

**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 230 of 2020**

**Hasibuddin Mondal & Ors.**

**Vs**

**The State of West Bengal & Anr.**

**For the Petitioners** : Mr. Ashis Kumar Choudhury,  
Mr. Rajib Ghosh,  
Mr. Avijit Kar.

**For the State** : Mr. Madhusudan Sur,  
Mr. Manoranjan Mahata.

**For the Opposite Party No. 2** : Mr. Sandip Ghosh,  
Mr. Subra Podder.

Heard on : 01.03.2023

Judgment on : 21.04.2023

**Shampa Dutt (Paul), J.:**

1. The revision has been preferred, praying for quashing of Dankuni Police Station Case No. 28 dated 19.03.2009, under Sections 493/376/313/109 of the Indian Penal Code being GR Case no. 208/2009, pending before the Learned Additional Chief Judicial Magistrate at Serampore District – Hooghly, in respect of the petitioner.
2. The petitioner's case is that the Opposite Party No.2 filed a Written Complaint against petitioner No. 1's son by alleging that his father (petitioner no. 3) along with petitioner No. 2, had given a marriage proposal to the father of opposite party no. 2. Thereafter as per the allegation made by the opposite party no. 2, petitioner no. 1's brother took this opportunity and started a relationship with opposite party no. 2 and raped her several times on the proposal of marriage. After that according to the opposite party no. 2 she had conceived a child, which ended in a miscarriage. As alleged by the opposite party no. 2, the petitioner no. 1's brother subsequently denied to marry her and so she lodged a written complaint and on the basis of the written complaint FIR being no. 28/09 dated 19.03.2009 was started under Sections 493/376/313/109 of the Indian Penal Code.
3. It is submitted by the petitioner that the opposite party no. 2 herein liked the petitioner's no. 1's brother and proposed to him but when he denied her proposal, she lodged the false complaint against the petitioner's

brother and that she never miscarried as alleged because they never co-habited. And that's the reason the opposite party no. 2 never produced the medical certificate regarding the miscarriage.

4. That the allegations made in the F.I.R./written complaint is totally false and does not disclose the commission of any offence and nor is there any prima facie case against the petitioners.
5. The allegations made in the F.I.R./written complaint are so absurd that no prudent person can ever reach a just conclusion and that there is no sufficient ground for proceeding against the accused.
6. **Mr. Ashis Kumar Choudhury, learned counsel for the petitioners** has submitted that the investigation of the purported crime is perfunctory, fake, fraudulent, and unreliable and seeks the interference of this court in quashing the said investigation.
7. The said case was initiated mischievously and with malafide for wreaking vengeance to settle private and personal grudge.
8. Thus it is prayed that the proceeding be quashed.
9. **Mr. Madhusudan Sur, learned counsel for the State** has submitted that the judgment under revision is in accordance with law and needs no interference. The revision is thus liable to be dismissed.
10. Heard the learned counsels for both sides. Perused the materials on record. Considered.
11. Following judgments have been relied upon by the petitioners:-

1. ***Mandar Deepak Pawar vs The State of Maharashtra & Anr., Criminal Appeal No(s). 442/2022, On 27<sup>th</sup> July, 2022,*** the

Supreme Court held that:-

*“We are fortified to adopt this course of action by the judicial view in (2019) 9 SCC 608 titled **“Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr.”** where in the factual scenario where complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relations, the Supreme Court quashed the FIR. A distinction was made between a false promise to marriage which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled. This was in the context of Section 375 Explanation 2 and Section 90 of the IPC, 1860.”*

2. ***Shambhu Kharwar vs State of Uttar Pradesh & Anr., Criminal Appeal No. 1231 of 2022, on August 12, 2022,***

the Supreme Court held that:-

*“**10.** An offence is punishable under Section 376 of the IPC if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 along with Section 90 of the IPC is relevant which is set out below.*

*“**375. Rape** – A man is said to commit “rape” if he –*

*[...]*

*under the circumstances falling under any of the following seven descriptions*

*Firstly ...*

*Secondly. – Without her consent.*

[...]

*Explanation 2. – Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:*

*Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.*

xxx

**90. Consent known to be given under fear or misconception** - A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or...”

**11. In *Pramod Suryabhan Pawar v. State of Maharashtra***, a two Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in ***Sonu @ Subhash Kumar v. State of Uttar Pradesh***, observed that :

“12. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action...”

[...]

14. [...] Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled...

[...]

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman’s “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. **The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act...**

[...]

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.**

**(emphasis supplied)**

**3. *Naim Ahamed vs State (NCT of Delhi), Criminal Appeal No.***

**257 of 2023, on 30.01.2023**, the Supreme Court held:-

*“20. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause – Secondly of Section 375 IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.”*

12. Charge Sheet in this case has been filed against the principal accused, Mainuddin Mondal, (Not a petitioner herein) and the other FIR named persons including the petitioners.

13. Petitioner no. 1 here is Mainuddin's brother.
14. Petitioner no. 2 is his mother
15. Petitioner no. 3 is his father.
16. Petitioner no. 4, 5, 6 are his (women) relatives.
17. Allegedly the petitioners fixed the marriage of the complainant with the principal accused, Mainuddin.
18. After that the complainant and the said Mainuddin allegedly co-habited.
19. There's no documents for the alleged miscarriage.
20. The medical report shows that the complainant stated before the Doctor that she had free mixing for about 3 years with Mainuddin on assurance of marriage. Breast lactating.
21. **In the present case, accused Mainuddin prima facie on false promise of marriage to the complainant cohabited with her, having no intention right from the beginning to marry the complainant/prosecutrix and thus cheated her only to satisfy his lust.**
22. **This is prima facie not a case of breach of promise where accused Mainuddin gave his promise to marry in all seriousness as there has been no unforeseen circumstances beyond his control, which prevented him to fulfill his promise (*Naim Ahamed vs State (NCT of Delhi) (Supra)*).**
23. **But Mainuddin is not before this court. The petitioners are his family members.**

24. None of the ingredients required to constitute the offences alleged under Sections 493/376/313/109 of IPC are present/applicable in respect of the present petitioners.
25. Accordingly the proceedings and the Charge Sheet in respect of the petitioner herein is liable to be quashed only against the petitioners.
26. **CRR 230 of 2020 is allowed.**
27. The proceedings being Dankuni Police Station Case No. 28 dated 19.03.2009, under Sections 493/376/313/109 of the Indian Penal Code being GR Case no. 208/2009, pending before the Learned Additional Chief Judicial Magistrate, Serampore, Hooghly, is hereby quashed only in respect of the petitioners before this Court.
28. **The trial in respect of accused Mainuddin will proceed in accordance with law.**
29. There will be no order as to costs.
30. All connected Applications stand disposed of.
31. Interim order if any stands vacated.
32. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
33. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**