

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 83 of 2017****With****IA No. CRAN 15 of 2023****IN THE MATTER OF****Rajneeth Kurme.****Vs.****State of West Bengal & Anr.**

**For the Petitioners : Mr. Sandipan Ganguly, Adv.,
Mr. Pinak Kumar Mitra, Adv.,
Mr. H.B.Dubey, Adv.,**

**For the State : Mr. Sudip Ghosh, Adv.,
Mr. Bitasok Banerjee, Adv.**

Judgment on : 15.06.2023

Subhendu Samanta, J.

This is an application u/s 482 of the Code of Criminal Procedure for quashing of a proceeding being SC no. 9 (v) of 2016 [(ST) no. 22 (xii) of 2016] pending before the Learned Additional Sessions Judge Baruipur, south 24 Parganas arising out of Baruipur P.S Case No. 1141 of 2014 dated 08.08.2014 u/s 376/417 of the IPC wherein the charge has been framed against the present petitioner u/s 376/417 of the IPC.

The brief fact of the case is that the present opposite party no. 2 has lodged a written complaint before the OC Baruipur P.S being Case No. 1141 of 2014 dated 8th August 2014 u/s 376 /417 IPC. The written complaint contended that the opposite party no. 2 is a resident of Baruipur, Kolkata and presently she is working as a research Scholar in the department of Food Technology and Biochemical Engineering; that since March, 2009 the Opposite Party No. 2 was in a relationship with the petitioner, who is a M. Tech and had done such course from the same department in which the Opposite party No 2 works; that presently the petitioner is working as a Technical Assistant – II in Food corporation of India, Nizamabad Circle; that after the final examination of the M. Tech course, the petitioner went to Hyderabad in the middle of 2009 and after that he came to Kolkata on various occasions for appearing in various examinations; that the Opposite Party No. 2 always supported the petitioner mentally and financially whenever he needed, that the petitioner came to Kolkata on the expense of the Opposite Party No. 2 and stayed at the residence of the Opposite Party No. 2; that on 05.08.2010 when the petitioner came to Kolkata to attend the marriage function of a common friend, for the first time cohabitation took place by and between the petitioner and the Opposite Party No 2; that

on that occasion, the petitioner stayed over at the house of the Opposite Party No. 2 for three days and continued to have physical relationship with her; that the petitioner convicted the Opposite Party No. 2 for developing physical intimacy by saying that he has already accepted the Opposite Party No. 2 as his wife and hence there was no reason to be worried and that the petitioner would marry the Opposite Party No 2; that thereafter, the petitioner came to Kolkata on 29.01.2011 to attend the wedding of the brother of the Opposite Party No. 2 and got introduced to the family members of the Opposite Party No. 2, her neighbours as well as friends; that during such visit, the family members of the petitioner came to know for the first time about the relationship by and between the petitioner and the Opposite Party No 2; that thereafter, the petitioner got a job in Food Corporation of India, but after getting such job, he did not inform his own family members about the relationship with the Opposite Party No. 2 that again on 03.11.2013 the petitioner came to Kolkata and on that occasion also, the Opposite party No. 2 and the petitioner had physical relationship; that during such visits, the Opposite Party No. 2 informed her mother about their relationship in presence of the petitioner; that however, after leaving the petitioner picked up quarrels with the Opposite Party No. 2 as

the petitioner was upset that his own family members, especially his maternal uncle was informed about the relationship by the Opposite Party No. 2; that thereafter, the petitioner started avoiding the Opposite party No. 2 and finally informed her that he did not want to continue the relationship and intended to marry elsewhere; that the Opposite Party No. 2 tried her best to resolve the disputes but on each occasion the petitioner flatly denied marriage; that due to the aforesaid flasco, the mental peace and happiness of the Opposite Party No. 2 has been destroyed and her career is also suffering.”

On the basis of the written complaint the police conducted investigation and the charge sheet has been submitted against the present petitioner u/s 376/417 IPC.

The case was committed to the Learned Sessions Judge and thereafter it was transferred to the Learned Additional Sessions Judge, Baruipur, South 24 Parganas for disposal, wherein charges has been framed against the present petitioner u/s 376/417 IPC.

Hence this revision.

Learned Advocate for the petitioner submits that from the plain perusal and the written complaint it would be revealed that the major girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such

activities, it is an act of promiscuity on her part and not act induced by the misconception of fact u/s 90 of IPC. It would be revealed from the FIR that prosecutrix as well as the present petitioners were engaged with their love and relationship for a quite long time. There was a promise of marriage between the two adult persons at the time there may have some physical relationship between the parties but that cannot be framed as rape defined u/s 375 of the Indian Penal Code. It is the further case of the petitioner that petitioner is absolutely innocent and he has been falsely implicated in this case. The FIR charge sheet and material thereon are all concocted and need be quashed. It is the further case of the petitioner that the entire proceeding was initiated by the prosecutrix/ de facto complainant only to harass the present petitioner. So he prayed for quashing the entire criminal proceeding.

