

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 2370 of 2021

With

CRAN 2 of 2022

With

CRAN 4 of 2022

Atanu Kumar Dey

-vs.-

The State of West Bengal & Anr.

Mr. Sourav Chatterjee,
Mr. Uttam Basak.

...For the Petitioner

Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Sandip Chakraborty.

...For the State

Mr. Subhasish Roy,
Mr. Arnab Chatterjee.

...For the opposite party no.2

Reserved on : 16.02.2023

Judgment on : 13.03.2023

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the continuance of the proceedings arising out of Rabindra Sarobar Police Station

Case no. 160/19 dated 29.07.2019 in connection with CG.R. Case no. 2682 of 2019 pending before the learned Additional Sessions Judge, Fast Track Court, no.6, Alipore under Section 376/417/313/506 of the Indian Penal Code wherein charge-sheet has been submitted under Section 376/417/506 of the Indian Penal Code.

The case was initiated on the basis of a complaint lodged by Paulami Majumdar (hereinafter referred to as the 'complainant') with the Officer-in-charge, Rabindra Sarobar Police Station. The complainant introduced her as a resident of South Breeze Residency, Saraswati Apartment, 2nd Floor, 15/3/16 Jheel Road, Kolkata – 700031. She lodged the complaint against Atanu Kumar Dey, a resident of South End Park, Pailan (Newmans Park, near South End Park Club) Kolkata – 700104. She alleged that she was in a relationship with the accused/petitioner for two years and knew him from his previous office 'Webskitters Technology Solutions Pvt. Ltd.' from May, 2015. During such period they had physical relationship with each other in several places such as Bakkhali, friend's home, at her house (several times), at the house of the accused (several times), Guwahati, Darjeeling, Falta and Puri. The complainant alleged that at that time the accused committed to get married and she became pregnant during May, 2018 which she informed him. Initially the accused represented that there should be a pregnancy test report and if it is positive then he would marry her then and there, after that the accused asked her to go for abortion. At the time of abortion the accused committed to get married with her and also mentioned that he would not leave her in any circumstances.

They had been to Dr. Sanjib Mukherjee for abortion and aborted the baby. The family members of both of them were aware about the relationship and earlier the family of the accused approached her family for marriage. The complainant alleged that recently (July 2019) they went to Guwahati and had physical relationship and she asked him for her late periods for a pregnancy test kit and he wrote an e-mail that he would meet her on 28.07.2019 at Tollygunge but he did not arrive there on the pretext that his mother will call her family and take her parent's permission whether he would meet her or not. Till date nobody called on behalf of his family and neither the accused helped her out with the pregnancy kit. The complainant alleges that the accused is having some photographs of private moments with which he has threatened that he would disclose and divulge the same in public forum and also threatened to destroy her. Previously the accused abused her and also used slang languages. When she called his mother for complaining against him she blocked her and did not even bother to reply to her. The accused and his family was completely ignoring her in spite of the fact that the accused committed to get married with her. The complainant sought the help of police authorities and stated that she is interested in marrying the accused and family of the accused cannot deny her after what happened to her. She further complained that the accused and his mother is beyond any contact as they have blocked her over phone, whatsapp and messenger. She complained that she was also assaulted by the accused in the year 2018 and had eye injury. She requested for taking action against the accused.

The investigating agency on receipt of such complaint registered the case and proceeded for investigation and on conclusion of investigation submitted charge-sheet under Section 376/417/506 of the Indian Penal Code.

