

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**CRR 479 of 2020
With
CRR 480 of 2020**

**Raju Khan
Vs.
The State of West Bengal & Anr.**

For the petitioner : Mr. Biswajit Hazra
Mr. Arif Mahammad Khan
Mr. Archisman Sain

For the State : Mr. P.K.Datta
Md. Kutubuddin
Mr. Santanu Deb Roy

For the Opposite party No. 2 : Sk Rejaul Alam

Heard on : 16.01.2023

Judgment on : 07.02.2023

Ajoy Kumar Mukherjee, J.

1. Both aforesaid revisional applications have been preferred under section 482 of the code of Criminal procedure Criminal procedure with prayer for quashing the respective proceedings and since both the incidents have some

common link and between the parties some of whom are common, both the revisional applications are disposed of by this common judgment.

2. CRR No. 479 of 2020 has been preferred seeking quashing of the First Information Report (herein after called as FIR) arising out of Nandigram Police Station FIR No. 265/2016 dated 19.06.2016, corresponding to G.R. Case No. 983 of 2016 pending before the learned Additional Chief Judicial Magistrate Haldia, Purba Medinipur. Petitioner contended that pursuant to the written complaint dated 19.06.2016 lodged by the complainant/opposite party no. 2 aforesaid FIR was registered under sections 493/376/417 of the Indian Penal Code (herein after called as IPC) against the present petitioner for investigation. The allegations leveled in the FIR against the present petitioner by the opposite party no. 2 herein *interalia* in short is that the opposite party no. 2 was introduced and intimated with the petitioner at about 8 years ago. Then both of them fall in love with each other and thereafter the petitioner and opposite party no. 2 started cohabitation due to their love and the assurance of marriage which was given by the petitioner but when the opposite party no. 2 asked the petitioner to marry her, same was initially delayed but ultimately denied by the petitioner. It was further alleged in the said complain that the petitioner is a married and muslim person by religion but suppressing all these facts, the petitioner disclosed his identity falsely to the opposite party no. 2 as a Hindu person by religion and that his name is Raju Adhikary.

3. Learned counsel appearing on behalf of the petitioner submits that due to personal grudge the opposite party no. 2 lodged the aforesaid complain

against the petitioner. Actually the opposite party no. 2 took some money as loan from the petitioner but same was not repaid by the opposite party no. 2 within the stipulated period and for that reason the petitioner lodged complain to the office of the local panchayat and on the basis of said complain, the Upo-Pradhan of the said gram panchayat issued a letter dated 16.06.2016 to the petitioner and opposite party no. 2, directing them to appear on 18.06.2016 along with all documents to resolve the dispute in respect of the said loan and it is repayment.

4. Petitioner further alleged that in response to the said letter dated 16.06.2016 the petitioner herein appeared in the said office of panchyat but opposite party did not appear. Opposite party no. 2 neither repaid the aforesaid loan amount nor appeared in the said “Salishi Sabha” of concerned Gram panchyat but on the next day i.e. on 19.06.2016 opposite party no. 2 lodged aforesaid complain against the petitioner alleging rape and promise of marriage and on the basis of such complain aforesaid proceeding started.

5. Accordingly petitioner submits that the allegation made in the FIR do not make out any case constituting the ingredients of offence and/or essentials of the offence alleged against the petitioner and FIR does not disclose any case of initial deception, rape or criminal conspiracy against the petitioner and accordingly the impugned FIR is liable to be quashed.

6. CRR 480 of 2020 has been initiated on the basis of the complaint filed by the opposite party no. 2 herein against present petitioner and two others and in that proceeding the summon was issued against the accused persons under sections 323,324,342,354,506,34 of the IPC by the Additional Chief

Judicial Magistrate (ACJM), Haldia, Purba Medinipur. The petitioner of 479 of 2022 and two others have preferred, present revisional application being CRR 480 of 2020, with a prayer for quashing the said complain case no. being No. CR 168 of 2018 under sections 323,324,342,354,506,34 IPC pending before the learned ACJM, Haldia Purba Medinipur.

