

CRR 1662 of 2021
(Through Video Conference)

In Re: - An application under Section 482 read with Section 401 of
the Code of Criminal Procedure, 1973
And

In the matter of: **Darshan Binani**

.... Petitioner

Mr. Danish Haque,
Md. Zohaib Rauf,
Mr. Abdul Zahid

...For the Petitioner

Mr. Rana Mukherjee,
Ms. Sukanya Bhattacharyya,
Mr. Pratick Bose

...For the State

Ms. Aishee Banerjee,

...For the Opposite Party No. 2

This is an application for quashing of the criminal proceeding in connection with CGR 3944 of 2020 under Sections 417 and 376 of the Indian Penal Code, 1860, pending before the Court of the learned Chief Judicial Magistrate, Alipore, South 24 Parganas.

The petitioner/accused, in this case, is the brother-in-law of the de-facto complainant /opposite party no. 2.

The opposite party no. 2 lodged a complaint before the Joint Commissioner of Police (Crime), Kolkata Police, alleging, *inter alia*, that the petitioner is married to her eldest sister and they have three daughters. The petitioner convinced her to spend some romantic moments with him and took her to various hotels in Kolkata. The petitioner had sexual intercourse with her for several times by giving false assurance of marriage.

Upon the completion of the investigation, a charge sheet has been filed by the police under Sections 376 and 417 of the Indian Penal Code, 1860.

Mr. Rana Mukherjee, learned advocate, appearing for the State submits that the statement of the victim was recorded under Section 164 of the Code of Criminal Procedure, 1973, and she was medically examined. Some documents were seized from some of the hotels in Kolkata which suggest that the petitioner and the opposite party no. 2 had physical relationship and indulged in sexual intercourse.

Ms. Aishee Banerjee, learned advocate, appearing for the opposite party no. 2 submits that the opposite party no. 2 does not want to proceed with the instant case any further since she has married another person within this time frame.

The opposite party no. 2 being the sister-in-law of the petitioner was conscious of the fact that the petitioner was married to her eldest sister and leading a family life with their three children. The opposite party no. 2 never alleged that she participated in the sexual act without her will or consent.

It cannot be said that the opposite party no. 2 gave consent for sexual intercourse in consequence of any misconception of fact. The opposite party no. 2 allegedly gave her consent on the promise that the petitioner would marry her after obtaining a decree of divorce from the eldest sister of the opposite party no. 2. Such an illegitimate expectation cannot form “misconception of fact” within the meaning of Section 90 of the Indian Penal Code, 1860. The allegation of rape is not established. The position of law in this regard has been settled by the Supreme Court in the judgments reported at **(2005) 1 SCC 88 (Deelip Singh alias Dilip Kumar Vs. State of Bihar), (2013) 7 SCC**

675 (Deepak Gulati Vs. State of Haryana), (2003) 4 SCC 46 (Uday Vs. State of Karnataka) and (2019) 18 SCC 191 (Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra).

In that view of the aforementioned facts and the stand of the opposite party no. 2 that she does not want to proceed with the instant case any further, I am of the opinion that there is no justification to continue with the present criminal proceeding.

Accordingly, the criminal proceeding arising out of Bhawanipore PS/DD Case No. 293 of 2020 dated December 9, 2020, under Sections 417 and 376 of the Indian Penal Code, 1860, pending before the Court of the learned Chief Judicial Magistrate, Alipore, South 24 Parganas stands quashed.

The revisional application **CRR 1662 of 2021**, is allowed.

(Kausik Chanda, J.)