

Form J(1)

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

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

**CRR 2698 of 2022
Alakesh Chatterjee
Vs
The State of West Bengal & Anr.**

For the petitioner : Mr. Abhra Jena, Adv.

Heard on : 05.09.2022

Judgment On : 05.09.2022.

Bibek Chaudhuri, J.

The petitioner being charge-sheeted accused in connection with G.R.No.809 of 2017 under Sections 376/417/506 of the Indian Penal Code arising out of Mahishadal Police Station Case No.179 of 2017 presently pending before the learned Additional Chief Judicial Magistrate, Haldia has filed the instant revision praying for quashing of the above-mentioned proceeding on the ground that on the basis of a written complaint submitted by the opposite party No.2 on 6th June, 2017, police registered Mahishadal Police Station Case No. 179 of 2017. On the very next day of the registration of the case, statement of the victim/de-facto complainant was recorded under Section 164 of

the Code of Criminal Procedure. In the said statement de-facto complainant stated that she does not want to proceed with the case. It is further submitted by the learned Advocate on behalf of the petitioner that both the petitioner and the opposite party No.2 had mutual love relationship and both of them are major. There was consensual physical intimacy between the parties. Therefore, question of cheating for the purpose of commission of offence under Section 417 of the Indian Penal Code cannot be held to be valid and proper.

It is needless to say that a statement under Section 164 of the Code of Criminal Procedure is not a substantive piece of evidence. Such statement of the maker can be used only for corroboration or contradiction. It is also for the Trial Court to consider as to whether specific act and conduct of the petitioner amounted to an act of cheating within the meaning of Section 417 of the Indian Penal Code for the purpose of commission of an offence under Section 376 of the Indian Penal Code can only be decided on the basis of the evidence that may be adduced by the witnesses on behalf of the prosecution during trial.

Accordingly, I do not find any merit in the instant revision and the same is summarily dismissed.

It appears from the copies of the order passed by the learned Trial Court that warrant of arrest is pending against the petitioner. The petitioner is directed to surrender before the Trial Court within one week after vacation and pray for bail. The Trial Court shall consider the application for bail in accordance with law.

The Trial Court is also requested to expedite the trial of the Mahishadal Police Station Case No.179 of 2017.

The petitioner is at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)

***Mithun De/
A.R. (Ct).
SI No.100..***