

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

IA No: CRAN/1/2022

In

CRR 3972 of 2022

Rajendra Prasad Saw @ Shaw

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Rabindra Kumar Jaiswal, Adv.,

For the State: Mr. Saswata Gopal Mukerjee, Ld. A.P.P.,
Mr. Sudip Ghosh, Adv.,
Mr. Bitasok Banerjee, Adv.

Heard on: 06 January, 2023.

Judgment on: 06 January, 2023.

BIBEK CHAUDHURI, J. : –

1. The parties have filed a joint petition for compromise and prayed for quashment of charge-sheet bearing No.65 of 2022 filed in the court of the learned Additional Chief Judicial Magistrate at Alipore under Section 417/341/376/323 of the Indian Penal Code in connection with Haridevpur Police Station Case No.112 dated 30th April 2021.

2. In his application under Section 482 of the Code of Criminal Procedure it is stated by the petitioner that on or about 21st March, 2018 the petitioner and the opposite party No.2 came in contact through Social Networking Site. They were in touch regularly through Social Networking Site as well as over telephone. Subsequently the petitioner and the

opposite party No.2 started to live together in a rented accommodation. At the end of December 2020, petitioner for the first time came to know that the opposite party No.2 is a married lady and her marriage was solemnized in the year 2016. After getting the said information the petitioner had cut off all connection with the opposite party No.2. However the opposite party No.2 has lodged a complaint against the petitioner on the basis of which Police registered a case under Section 417/341/376/323 of the IPC. In the said case, charge-sheet has been submitted against the petitioner. It is contended on behalf of the petitioner that both the opposite party No.2 and the petitioner have attained majority. They had physical relationship on consent of each other and there was no deception on the part of the accused/petitioner. The opposite party No.2 made a false complaint against him.

3. During pendency of the instant revision both the petitioner and the opposite party No.2 has filed a joint petition for compromise stating, inter alia, that the dispute between the parties has amicably been settled and on the basis of such settlement the criminal case pending before the learned Additional Chief Judicial Magistrate at Alipore may be quashed.

4. The learned P.P submits that the issue as to whether a major lady was cheated on false promise of marriage and her consent of physical relationship is obtained on such false promise, is a question on fact to be determined only at time of trial on evidence. In support of his contention the learned Public Prosecutor refers to a recent decision of the Hon'ble Supreme Court in **Daxaben vs State of Gujarat & Ors.** reported in **2022**

SCC OnLine SC 936. It is held in the aforesaid report by the Hon'ble Supreme Court that a criminal proceeding cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C, only because there is settlement between the accused and the complainant.

5. Learned Advocate for the complainant/opposite party No.2, on the other submits that the opposite party does not want to proceed with the criminal case against the petitioner on the ground that her father is seriously ill and at any point of time serious consequence may happen to her father if the case is pending. It is also submitted by the petitioner that she has got a government job and if a criminal proceeding is pending, she may be denied of the job.

6. Learned Advocate for the petitioner on the other hand refers to a decision of the Kerala High Court in the case of **Tino Thankachan vs State of Kerala** reported in **2022 LiveLaw (Kerala) 615**. It is held by the Kerala High Court that if a man retracts his promise to marry a woman, consensual sex they had would not constitute an offence punishable under Section 376 of the IPC unless it is established that consent for such sexual act was obtained by him, by giving false promise of marriage with no intention of being adhered to and that promise made was false to his knowledge.

7. In the instant case it is ascertained from the record that opposite party No.2/complainant was previously married sometimes in the year 2016 however her marriage was dissolved by decree of divorce in the year 2018. The accused came in touch with her in 2018 when there was no

marriage. I am in agreement with learned Public Prosecutor that the issue was to whether the consent of the lady for such sexual act was obtained by the petitioner by giving false promise of marriage without any intention to marry her from the very beginning is a question of fact that only be adjudicated upon during trial. Lastly, I like to record that the opposite party being the defacto complainant may not have any problem in getting her job in a government service because of pendency of the case.

8. In view of the above discussion, I find no ground to entertain the instant petition for compromise the joint petition for compromise is therefore rejected. In view of rejection on the petition for compromise, the revision is also dismissed.

(Bibek Chaudhuri, J.)