7. The petitioners in revisional application no. CRR 480/2020 have contended that opposite party no. 2 of CRR 479 of 2020 who is also opposite party herein filed a complaint in the court of ACJM, Haldia, Purba Medinipur on 27.07.2018 contending *interalia* that the said opposite party was introduced and intimated with the petitioner No. 1 at about 8 years ago, then both of them fall in love with each other and thereafter the petitioner No.1 and opposite party started cohabitation due to their love and assurance of marriage, which was given by the petitioner No.1 but when the opposite party no. 2 asked to the petitioner to marry her, same was initially delayed but ultimately denied by the petitioner. It was further alleged in the said complaint that the petitioner is a muslim person by religion but suppressing that, the petitioner no. 1 disclosed his identity falsely to the opposite party as a Hindu person by religion. Having no other alternative the opposite party compelled to lodge FIR for which aforesaid Nandigram Police station case no. 265 of 2016 dated 19.06.2016 was started, against which the aforesaid earlier revisional application being CRR 480 of 2020 have been sought to be quashed. In the complaint the complainant/opposite party, further alleged that after lodging said case by the opposite party the petitioners started making contact with the opposite party with a moto to escape the petitioner no. 1 from the aforesaid

FIR being Nandigram Police Station case no. 265 of 2016 dated 19.06.2016 and they created pressure upon the opposite party herein to withdraw said case. On 18.05.2018 at about 3 p.m. the petitioner no. 1 came along with petitioner no. 3 in the house of opposite party and they made under stand to the parents of Opposite party that the petitioner No.1 is agreed to give the status to the opposite party, as a second wife of the petitioner No.1 and on that day opposite party came to the house of the petitioner no. 1 with him but after reaching in the house of the petitioner no. 1, the opposite party was deadly and seriously attacked by the petitioner no. 2 and they had made an attempt to kill the opposite party and petitioner snatched the gold ornaments from the opposite party and she was confined for the whole night in a room and on 19.05.2018 at morning, the opposite party somehow able to escape herself and able to go away from house of the petitioners but till date the opposite party receiving threats from the petitioners from the various corner.

8. On the basis of said complaint, complainant was examined on 27.07.2018 on oath under section 200 of the Criminal Procedure Code by the learned judicial magistrate and on perusal of the documents and case record and on consideration thereof, the court below was pleased to issue summon against the petitioners on the finding that a prima facie case under sections 323/342/324/354/506/34 of the IPC has been made out and thereafter the learned court below was also pleased to issue process upon the accused persons/petitioners under above noted sections. On 01.11.2018 the petitioner no. 3, surrendered before the trial court and was release on bail and on 21.09.2019 the petitioner no. 1 and 2 have also been released on bail.

9. The petitioner submits that the averments made in the petition of complaint as well as in the initial deposition of the complainant /opposite party do not at all make out any case, not to speak of even a prima facie case under any of the sections 323/342/324/354/506/34 and accordingly the impugned criminal proceeding being CR case no. 168 of 2018 is liable to be quashed in the interest of justice and to prevent abuse of process of the court.

10. The petitioner further submits that the ingredients of the offence in respect of which the summons has been issued to the petitioners have not been satisfied on the basis of the allegations and/or averments made in the complaint as well as in the initial deposition of the complainant and as such petitioners cannot be made to face the rigmarole of a criminal trial unnecessarily and as such the said criminal proceedings is also liable to be quashed.

11. Learned counsel appearing for the opposite party No.2/complainant/FIR maker submits that in both the cases the written complaint clearly discloses offence and as such the question of quashing the said proceeding does not arise. Learned counsel appearing on behalf of the state Mr.Santanu Deb Roy leaves the issue involved in CRR 479 of 2020, to the discretion of the court, on perusal of materials appearing in the Case Diary (CD). He accordingly placed the C.D. before the court.

12. On perusal of the C.D. it appears that in the FIR and from the statement recorded under section 161 and under section 164 of the Code of criminal Procedure, the victim/opposite party has categorically stated that the petitioner has made sexual intercourse with the victim /opposite party at

several places giving false promise of marriage. Subsequently petitioner refused to accept her phone call and as such after tracing petitioner's office address, the opposite party had gone to the office of the petitioner, who is posted as traffic constable and came to learn that the opposite party belongs to Muslim Caste and he is married having two children. The opposite party /victim accordingly stated that the petitioner has practiced fraud upon her by giving false promise of marriage and allured her for repeated sexual intercourse and thereby spoiled her life. It also appears from the statements of other witnesses as recorded under section 161 of the Cr.P.C. that said statement of the victim more or less corroborates with the statement made by the other witnesses.

13. Learned Counsel appearing on behalf of the petitioner referred ***Pramod Suryabhan Pawar Vs. State of Maharashtra*** reported in **2019 SCC Online SC 1073** and also one unreported judgment passed by this court relying upon the aforesaid Pawar's (supra) judgment in CRR 1650 of 2019. Relying upon these two judgments petitioner herein contended that the factual matrix in the said two cases are almost similar and in the said two cases the concerned High Court and the Supreme Court quashed the proceedings.

