

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.R. 2034 of 2021

**Dr.Anagh Banerjee
Vs.
State of West Bengal & Anr.**

**For the petitioner : Mr. Rajdeep Mazumder, Adv.
Mr. Moyukh Mukherjee, Adv.
Mr. Pritam Roy, Adv.**

**For the O.P. No.2 : Mr. Atish Kumar Biswas, Adv.
Mr. Partha Sarkar, Adv.
Mr. Amit Singh, Adv.
Ms. Jyoti Agarwal, Adv.**

**For the State : Mr. Madhusudan Sur, Adv.
Mr. Dipankar Paramanick, Adv.**

Heard on : 30.06.2022

Judgment On : 30.06.2022.

Bibek Chaudhuri, J.

The instant application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure is filed by the accused No.1 of Sessions Case No.21 of 2020 arising out of Nalhati Police Station Case No.66/18 dated 24th February, 2018 under Sections 493/366C/417/506/120B of the Indian Penal Code. It is submitted by

Mr. Mazumder, learned Advocate for the petitioner that the petitioner previously filed a criminal revision being CRR No.2926 of 2019 and the said revisional application was disposed of granting liberty to the petitioner to file an application under Section 227 of the Code of Criminal Procedure before the Trial Court at the time of framing of charge and the Trial Court was directed to frame charge after disposing of the application under Section 227 of the Code of Criminal Procedure that would be filed by the accused.

According to the direction passed by this Court, the petitioner filed an application under Section 227 of the Code of Criminal procedure. The said application was taken up for hearing by the Trial Court on 24th September, 2021 and the Trial Court after rejecting the application under Section 227 of the Code of Criminal Procedure framed charge against the petitioner in graver offence under Section 376 (2)(f) of the Indian Penal Code.

It is further submitted by Mr. Mazumder that the petitioner was posted as Block Medical Officer of Health at Nalhati Block Medical Health Centre. The de-facto complainant was a staff Nurse of the said hospital. The petitioner gave her a false assurance, stating, inter alia, that a divorce proceeding is going on between him and his wife and the said divorce proceeding would be disposed of very recently. It has been said that the petitioner would have to pay Rs.40,00,000/- to

his wife. Out of the said amount, he has already paid a sum of Rs.20,00,000/-. The petitioner gave a proposal of establishing a relationship with the de-facto complainant through one Soumen Bhattacharjee , Data Entry Operator of Nalhati Block Medical Health Centre. Initially the de-facto complainant refused to accept such proposal but on repeated persuasion and insistence, the relationship developed between the parties. As a result of such relationship, they cohabited for about 2 years. Subsequently, the de-facto complainant wanted to see divorce papers from the petitioner. Trouble started at this juncture. The petitioner could not show any document of divorce to the de-facto complainant. Both the petitioner and the said Soumen Bhattacharjee threatened the de-facto complainant and finally she lodged written complaint on the basis of Nalhati Police Station Case No.66 of 2018 dated 24th February, 2018 was registered. It is contended by Mr. Mazumder that the relationship between the petitioner and the de-facto complainant was all along consensual. Both of them are major. There is no iota of prima facie evidence under Section 376 of the Indian Penal Code. Moreover, the learned Trial Judge acted illegal and with material irregularity when he framed charge under Section 376(2)(f) of the Indian Penal Code against the petitioner.

Learned Advocate for the de-facto complainant/opposite party No.2, on the other hand, submits that the Trial Court rightly framed charge under Section 376(2)(f) of the Indian Penal Code because it is the BMOH who exercising his authority got the de-facto complainant transferred from a Primary Health Centre to Nalhati Block Medical Centre.

He converted a room by the side of the operation theatre as a bedroom and cohabited with the de-facto complainant with false promise of marriage. All such act was done by exercising the trust and authority of the petitioner. Therefore, the instant revision is devoid of any merit and ought to be rejected.

Learned Public-Prosecutor-in-Charge has placed relevant materials from the case diary. I have perused the statement of the de-facto complainant under Section 164 of the Code of Criminal Procedure. I have also perused the duty roster of other staff in the said hospital, copy of which has been seized by the Investigating Officer. It appears that the de-facto complainant was allotted night duty on each Friday and it is alleged that during night of each Friday, both of them had physical relationship inside the hospital.

After institution of the case, the petitioner taking advantage of his authority, not only harassed the de-facto complainant but also got

a departmental proceeding against the mother of the de-facto complainant who is also an employee under the Health Department.

Considering the FIR, materials on case diary and other documents annexed by the petitioner, there cannot be any doubt that physical relationship between the petitioner and the de-facto complainant was established on the consent of both the parties. It may be fact that her consent was dishonesty and fraudulently taken by giving a small promise that the petitioner would divorce his wife.

I am not unmindful to note that the de-facto complainant is not an illiterate lady. She never raised any objection when her duty was fixed at night on every Friday in the hospital. She also did not raise any objection when she was brought to Nalhati Block Health Centre on transfer. It is submitted by Mr. Mazumder that such transfer can only be made by the CMOH of the District and not by the BMOH in the block level.

Be that as it may, I have not found any prima facie material against the petitioner in respect of the charge under Section 376(2)(f) of the Indian Penal Code. However, the petitioner will face trial under Section 376(c)/493/417/506 of the Indian Penal Code.

With the above direction, the instant criminal revision is disposed of.

Considering the fact that the incident lastly occurred in 2018 and charge has already been framed. The learned Trial Judge will take expeditious step for disposal of the case pending against him.

The instant criminal revision, is, thus, **disposed of.**

(Bibek Chaudhuri, J.)