Mr. Sourav Chatterjee, learned Advocate appearing for the accused/petitioner submitted that the present case fails to make out any offence under Section 417/376 of the Indian Penal Code. It has been submitted that both the accused and the complainant were adults. The lady was conscious of the decision of such relationship which continued according to the complainant for a period of about 4 years. The decision of physical relationship was consensual as would be revealed from the complaint in view of the places which they have been visiting. Learned advocate submits that even if the allegations in the complaint are accepted to be true, after the lady was pregnant the issue relating to marriage cropped up. So the manner in which the prosecution has projected the case that there was a false promise of marriage is absolutely absent which has been bolstered by the investigating agency in the charge-sheet. Learned Advocate appearing for the petitioner draws the attention of the Court to paragraphs 16, 21 and 25 of the judgment of the Hon'ble Supreme Court in Uday -Vs. - State of Karnataka reported in (2003) 4 SCC 46, the relevant paragraphs are set out as follows:

“16. The High Court of Calcutta has also consistently taken the view that the failure to keep the promise on a future uncertain date does not always amount to misconception of fact at the inception of the act itself. In order to come within the meaning of misconception of fact, the fact must have an immediate relevance. In Jayanti Rani

Panda v. State of W.B. [1984 Cri LJ 1535 : (1983) 2 CHN 290 (Cal)] the facts were somewhat similar. The accused was a teacher of the local village school and used to visit the residence of the prosecutrix. One day during the absence of the parents of the prosecutrix he expressed his love for her and his desire to marry her. The prosecutrix was also willing and the accused promised to marry her once he obtained the consent of his parents. Acting on such assurance the prosecutrix started cohabiting with the accused and this continued for several months during which period the accused spent several nights with her. Eventually when she conceived and insisted that the marriage should be performed as quickly as possible, the accused suggested an abortion and agreed to marry her later. Since the proposal was not acceptable to the prosecutrix, the accused disowned the promise and stopped visiting her house. A Division Bench of the Calcutta High Court noticed the provisions of Section 90 of the Penal Code, 1860 and concluded: (Cri LJ p. 1538, para 7)

“The failure to keep the promise at a future uncertain date due to reasons not very clear on the evidence does not always amount to a misconception of fact at the inception of the act itself. In order to come within the meaning of misconception of fact, the fact must have an immediate relevance. The matter would have been different if the consent was obtained by creating a belief that they were already married. In such a case the consent could be said to result from a misconception of fact. But here the fact alleged is a promise to marry we do not know when. If a full-grown girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such activity until she becomes pregnant it is an act of promiscuity on her part and not an act induced by misconception of fact. Section 90 IPC cannot be

called in aid in such a case to pardon the act of the girl and fasten criminal liability on the other, unless the Court can be assured that from the very inception the accused never really intended to marry her.”

21. *It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.*

25. *There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry*

induced the prosecutrix to consent to having sexual intercourse with the appellant.....”

Reliance has also been placed by the petitioner in Dr. Dhruvaram Murlidhar Sonar -Vs. - State of Maharashtra and Ors. reported in (2019) 18 SCC 191, paragraphs 17, 23 and 24 was relied upon and are set out for the purposes of this case as follows:

“17. Thus, Section 90 though does not define “consent”, but describes what is not “consent”. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. If the consent is given by the complainant under misconception of fact, it is vitiated. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act, but also after having fully exercised the choice between resistance and assent. Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances.

23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or

where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.

24. *In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas sometimes at his home". Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the*

face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since the complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained.”

Attention of the Court was drawn to the judgment of the Hon’ble Apex Court in Maheshwar Tigga –Vs. – State of Jharkhand reported in (2020) 10 SCC 108, paragraphs 18 and 20 are relied upon by the petitioner for the purposes of the present and are set out as follows:

“18. *We have given our thoughtful consideration to the facts and circumstances of the present case and are of the considered opinion that the appellant did not make any false promise or intentional misrepresentation of marriage leading to establishment of physical relationship between the parties. The prosecutrix was herself aware of the obstacles in their relationship because of different religious beliefs. An engagement ceremony was also held in the solemn belief that the societal obstacles would be overcome, but unfortunately differences also arose whether the marriage was to solemnised in the church or in a temple and ultimately failed. It is not possible to hold on the evidence available that the appellant right from the inception did not intend to marry the prosecutrix ever and had fraudulently misrepresented only in order to establish physical relation with her. The prosecutrix in her letters acknowledged that the appellant's family was always very nice to her.*

20. *We have no hesitation in concluding that the consent of the prosecutrix was but a conscious and deliberated choice, as distinct from an involuntary action or denial and which opportunity was available to her, because of her deep-seated love for the appellant leading her to willingly permit him liberties with her body, which according to normal human behaviour are permitted only to a person with whom one is deeply in love. The observations in this regard in Uday [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] are considered relevant : (SCC p. 58, para 25)*

“25. ... It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent.””