14. The factual scenario of ***Pramod Suryabhan power case (supra)*** is that complainant was aware that there existed obstacle in marrying the accused and still continue to engage the sexual relations and the Supreme Court quashed the FIR. In the said case accused proposed marriage and assured complainant that their belonging to different caste would not be a hindrance and promised to marry her after the marriage of his elder sister. Afterwards

accused raised concerns about marrying her in 2013 on the ground their belonging to different castes would hinder accused person's younger sister's marriage. However they continued their sexual relationship till March, 2015. In November, 2015, the complainant first time threatened to file police complain. On 9th March 2016, the accused engaged in sexual intercourse with complainant against her will and subsequently complainant was apprised that the accused was engaged to another woman and the accused informed the complainant that the woman he was engaged to was demanding Rs. 2Lakhs to break of the engagement. On 28th March, 2016, the accused reiterated promise to marry the complainant and arranged for her to speak to the woman he had been engaged to, to assure the complainant that the accused was no longer in a relationship with her. Subsequently, the complainant became aware that the accused had married on 1st May 2016. On 17th May, 2016 she filed the FIR..

15. In the said judgment a clear distinction has been made between the false promise to marriage which is given on understanding by the maker that it will be broken and the breach of promise, which is made in good faith, but subsequently not fulfilled, in the context of section 375, explanation-II, read with section 90 of the IPC. In Paragraph 17 of the Judgment , Apex Court was pleased to explain, what can be construed as mis-conception of fact, which runs as follows:-

“In the present case, the “misconception of fact” alleged by the complainant is the appellant's promise to marry her. 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. In Anurag Soni v. State of Chhattisgarh [Anurag Soni v. State of Chhattisgarh, (2019) 13 SCC 1 : 2019 SCC OnLine SC 509] , this Court held : (SCC para 12)

“12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC.”

16. In the said judgment the observation made in ***Deepak Gulati Vs. State of Haryana*** reported in **(2013) 7 SCC 675** was quoted in the context of distinction between the mere breach of a promise and not fulfilling a false promise, and it was held that court must examine whether there was made at an early stage a false promise of marriage by the accused and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. Paragraph 24 of the said Judgment runs as follows:-

“24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.”

17. In ***Pramod Suryabhan Pawar Case (supra)*** Apex Court in Paragraph 22 summarized the legal position in this context as follows:-

“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.”

18. In **pramod Suryabhan Case (supra)**, Supreme Court considered certain relevant factors of the case history like accused and complainant knew each other since 1998 and were intimated since 2004 and they used to met regularly and most importantly the accused expressed his reservations about marrying the complainant on 31st January, 2014 but despite this they continued to engage in sexual intercourse until March, 2015. Accordingly Court observed that the allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the accused since 2008 and that she and the accused continued to engage in sexual relations long after their getting married had become a disputed matter. Accordingly supreme court come to a conclusion that the accused person's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false.

19. In the said judgment it has been made clear that there lies clear distinction between mere breach of promise and non-fulfillment of false promise. Thus the court must examine whether there was made at an early stage the false promise of marriage by the accused and whether the consent involved was given after wholly understanding the nature and consequence of sexual indulgence. Because there may be a case where the prosecutrix occurs to have sexual intercourse on account of her love and passion for the accused and not solely on account of mis-representation made to her by the accused. And accordingly there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself the accused had no intention whatsoever of

keeping his promise to marry the victim and this circumstances shall be distinguished from the circumstances when a person having the best of the intention, is unable to marry the victim owing to various unavoidable circumstances. Accordingly in order to come within the meaning of the term “misconception of facts” the fact must have an immediate relevance.

20. In the light of aforesaid observation of the Apex Court let me judge the present case as to whether at this stage FIR and other materials collected during investigation discloses that at the relevant time that is at the initial stage itself, the petitioner accused had an intention whatsoever of keeping his promise to marry the victim, so that the allegation does not attract the definition of offence given in Section 375 of IPC.

