

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 856 of 2023

SURANJAN DASGUPTA
VS.
STATE OF WEST BENGAL & ANR.

For the Petitioner	: Mr. Milon Mukherjee, Sr. Adv. Mr. Rana Mukherjee, Adv. Mr. Suman De, Adv.
For the State	: Mr. Madhusudan Sur, Adv. Mr. Dipankar Paramanick, Adv.
Hearing concluded on	: 18 th August, 2023
Judgement on	: 24 th August, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 401 read with Section 482 of the Code of Criminal Procedure impeaches the order passed by the learned Additional Sessions Judge, Fast Track, 1st Court, Bichar Bhawan, Calcutta rejecting thereby the petition under Section 227 of the Criminal Procedure Code filed with a prayer for discharge of the accused petitioner, in connection with Hare Street Police Station Case No. 677 of 2015 dated 17th November, 2015.
2. Heard Mr. Milon Mukherjee, learned Senior Counsel for the petitioner; Mr. Madhusudan Sur, learned Counsel for the State. Despite service of notice the victim did not attend the hearing.

3. Briefly stated, the victim lady, an advocate by profession, on 16th November, 2015 informed the Officer-In-Charge, Hare Street Police Station in writing stating, *inter alia*, that the victim and the accused person came to know each other on 26th August, 2014. Both of them are advocate by profession and practicing in the High Court at Calcutta and gradually with the passage of time their acquaintance developed into intimacy. The accused person and the victim started meeting almost on everyday at High Court premises. They used to share their sad events of life. The accused person depicted himself as a mutually divorced person, having one son aged about 21 years who was pursuing graduation from Calcutta St. Xaviers College. The accused person produced photocopy of document evidencing the mutual divorce to convince the victim. On 29th June, 2015 the accused person expressed his mind to marry the victim and thus he earned confidence of the victim, based on mutual faith upon each other and indulged in physical union. She was taken to the residence of the accused person where the victim came across one Ms. Anuradha, who was introduced as widow cousin sister of the accused person. The victim narrated how she and the accused person, together spent their days in different places of Delhi and Bombay. On 2nd October, 2015 the accused person asked the victim over telephone to clear all on-account post dated cheques issued by the victim lady against the legal matters assigned to the accused person on behalf of the law firm, she was associated with. Reminding the accused person about the professional ethics, the victim requested the accused

person to submit itemized professional bills as against his professional tips in favour of completion of work. On 10th of October, 2015 the accused and the victim went to Southern Park Café Cofee Day where the accused person disclosed that his only son wanted his parents to re-unite and his ex-wife expressing her willingness to honour the desire of their son started staying in the flat. It was quite shocking news to the victim lady. On 21st October, 2015, when again they met at the same place to discuss the future plan and issues relating to his ex-wife. On 23 of October, 2015 when they met at Floatel, the accused person informed the victim lady that he was reeling under huge pressure from his family and friends to get re-united with his ex-wife and for that he was feeling unwell. She was requested by the accused person not to call or text him. On 27th of October, 2015 the accused person rang up and in course of conversation over telephone one female voice started hurling abusive language demanding money. The accused person ultimately declared that he would never marry the victim lady.

4. On the basis of such information Hare Street P.S. Case No. 677/2015 was registered on 17th of November, 2015. Police took up investigation which culminated into submission of charge sheet under Sections 376/417/506 of the Indian Penal Code against the accused person.
5. The victim lady, however, was not happy with the result of the investigation and by filing an application before the learned Trial Court, before whom the case was placed for trial following the

provision of Section 209 of the Criminal Procedure Code, the victim stated that she was forced by the Officer-In-Charge of the concerned police station to change her written information. The I.O. made her change the version of the written information at least five times with certain mala fide intention.

6. The accused person filed an application under Section 227 of the Code of Criminal Procedure before the learned Trial Court seeking an order of discharge. The learned Trial Court, however, refused to accept the prayer of the accused person by passing the order impugned.
7. From the attending facts of the case, it is admitted that the victim lady is an advocate by profession and as disclosed by herself, she was 37 years old when she lodged the complaint. It is not the case of the victim that she was either forced or put under fear to surrender to the lust of the accused person, rather she made it clear that it was an act of free will of two adult persons who indulged into physical union. But she was swayed by the promise made by the accused person to marry her, soon after obtaining the certified copy of the decree for divorce.
8. Mr. Mukherjee, learned senior counsel makes me go through the alleged certified copy of the decree as annexed by the victim to her protest petition filed on 11th of April 2017. The document shows that learned Judge granted a decree for judicial separation in a proceeding under Section 13(B) of the Hindu Marriage Act, on 30th April, 2013 while the date under the signature of learned Judge appears to be 16th April, 2013 at least 14 days prior to the date of decree. This

document fails to inspire confidence of the Court particularly when it is found that application in a proceeding under Section 13(B) of the Hindu Marriage Act which is meant for dissolution of marriage on mutual consent of the parties to the marriage, learned Judge passed a decree for judicial separation. Even the address of the husband, Suranjan Dasgupta is found to be different from that of his address given in the written information by the victim lady.