Lastly, it has been submitted that as no case has been made out the proceeding of the present petitioner should be quashed.

Mr. Subhasish Roy, learned Advocate appearing on behalf of the private/opposite party, on the other hand resisted the submissions advanced on behalf of the petitioner contending that the manner of representation by the complainant while lodging the complaint should not be the absolute consideration in a Court of law. According to the learned Advocate the accused by his conduct created circumstances for carrying on life together and was able to enjoy such confidence of the complainant for which both of them had physical relationship. It was submitted that evidence has been collected by the prosecution in this case. The petitioner has come up for quashing of the proceedings at a stage when the evidence is yet to be adduced by the prosecution. Additionally it has been submitted that the accused was running away and blocking the contact subsequently, which would go to show that there was a false promise from the accused in order to enjoy the lady/complainant and thereafter deny her the rights of a wife.

Learned Advocate appearing for the private/opposite party relied upon the judgment of Anurag Soni –Vs. – State of Chhattisgarh reported in (2019) 13 SCC 1, emphasis was made on paragraph 12 which is set out as follows:

“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 Section 375 IPC and can be convicted for the offence under Section 376 IPC.”

Learned Advocate also relied upon a decision of this Court in Dilip Das @ Nani -Vs. - State of West Bengal reported in (2021) CriLJ 930, reference was made to paragraphs 6, 8 and 17 which were set out as follows:

“6. PW1, in her evidence before the Court stated that in the month of September, 2007 she came to know that her daughter became pregnant when she had taken her daughter to the doctor. Thereafter, she came to know from her daughter that in her absence Dilip Das used to visit her. According to the witness Dilip Das promised to marry the victim PW3 and on the basis of such promise the appellant established a relationship like husband and wife with her daughter. As such in course of time her daughter became pregnant and the incident took place between 01.01.2007 to 07.03.2007. The witness further stated that at the time the incident took place her daughter was 17 to 17 ½ years old and after knowing the incident she had been to the police station and filed the complaint which was written by her daughter PW2. She identified her signature in the complaint which was marked as Exbt.1. She also identified her signature in the seizure list by which the birth certificate of her daughter was seized which was marked as Exbt.2 and she also identified the Birth Certificate of her daughter which was marked as Exbt.4, she also identified her signature on the document by which she received back the original Birth Certificate after seizure which was marked as Exbt.3.

8. PW3 is the victim she narrated that the incident took place in the year 2007 and on or about 01.01.2007 the appellant came to her house and for the first time they knew each other, gradually a friendship developed between them and the appellant thereafter proposed the victim and with passage of time established a physical relationship with her. The witness further stated that when she refused the proposal, the appellant promised to marry her and in such manner obtained her consent and it was about two months later she was able to understand that she was pregnant. As a consequence, the appellant established her to take her to tenanted house to save the child. However, when the victim/witness along with her mother went for treatment to the doctor, her mother came to know that she was pregnant and when her mother went to the house of the appellant and informed regarding the pregnancy, the family members of the appellant and the appellant denied such acts and as such having no other alternative her mother informed the police. The witness also identified her signature in her statement before the learned Magistrate under Section 164 of the Code of Criminal Procedure which was marked as Exbt.5. The witness also identified the appellant in Court.

17. I have taken into account the submissions advanced by both the parties and having regard to the ratio laid down in Anurag Soni – Vs.– State of Chhattisgarh reported in (2019)13 SCC 1, I am of the view that the facts and circumstances of the case which the prosecution has brought in evidence from the very beginning reflects that the accused never intended to marry the prosecutrix. The accused/appellant gave false promises of marriage to prosecutrix on such false promise he had physical relation with PW3; PW3 initially resisted, however, she gave a consent relying upon false promise of the accused that he will marry her therefore such consent is consent

of misconception of fact as per Section 90 of IPC and thus, cannot excuse the appellant from the charge of rape.”