21. It is not in dispute in the present case that at the time of occurrence petitioner/accused was already married. The victim/opposite party has stated everywhere that when the petitioner accused stopped making contact with her, then she went to the office of petitioner and therefrom only he came to know that the petitioner is a married person having two children. Accordingly allegations prima facie discloses that the petitioner had suppressed that he is a married person, to the opposite party from the inception. Had the petitioner any intention to keep his promise to marry the victim, apparently there would have no cause of suppression of his existing marriage to the opposite party. Materials so far available in the case diary, prima facie reveals, of course subject to completion of investigation, that at the initial stage accused/petitioner had hardly any intention whatsoever, of keeping his promise to marry the victim, in view of the case set out in the FIR , and the

recorded statements which at this stage, if taken to be true for the present purpose, of deciding application under section 482 Cr.P.C., discloses that accused Raju Khan introduced himself to complainant as Raju Adhikary thereby suppressed his religious faith and also assured her that presently he is posted as constable and soon he would get promotion, then he will marry. What prompted petitioner to take false personification and suppression of earlier marriage at the initial stage, as alleged, still remains unexplained. According to materials in C.D. accused took shelter of initial deception by making false statements and suppression of earlier marriage from the very beginning which prima facie makes out a case of false promise of marriage but the victim/opposite party gave the consent to the sexual intercourse on such assurance of the accused that he would marry her. In view of above the facts and circumstances of **Pramod Suryabhan Case (supra)** is clearly distinguishable from the facts and circumstances of the present case, which till now appears to be not a case of mere breach of promise but is a case where the materials so far collected prima facie suggests that the consent was given in compliance of mis-conception and such consent is vitiated by misconception of fact which prima facie discloses offence under section 376 as defined in section 375 (Explanation-II) read with section 90 of IPC. Since the allegation in the FIR and materials in the Case Diary collected so far during investigation does not indicate that the FIR maker was aware that there existed obstacles in marrying the petitioner, the factual aspect of judgment passed by this court in CRR No. 1650 of 2019 is also distinguishable from the

present case. Since in the said case, the co-ordinate Bench was of clear view that there was no mistake of fact, on the part of the prosecutrix.

22. It is well settled, while dealing with an application under section 482 of the code, court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused, which appears to exist in the present case. In this context reliance has been placed in **State of M.P. Vs. Awadh Kishore Gupta** reported in **2004 (1) SCC 691** and paragraph 11 of said judgment runs as follows:-

“11. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. (See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and Raghubir Saran (Dr) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .) It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of

secondary importance. It is the material collected during the investigation and evidence led in the court which decide the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings. [See Dhanalakshmi v. R. Prasanna Kumar [1990 Supp SCC 686 : 1991 SCC (Cri) 142 : AIR 1990 SC 494] , State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651 : 1999 SCC (Cri) 304] , State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , Satvinder Kaur v. State (Govt. of NCT of Delhi) [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] and Rajesh Bajaj v. State NCT of Delhi”

23. Accordingly when the materials collected during investigation suggests that the ingredients of the offence are disclosed then this court would not be justified in quashing the proceeding on the consideration whether conviction would be sustainable or not.

24. In the complain case being CRR 480 of 2020 which has also been sought to be quashed on the ground that the complaint filed by the complainant/victim does not disclose any offence is also required to be judged in the light of aforesaid observation made in **Awadh Kishore Gupta Case (Supra)**. On perusal of the contents of the written complaint it appears that specific allegation has been levelled against each and every accused persons/petitioners which clearly constitutes offence. Learned court below after examining the victim /opposite party's witnesses on oath was pleased to issue process against the petitioners. In the initial deposition opposite party complainant in support of the contents of the complaint has specifically stated inter alia that on 18.05.2018 accused no. 1 and accused no.3 came to her residence and assured her that she will be given marriage with accused no. 1 and took her to their house and thereafter in midnight of 18.05.2018, the accused person tried to strangle her, physically assaulted her and confined

her within a locked room. Accordingly if the contents of the complaint and initial deposition are read together the inevitable conclusion is magistrate concerned was justified in issuing the process under section 204 of the Cr.P.C.

25. The scope of exercise of Power under section 482 of the code and the categories of cases where High Court may exercise it's power under it relating to cognizable offence to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in ***State of Haryana and others Vs. Ch.Bhjanlal and others***, reported in **AIR 1992 SC 604** and illustrative categories indicated in paragraph 108 of the judgment, runs as follows:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

26. On careful scrutiny of the allegations leveled in the complains, I am constrained to conclude that complaint made in connection with CRR 479/2020 as well CRR 480/2020 do not fall within any of the exceptions as carved out by the Apex Court in Bhajanlal’s Case (Supra) nor can it be said, that if said proceeding are allowed to be continued, it would be abuse of process of court or law.

27. In view of above CRR 479/2020 and 480/2020 are dismissed.

28. Case Diary be returned to the learned Advocate appearing on behalf of the State.

However, there will be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJAY KUMAR MUKHERJEE, J.)