Learned Advocate appearing on behalf of the state submitted before this court that the allegation of heinous offence was reported to the police. Thereafter police took up the investigation of this case. During the course of investigation police has collected sufficient material including the statement of available witnesses. The prosecutrix was examined before the Magistrate u/s 164 of the Cr.P.C. The entire evidence collected by the IO has prima facie prove the commissions of

offence against the present petitioner. More over, the charge has been framed before the Learned Sessions Judge. At this juncture, as the trial has already been initiated after framing of the charge the High Court can not quash the proceeding. He further argued that the merits of the case cannot be determined by the High court at this revisional stage. So he prayed for the rejections of this instant petition.

Perused the CD. Perused the materials on record.

Learned Advocate appearing on behalf of the petitioner cited a bunch of judgment in support of his contention

In the case of **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra (2019) 18 SCC 191**, the appellant/accused and complainant was working in the same health centre, they belong different communities— complainant stated that she had fall in love with appellant and she needed a companion as she was widow— thus they were living together sometimes at her house sometimes at residence of appellant accused— they were for relationship and enjoyed each others company on the basis of such fact Hon'ble Supreme court has held:

“consensus decision of victim to be involved in sexual relationship with accused without pressure or misconception on part of the accused and relationship not involved passive statement of victim— offence on rape not made out.

In case of **Shyamapada Tewari Vs. State of West Bengal** reported in **(2009) 1 CCRLR (CAL) 226** the Calcutta High court has held that :

“prosecutrix victim is woman aged about 34 years developed intimacy with accused who is a co-employee— consented to sexual intercourse on the promise of marriage by the accused— the victim knew about the result of sexual intercourse— it cannot be said with the consent was given by the victim women due to any misconception of facts— hence the facts alleged in the case do not constitute any offence— hence continuation of such criminal proceeding is abuse of the process of the court— proceeding quashed”.

Finally in the case of **Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr (2019) 9 SCC 608** the Hon’ble Division Bench of the Apex Court if discussion of the earlier Judgments as held that :

18. To summarise the legal position that emerges from the above cases, the “consent “of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.

19. The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose. They are as follows:

19.1 The complainant and the appellant knew each other since 1998 and were intimate since 2004.

19.2 The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant.

19.3 The appellant expressed his reservations about marrying the complainant on 31-1-2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015.

20. The appellant is a Deputy Commandant in the CRPF while the complainant is an Assistant Commissioner of Sales Tax.

21. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complaint's statements are accepted in totality, no offence under Section 375 IPC has occurred.

The present position of law has been specifically discussed by the Hon'ble Apex Court and the Hon'ble High

Court in the above mentioned judgment. Admittedly the present prosecutrix is a major lady. The petitioner and the de-facto complainant were both working. During their course of employment they met each other and intimacy grown up. It appears from the FIR that the prosecutrix herself stated during the course of intimacy they have gone to the extreme point of physical relationship. It has never uttered in the FIR that the present petitioner had any point of time given proposal of marriage to the de facto complainant. The particular fact goes to show that both the prosecutrix as well as the petitioner has enjoyed their love relationship which goes to the ultimate stage love making between them. It further alleged in the FIR that the dispute between the petitioner and de facto complaint was cropped up after several years of their intimacy. During their relationship both of them resides in the house of the prosecutrix as well as elsewhere, obviously there is no misconception of fact by the prosecutrix but being a major lady has knowledge about the consequences of such physical relationship. Moreover, she enjoyed their physical relationship and her consent was actually voluntary. Such consent cannot be treated under the purview of the term "consent" defined u/s 90 of the IPC.

Considering the facts and circumstances of this case the fact of the given case is very much similar to the facts of the cases wherein the Hon'ble Division Bench of the Apex Court in **Pramod Suryabhan Pawar's case (supra)** has decided that the "consent" was not vitiated by a misconception of fact arising out of false promise to marry. Thus I find merit to entertain the instant criminal revision.

By virtue of the law discussed by the Hon'ble Division Bench of Apex Court in **Pramod Suryabhan Pawar's case (Supra)** the continuation of the instant criminal proceeding would be an abuse of process of court.

CRR is allowed.

The criminal Proceeding being SC no. 9 (v) of 2016 (ST) no. 22 (xii) of 2016 pending before the Learned Additional Sessions Judge Baruipur, south 24 Parganas arising out of Baruipur P.S Case No. 1141 of 2014 dated 08.08.2014 u/s 376/417 of the IPC wherein the charge has been framed against the present petitioner u/s 376/417 of the IPC. against the present petitioner is hereby quashed.

Any interim order passed by this court during the continuation of the instant criminal revision is vacated. Pending applications if any are also disposed of.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)