9. Mr. Sur, learned counsel representing the State supports the order impugned and submits the materials collected in course of evidence justifies the order of learned Trial Court-I have the opportunity to go through the Case Diary and the statement made by the victim lady before the Metropolitan Magistrate, 19th Court, Calcutta on 30th November, 2015. Upon perusal of the said document I find a narrative, altogether different from the statement made by the de facto complainant in her maiden statement before police which forms the part of F.I.R. This statement under Section 164 of the Code of Criminal Procedure unerringly demonstrates the knowledge of the victim lady about Ms. Anuradha Dasgupta; about the content of statement as no copy was served upon the accused person. Mr. Mukherjee expresses his ignorance the copy of the statement of the victim lady under Section 164 of the Code of Civil Procedure was not given to the accused person in compliance with the provision of Section 207 of the Criminal Procedure Code, it cannot be presumed that prosecution does not want to rely upon the said document to bring home charges. Other than victim lady there is no witness

having knowledge of the alleged incident. Even the materials collected in course of investigation do not make out a case of 'rape' as defined under Section 375 of the Indian Penal Code.

10. The statement under Section 164 of the Criminal Procedure Code made by the victim lady, if examined in contradistinction with her statement before the police in writing that set the criminal proceeding into motion, it strikes at the root of the case of prosecution. It is alleged that the accused person made the victim surrender to his lust as he promised to marry the victim lady depicting himself as a divorced person. But the statement before learned Metropolitan Magistrate so made by the victim lady shows that on 27th October, 2015 she had the knowledge that Anuradha Dasgupta is the wife of the accused person.
11. There is an indication in the FIR that the accused person requested the victim to pay his professional fees and soon thereafter rough weather invaded into their relationship. Even the wife of accused person, as alleged by the victim lady, demanded money from the victim lady due to her husband, while accused person was talking to the victim lady over phone.
12. Learned trial court as I find from the impugned order took the pains go through the case diary. It is not clear why the leaned trial court failed to consider the statement made by the victim lady before the learned Metropolitan Magistrate under Section 164 of the Code of Criminal Procedure.

13. As I have pointed out earlier the statement of victim lady before the learned Metropolitan Magistrate if is considered in contradistinction with her statement before the police in writing, which goaded the police to register the FIR, coupled with the photocopy of so-called decree allegedly passed by the learned Judge under the signature dated 16th of April, 2013, thereby granting a decree for judicial separation on 30th April, 2013 in a proceeding under Section 13(B) of the Hindu Marriage Act, it would lead any man of ordinary prudence to hold that the victim lady was quite aware of the fact that the accused person is a married man and not divorced as depicted by the victim lady in her FIR.
14. This again sprouts the possibility of false implication as well. But the attending facts rules out the possibility of mis-conception of fact as laid down under Section 90 of the Indian Penal Code.
15. It is a settled principle of law when two views are possible and one of the two views tilts in favour of the accused person, the benefit should be extended to the accused person. The prosecution case as made out hardly create suspicion and not grave suspicion which learned trial court, in my humble opinion failed to appreciate, though in the order impugned learned trial court relied upon the judgment of Hon'ble Apex Court in **Sajjan Kumar-vs-Central Bureau of Investigation**) reported in **(2010) 9 SCC 368** wherein Hon'ble Apex Court in no uncertain terms held:-

“(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this

stage, he is not to see whether the trial will end in conviction or acquittal.”

16. In the aforesaid facts and circumstances of the case, I am of the view that the order impugned suffers from serious infirmity.
17. Learned Trial Court committed jurisdictional error in passing the order impugned.
18. It is rather a fit case to invoke of provision of Section 227 of the Code of Criminal Procedure and to discharge the accused person, which I accordingly do.
19. The accused person be discharged from the bail bond.
20. Let a copy of this order be sent down to the learned trial court for information and necessary action.
21. Urgent photostat certified copy of this order be applied therefor, be given to the parties upon compliance of requisite number of formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)