Mr. Sandip Chakraborty, learned Advocate appearing for the State submitted that the prosecution in order to prove its case relied upon 11 witnesses and collected number of documents. According to the learned Advocate for the State, the doctors who have been cited as witnesses have confirmed regarding the relationship and the act and conduct of the present petitioner would reflect that there was a physical relationship for a considerable period of time and thereafter this accused denied to marry the complainant. The police authorities after investigation collected materials and as such the case must be taken to its logical conclusion after the prosecution is granted opportunity to adduce its evidence.

Before analysing the submissions of the learned Advocates appearing for the respective parties the statement under Section 164 of the Code of Criminal Procedure made by the complainant/lady/victim/opposite party is required to be considered. In her statement under Section 164 of Cr.P.C. the opposite party/lady stated that accused Atanu Kumar Dey was a colleague in her previous office. Both of them were in love and had relationship for the previous two years. Accused promised to marry her and both the family were aware regarding the relationship. She had physical relationship with the accused on number of occasions, as a result of which once she became pregnant also. From the month of April the accused denied to marry her and threatened that in case she pressed him he would circulate all the photographs of their private

moments in social networking sites. According to the complainant the accused has deceived her.

In view of the statement made by the lady apart from the judgments which have been relied upon by the petitioner and the opposite party the following judgments of the Hon'ble Supreme Court also require consideration. In *Prasant Bharti –Vs. – State (NCT of Delhi)* reported in (2013) 9 SCC 293 it was held as follows:

“23.6. *Sixthly, even though the complainant/prosecutrix was married to one Manoj Kumar Soni, s/o Seeta Ram Soni (as indicated in an affidavit appended to the Delhi Police format for information of tenants and duly verified by the investigating officer, wherein she had described herself as married), in the complaint made to the police (on 16-2-2007 and 21-2-2007), she had suggested that she was unmarried.*

23.7. *Seventhly, as per the judgment and decree of the Civil Judge (Senior Division), Kanpur (Rural) dated 23-9-2008, the complainant was married to Lalji Porwal on 14-6-2003. The aforesaid marriage subsisted till 23-9-2008. The allegations made by the complainant dated 16-2-2007 and 21-2-2007 pertain to occurrences of 23-12-2006, 25-12-2006, 1-1-2007 and 15-2-2007 i.e. positively during the subsistence of her marriage with Lalji Porwal. Thereafter, the complainant Priya married another man Manoj on 30-9-2008. This is evidenced by a “certificate of marriage” dated 30-9-2008. In view of the aforesaid, it is apparent that the complainant could not have been induced into a physical relationship based on an assurance of marriage.*

23.8. *Eighthly, the physical relationship between the complainant and the accused was admittedly consensual. In her complaints Priya had however asserted, that her consent was based on a false assurance of marriage by the accused. Since the aspect of assurance stands falsified, the acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC. Especially because the complainant was a major on the date of occurrences, which fact emerges from the “certificate of marriage” dated 30-9-2008, indicating her date of birth as 17-7-1986.*

24. *Most importantly, as against the aforesaid allegations, no pleadings whatsoever have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted. As a matter of fact, the complainant/prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would therefore be legitimate to conclude, in the facts and circumstances of this case, that the material relied upon by the accused has not been refuted by the complainant/prosecutrix. Even in the charge-sheet dated 28-6-2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 CrPC. ”*

In *Pramod Suryabhan Pawar –Vs. – State of Maharashtra* reported in (2019) 9 SCC 608 it was held as follows:

“11. *The primary contention advanced by the complainant is that the appellant engaged in sexual relations with her on the false promise of marrying her, and therefore her “consent”, being*

premised on a “misconception of fact” (the promise to marry), stands vitiated.

