

**CALCUTTA HIGH COURT**  
**IN THE CIRCUIT BENCH AT JALPAIGURI**  
**CRIMINAL REVISIONAL JURISDICTION**

**PRESENT:**

**THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**CRR 132 of 2019**

**Suman Modak**

**Versus**

**State of West Bengal & Another.**

**For the petitioner: Mr Surajit Basu, Advocate.**

**Mr Ratan Chandra Roy, Advocate.**

**For the State: Mr Aditishankar Chakraborty, Additional Public Prosecutor.**

**Mr Arun Kumar Sarkar, Advocate.**

**Heard on: 2<sup>nd</sup> August, 2022.**

**Judgment on: 10<sup>th</sup> August, 2022.**

**JUDGMENT**

**Bivas Pattanayak, J :-**

**1.**The petitioner has filed the present revisional application under Section 482 of the Code of Criminal Procedure, 1973, for quashing of proceeding in connection with GR Case No. (1)07 of 2019 (arising out of Sahebganj Police Station Case no. 11 of 2019 dated 06.01.2019) under Sections 448/376/506

of the Indian Penal Code pending before the court of learned Additional Chief Judicial Magistrate, Dinhata, Cooch Behar.

**2.** The brief fact of the case is that the victim-complainant lodged a written complaint before the Officer-in-Charge, Sahebganj Police Station alleging, *inter alia*, to the effect that the petitioner, who used to give private tuitions to her sons, in the month of December 2018 gave illicit proposal to the victim-complainant which was turned down by her. It is further alleged that the petitioner threatened to kidnap her and furthermore on 4<sup>th</sup> January, 2019 in the evening at about 7/7.30 PM when the sons of the *de facto* complainant (victim) were not at home the petitioner came to her house and forcibly committed rape on her and also threatened to kill her. On such basis Sahebganj Police Station Case no.11 of 2019 under Sections 448/376/506 of the Indian Penal Code was registered against the petitioner. Upon completion of investigation charge sheet was submitted against the petitioner under the aforesaid provisions of law. Being aggrieved by and dissatisfied with the aforesaid proceeding the petitioner has preferred the present revisional application.

**3.** Mr. Surajit Basu alongwith Mr Ratan Chandra Roy, learned advocates appearing on behalf of the petitioner at the very outset submitted that the charge-sheet clearly indicate that there was a love affair between the petitioner and the victim-complainant and therefore alleged sexual cohabitation, if any, has taken place out of consent of the parties, who were major at the time of the

alleged incident. Furthermore, it is submitted that the charge-sheet reveals that on the assurance of marriage the petitioner entered into cohabitation with the victim-complainant, however such allegation is not tenable in the eye of law on the ground that the victim herself is a married lady with children and therefore the question of her being duped on promise of marriage by the petitioner is far-fetched. In support of his contention he relied on the decision of the Hon'ble Supreme Court passed in **Sonu @Subhash Kumar versus State of Uttar Pradesh and another** in Criminal Appeal No. 233 of 2021 and also decision of this Court passed in **Partho Pratim Phukan @ Meja versus State of West Bengal & another** reported in **2008 SCC online Cal 199; and Diptesh Roy @ Raja Barman versus The State of West Bengal & Another** reported in **2015 SCC online Cal 8357**. He further submitted that the statement of the victim-complainant is laden with several inconsistencies which clearly indicate that no such incident took place in the manner as has been alleged. Moreover, as per the RFSL report neither semen nor any foreign body could be detected in the vaginal swab, which makes the prosecution case further unbelievable. In view of their above submissions it is prayed that the proceeding before the learned trial Court should be quashed in the interest of justice.

**4.** In spite of service of notice none appeared on behalf of opposite party no.2-complainant.

**5.** In reply to the aforesaid contentions raised on behalf of the petitioner, Mr. Aditishankar Chakraborty, learned Additional Public Prosecutor along with Arun Kumar Sarkar, learned advocates representing the State submitted that the FIR and the statement of the victim-complainant recorded under Section 164 of CrPC, demonstrates that the petitioner, who was the private tutor of the children of the victim, ravished the victim-complainant in the absence of her husband and children. It is further submitted on behalf of the State that on the basis of *prima facie* material collected during the course of investigation charge-sheet has been filed against the petitioner under Sections 448/376/506 of the Indian Penal Code. With regard to the decisions cited on behalf of the petitioner it is submitted that the facts involved therein are factually different and distinguishable from the case in hand and therefore the ratios of those decisions does not apply to the present case. Further the issues raised by the petitioner pertain to questions of fact which can only be decided in the trial by taking evidence. In the light of their aforesaid submissions, they prayed for dismissal of the revisional application.

