the petitioner enclosed only the copy of F.I.R., charge-sheet and the impugned order dated 20.11.2018 and none of the documents which were served under Section 207 of the Code of Criminal Procedure were relied upon and as such this Court was compelled to call for the case diary to appreciate the contentions so advanced.

Mr. Niladri Sekhar Ghosh, Learned Advocate, appearing for the petitioner in order to substantiate the aforesaid claim relied upon the judgment of the Hon'ble Supreme Court in **Pramod Suryabhan Pawar -Vs - State of Maharashtra and Anr.** reported in **(2019) 9 SCC 608**.

Mr. Arijit Ganguly, Learned Advocate appearing for the State opposed the contentions of the petitioner and drew the attention of the Court to the statement of the complainant/victim, which was recorded under Section 164 of the Code of Criminal Procedure as also the statement of the other witnesses. The Learned Advocate for the State also contended that the

judgment, so relied upon by the Learned Advocate for the petitioner, is not applicable to the facts of the present case.

In **Pramod Suryabhan Pawar (supra)** paragraph 19 provides the factual background which is as follows:-

“19. The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose. They are as follows:

19.1. The complainant and the appellant knew each other since 1998 and were intimate since 2004.

19.2. The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant.

19.3. The appellant expressed his reservations about marrying the complainant on 31-01-2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015.”

An analysis of the facts narrated in the aforesaid judgment of the Hon'ble Apex Court, details the circumstances, particularly the period during which the complainant and the accused were known to each other. It is seen that in the said case the complainant and the accused knew each other from the year 1998 and they got intimated in the year 2004 and on or

about November, 2009 the complainant initially refused to engage in sexual relationship. Further fact which is reflected in the aforesaid paragraphs are that the accused expressed his reservations on 31.01.2014 and the complainant and the accused continued to engage in sexual relationship till March, 2015. Thus, acquaintance, intimacy and relationship in aforesaid case was for a period of almost 17 years. The allegations in the said F.I.R. reflects that it was known to the complainant that there were obstacles in their marriage and such facts being known to the complainant from the year 2008, the complainant continued such relationship. The Hon'ble Apex Court, under such circumstances, decided to quash the proceeding.

In **Kaini Rajan -Vs. - State of Kerala** reported in **(2013) 9 SCC 113** it has been held:

“12. Section 375 IPC defines the expression “rape”, which indicates that the first clause operates, where the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will; and second, where it is done without her consent; the third, fourth and fifth, when there is consent, but it is not such a consent as excuses the offender, because it is obtained by putting her on any person in whom she is interested in fear of death or of hurt. The expression “against her will” means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. “Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. Section 90 IPC refers to the expression “consent”. Section 90, though, does not define “consent”, but describes what is not consent. “Consent”, for the purpose of Section 375, requires voluntary participation not only after the

exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances...”

Further in **Deepak Gulati –Vs. – State of Haryana** reported in **(2013)**

7 SCC 675 it has been observed:

“21.Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.”

It would not be out of place to state the provisions of Section 227 of the Code of Criminal Procedure which is as follows:-

“S.227. Discharge. – *If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the judgment considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”*

Having regard to the observations of the Hon’ble Apex Court and the settled principle of law that the Court has to balance between two circumstances, one being of grave suspicion and other being of some suspicion, I do not think that the Learned Trial Court committed any error in refusing the prayer for discharge. As in the present case, the complainant joined her service on or about December, 2015 and the incident of engagement in sexual relationship on the basis of promise to marry existed for about 5-6 months. The short span of time as is revealed from the statement under Section 164 of the Code of Criminal Procedure of the complainant itself would go to show that the representation/allurement/promise of the accused-petitioner was so convincing that the complainant was not only convinced to engage in sexual relationship but also parted with gold ornaments and the motor bike. The factum of the allurement or deception in such a case within such a short span of time requires a rebuttal by way of cross-examination from the side of the accused-petitioner, which cannot be held to be conclusive at the inception of the case or prior to the commencement of trial. Further taking

into account the facts of the case as a whole and on perusal of the statement of the other witnesses, which have been relied upon by the prosecution in the charge-sheet, I am of the opinion that no conclusive view can be arrived at by a Court without completion of trial.

Under such circumstances, I do not find any illegality in the impugned order dated 20.11.2018 passed by the Learned Additional Sessions Judge, 5th Court, Howrah and as such the said order is affirmed. Consequently, the Revisional Application fails and is dismissed.

Case Diary be returned to the Learned Advocate appearing for the State.

The Learned Trial Court is directed to proceed with the trial as expeditious as possible and take the same to its logical conclusion within a reasonable period of time.

Hence, CRR 1153 of 2019 is dismissed.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)