

IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

**IA No. CRAN/1/2022**

**In**

**CRR 1510 of 2021**

**Samarpan Sharma**

**-Versus-**

**Indrani Das & Anr.**

For the petitioner:        Mr. Sabir Ahmed, Adv.,  
                                         Mr. Amal Kumar Banerjee, Adv.,  
                                         Mr. Mujibal Ali Rahaman, Adv.,  
                                         Mr. S. Sarkar, Adv.

For the Opposite Party No.1: Mr. Pinaki Ranjan Chakraborti, Adv.

For the State:                Mr. Avishek Sinha, Adv.

Heard on: 8 July, 2022.

Judgment on: 22 July, 2022.

**BIBEK CHAUDHURI, J. : –**

1.     The petitioner is the accused of GR Case No.745 of 2022 arising out of Mayureswar Police Station Case No.104 of 2020 dated 6<sup>th</sup> August, 2020 under Section 376(1)/417 of the Indian Penal Code corresponding to GR Case No.745 of 2020.

2.     On 6<sup>th</sup> August, 2020 the prosecutrix lodged a written complaint against the petitioner alleging, inter alia, the she was acquainted with the

petitioner since 2018. The accused cohabited with her for many times on false promise of marriage. After such cohabitation the defacto complainant requested him to marry her. The relatives of the defacto complainant also talked to the relatives of the accused and they agree to fix the date of marriage of the petitioner with the defacto complainant. On 4<sup>th</sup> August, 2020, the father of the defacto complainant requested the relatives of the petitioner to fix the date of her marriage with the petitioner. At that time the relatives of the petitioner flatly refused to give marriage of the petitioner with the defacto complainant. When the defacto complainant went to the house of the petitioner, her father and sister physically assaulted her. On the basis of the said complaint police registered Mayureswar P.S Case No.104 of 2020 dated 6<sup>th</sup> August, 2020 under Section 376(1)/417/323 of the IPC against the petitioner, his father and daughter.

3. On completion of investigation police submitted charge-sheet against the petitioner under Section 376(1)/417 of the IPC.

4. It is submitted by the learned Advocate for the petitioner that the petitioner is in judicial custody since the date of his arrest. The learned Additional Sessions Judge at Rampurhat passed an order dated 29<sup>th</sup> June, 2021 in Sessions Case No.23 of 2021 arising of the aforesaid Police Station Case rejected the prayer for bail of the accused. The defacto complainant filed more than one affidavit stating, inter alia, that the petitioner has agreed to marry the defacto complaint. Therefore, petitioner may be released on bail. It was also stated by the defacto complainant

that at present there is no dispute between her and the accused/petitioner. Thus, it is submitted by the learned Advocate for the petitioner that in view of the amicable settlement between the petitioner and the defacto complainant especially when the defacto complainant has agreed to marry the petitioner the proceedings pending before the court of learned Additional Sessions Judge at Rampurhat ought to be quashed.

5. It is also submitted by the learned Advocate for the petitioner that both the defacto complainant and the petitioner attained majority on the date of commission of the offence. The petitioner allegedly cohabited with the defacto complainant on promise of marriage. She was quite aware of the consequences of pre-marriage sexual intercourse. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting. Both of them committed sexual intercourse on bona fide belief that both of them would marry each other. There is no element or ingredient established during investigation that the accused obtained the consent of the victim in committing such offence by an act of cheating. In order to establish the charge under Section 417 of the IPC prosecution is under obligation to prove that from the very beginning the accused intended to obtain consent of the victim on false promise of marriage. There is absolutely no material that at the very inception there was element of deception by the accused in order to obtain consent of the victim lady for sexual intercourse. There is no material to show even prima facie that when she was proposed by the accused for sexual intercourse she resisted the overture of the accused and was not

agreeable initially to give consent to the act of physical relationship. Under such circumstances, it is submitted by the learned Advocate for the petitioner that the entire proceeding should be quashed. In support of his contention he refers to a decision of this Court in **Puran Giri vs. State of West Bengal & Anr.** reported in **(2016) 2 CHN 635**.

6. On perusal of the materials on record, it appears that the defacto complainant filed more than one affidavits stating, inter alia, that the accused has agreed to marry her and he might be released on bail so that the marriage of the victim lady might be solemnized with the petitioner. The trial court, however did not pay any heed to those affidavit and the accused still remains in judicial custody. In *Puran Giri* (supra) a Coordinate Bench of this Court held as hereunder:-

“34. In its revisional jurisdiction, this Court is not required to meticulously scan the evidence collected. But this much is clear from the complainant's own statement under Section 164 CRPC that she voluntarily had sex with him before satisfying herself about his sincere intention to marry her, as she admittedly did not wait to meet his children and already had sex with the petitioner either in September 2012 (according to the FIR) or otherwise in December 2012 (according to her statement under Section 164 CRPC), before the children arrived only in January 2013. In view of her own claim of having already been deceived earlier in a similar fashion by another Police Constable Tapas Kumar Singha, who had had sexual intercourse with her on the false promise of marriage, after which she implicated him in a criminal case to the knowledge of the petitioner, there would remain little doubt that she had submitted to the petitioner's sexual advances voluntarily.

35. Even the decision in “Yedla Srinivasa Rao” would not help her since she is admittedly not a tender aged girl of

16 years, but a full grown adult having crossed the age of 28 years and was also gainfully employed in the Nursing Home. In these circumstances her consent to the act of sexual intercourse cannot be said to have been obtained under any 'misconception of fact'. Her case is therefore squarely covered by the following observations in "Partho Pratima Phukan @ Meja Vs. The State of West Bengal & Anr." (supra) –

*"....It is clear from the materials in the case diary that the complainant freely exercised a choice between the resistance and assent. It cannot be said that she did not know the consequences of the act. Since materials on record suggest that the complainant freely, voluntarily and consciously consented to having sexual intercourse with the present petitioner, her consent could not be in consequence of any misconception of fact.*

*13. In such view of the matter, I am of the opinion that there is no rational justification for proceedings further with the case under reference. Accordingly, the application being C.R.R. No.441 of 2007 be allowed."*

36. For the aforesaid reasons, continuation of the proceedings against the petitioner in this case is not called for. Consequently further proceedings in Sessions Case number 9(7) 13 pending in the Ld. Fast Track 2nd Court, at Sealdah are now quashed. The pending application being CRAN 3102 of 2015 therefore becomes redundant and stands rejected."

7. The ratio of the above mentioned decision is squarely applicable in the instant case. It is no longer disputed that petitioner and the defacto complainant were involved in consensual sexual relationship on promise of marriage. There is no material on record that the petitioner obtained consent of the defacto complainant/prosecutrix on false promise of marriage. When there is no evidence of fraudulent and dishonest inducement made by the accused to obtain consent of the defacto

complainant for sexual intercourse and when during the pendency of the case, the petitioner has agreed to marry the defacto complainant, continuation of trial of Sessions Case No.23 of 2021 arising out of Mayureswar Police Station Case No.104 of 2020 dated 6<sup>th</sup> August, 2020 under Section 376(1)/417 of the IPC would be a casual formality amounting to abuse of the process of the court.

8. For the reasons stated above, the instant revision praying for quashment of the above proceeding pending in the court of learned Additional Sessions Judge at Rampurhat is allowed.

9. The instant revision is accordingly disposed of on contest, however, without costs.

10. The criminal proceeding being Sessions Case No.23 of 2021 arising out of Mayureswar P.S Case No.104 of 2020 under Section 376(1)/417 be quashed.

**(Bibek Chaudhuri, J.)**