**6.** In order to consider the contrary arguments placed on behalf of the petitioner and opposite party-State it would be apposite to examine the written complaint and the statement of the victim-complainant recorded during the course of investigation. At the very outset, it is pertinent to note that the written complaint was lodged on 6<sup>th</sup> January, 2019 just after one day of the incident and statement before the learned Magistrate has been made on the

subsequent date of lodging of the FIR i.e on 7<sup>th</sup> January 2019. Thus both the aforesaid statements have been made instantly soon after the alleged incident. Upon perusal of the written complaint as well as the statement of the victim-complainant made before the learned Magistrate and recorded under Section 164 of the CrPC, it would reveal that on the alleged date of incident i.e. 4<sup>th</sup> January, 2019, in the evening this petitioner entered into the house of the victim-complainant and ravished her. In both the aforesaid statements there are no such disclosures that on promise to marry, the petitioner entered into physical relationship with the victim-complainant. The statement of the victim-complainant under Section 161 of the CrPC recorded by the Investigating Officer on 19.04.2019, which is much later i.e after almost more than 3 (three) months of the occurrence, reveals of allegation of cohabitation on the promise to marry. Thus the earlier statements which are immediate to the occurrence namely the written complaint and the statement made before the learned Magistrate are in sync with each other and manifests primary involvement of the petitioner in the alleged offence and there is no such indication in those statements regarding cohabitation on promise to marry. The inconsistencies, if any, in any statement and its veracity and/or implication are matters to be decided in the trial. Moreover, on the basis of *prima facie* material collected during the course of investigation, the investigating agency has filed charge sheet against the petitioner in respect of offence under Sections 448/376/506 of the Indian Penal Code.

7. With regard to the decision of Hon'ble Supreme Court passed in **Sonu @Subhash Kumar (supra)** and the decision of this Court in **Partho Pratim Phukan @ Meja (supra)** and **Diptesh Roy @ Raja Barman (supra)** it is found that the facts involved in cited decisions are dissimilar to the case in hand. In all the aforesaid cases the Hon'ble Courts considered the effect of co-habitation on promise to marry in relation to the facts before it. Whereas in the case in hand from the earlier statements of the victim-complainant namely the written complaint and the statement made before the learned Magistrate, which are immediate to the occurrence, there is no revelation of cohabitation on assurance of marriage and thus the facts of the decisions relied upon stands distinguished.

8. Learned Advocate for the petitioner has strenuously argued that the RFSL report clearly indicate of absence of semen or foreign body in the vaginal swab and such finding of the expert makes the prosecution case suspicious in the eye of law. It is a trite law that while exercising power under Section 482 the Court should not usurp the jurisdiction of the trial court. The Court can quash a prosecution which amounts to abuse of process of the court, but that power cannot be exercised to hold a parallel trial, only on the basis of the statements and documents collected during investigation or enquiry, for the purpose of expressing an opinion whether the accused concerned is likely to be punished if the trial court is allowed to proceed. **(See\_Radhey Shyam Khemka and Another versus State of Bihar reported in (1993) 3 SCC 54).** It is settled

principle of law that at the stage of quashing FIR or complaint it is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein unless they are so absurd and inherently improbable that no prudent man can ever reach to just conclusion. **(See Rupan Deol Bajaj (Mrs) and Another versus Kanwar Pal Singh Gill and Another reported in (1995) 6 SCC 194).** It is placed on record that there is neither any absurd or inherent improbability noted in the facts of the present case nor the facts alleged in the complaint on its face value fails to disclose an offence with which the accused is charged. As it is already found that there are primary materials to proceed, hence invoking inherent power will lead to stifling of a legitimate litigation. Moreover the issues whether the co-habitation was with or without consent or what would be the implication of the finding in the RFSL report are precisely questions of facts which are to be decided in trial after taking evidence. Thus the argument advanced on behalf of the petitioner falls short of merit.

**9.** Accordingly, in the light of above discussion the instant criminal revision being **CRR no. 132 of 2019** stands dismissed on contest.

**10.** However, it is made clear that the observations made hereinabove shall not have any bearing on the rights and contentions of the petitioner before the trial court and the petitioner would be at liberty to raise the aforesaid issues at the appropriate stage of trial.

**11.** All connected applications if any stands disposed of.

**12.** Interim orders, if any, stand vacated.

**13.** Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

**14.** Let a copy of this judgment be sent to learned trial court for information.

**(Bivas Pattanayak, J.)**