12. *This Court has repeatedly held that consent with respect to Section 375 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. In Dhruvaram Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : 2018 SCC OnLine SC 3100] which was a case involving the invoking of the jurisdiction under Section 482, this Court observed : (SCC para 15)*

“15. ... An inference as to consent can be drawn if only based on evidence or probabilities of the case. “Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of.”

This understanding was also emphasised in the decision of this Court in Kaini Rajan v. State of Kerala [Kaini Rajan v. State of Kerala, (2013) 9 SCC 113 : (2013) 3 SCC (Cri) 858] : (SCC p. 118, para 12)

“12. ... “Consent”, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.”

17. *In Uday v. State of Karnataka [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] the complainant was a college-going student when the accused promised to marry her. In the complainant's statement, she admitted that she was aware that*

there would be significant opposition from both the complainant's and accused's families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The Court observed that in these circumstances the accused's promise to marry the complainant was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors : (SCC p. 58, para 25)

“25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each

other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married."

(emphasis supplied)

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 complainant's statements are accepted in totality, no offence under Section 375 IPC has occurred.”

On the basis of the aforesaid judgments the Hon'ble Supreme Court also expressed its similar view in Sonu -Vs. - State of U.P. reported in 2021 SCC OnLine SC 181 and Shambhu Kharwar -Vs. - State of U.P. reported in 2022 SCC OnLine SC 1032. The judgments so relied upon by the learned Advocate appearing for the petitioner requires to be taken into account in view of the consistent opinion of the Hon'ble Supreme Court as appearing in the factual circumstances of this Case. In Anurag Soni (supra) it has been observed in paragraphs 12 that the prosecutrix would not have consented for sexual intercourse and it was only on an assurance by the accused that he would marry her, such consent was obtained. On the aforesaid factual circumstances the Hon'ble Supreme Court was of the view that the consent was obtained on a

mis-conception of facts and as such the Hon'ble Supreme Court was pleased to affirm the order of conviction. In Dilip Das @ Nani (supra) relied upon by the complainant/opposite party the finding of the trial Court was that the girl was about 17 years old, who had physical relationship on proposal of the accused to marry her.

So far as the present case is concerned it is found that both the accused/appellant and the complainant were adults engaged in the profession and were colleagues; the relationship continued for about two years; both of them visited different places being Bakkhali, Guwahati, Darjeeling, Falta, Puri and enjoyed the relationship both at the home of the complainant and that of the accused; the accused according to the complainant represented to marry her; she became pregnant on or about May, 2018; thereafter the accused and his mother started evading her; the accused also threatened her that in case she pressurised him he would circulate all the pictures of private moments in social networking sites. The above sequences of facts reflect that the accused and the complainant were in love and they had physical relationship. There is nothing on record to show that there was any resistance from the side of the complainant rather the act of the complainant reflects that the same was consensual and she being an adult was fully capable of understanding the consequences of the physical act in which she was involved.

Having regard to the principles set out by the Hon'ble Supreme Court in similar set of circumstances in Dr. Dhruvaram Murlidhar Sonar –Vs. – State of

Maharashtra (supra), Prasant Bharti -Vs. - State (NCT of Delhi) (supra), Pramod Suryabhan Pawar -Vs. - State of Maharashtra (supra), Sonu -Vs. - State of U.P. (supra) and Shambhu Kharwar -Vs. - State of U.P. (supra), I am of the opinion that the charge-sheet so submitted in connection with the Rabindra Sarobar Police Station Case no. 160/19 dated 29.07.2019 (CG.R. Case no. 2682 of 2019) under Sections 376/417/506 of the Indian Penal Code fails to make out any offence and further continuance of the same is unwarranted.

Consequently, all further proceedings relating to Rabindra Sarobar Police Station Case no. 160/19 dated 29.07.2019 (CG.R. Case no. 2682 of 2019) is hereby quashed.

Accordingly CRR 2370 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

Case Diary be returned to the learned Advocate appearing for the State.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)