

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 4143 of 2022

With

CRAN 1 of 2022

Anirban Mitra

Vs.

The State of West Bengal and Anr.

For the petitioner: Mr. Ayan Bhattacharjee, Adv.,
 Mr. Sharequl Haque, Adv.,
 Mr. Subhojit Manna, Adv.

For the State: Ms. Faria Hossain, Adv.,
 Ms. Baisali Basu, Adv.

For the O.P. No.2: Mr. Anand Keshari, Adv.,
 Mr. Sekhar Mukherjee, Adv.

Heard on: 13 January, 2023.

Judgment on: 13 January, 2023.

BIBEK CHAUDHURI, J. : –

1. By filing a joint petition, both the petitioner and the opposite party No.2 have prayed for quashing of the proceedings of GR Case No.9650 of 2022 arising out Belghoria Police Station Case No.504 dated 7th October, 2022 under Section 417/376 of the IPC pending before the learned Additional Chief Judicial Magistrate at Barrackpore.

2. It is needless to mention the background of the case. The petitioner is the accused in GR Case No.9650 of 2022. The opposite party No.2 filed

a written complaint on 7th October, 2022 with the Officer-in-Charge, Belghoria police station stating, inter alia, that the petitioner developed deep friendship with the defacto complainant. Subsequently, he proposed to have physical relationship with her on several occasions. Finally on 4th October, 2022 at about 1 pm the accused entered into the room of the defacto complainant against her consent and forcibly committed sexual intercourse with her. At that point of time the minor girl of the defacto complainant was present in her house. Therefore, she could not raise hue and cry when she was ravished. As the defacto complainant is a divorced lady he took advantage of her loneliness and subsequently threatened her saying that police would not be able to do anything against him. Subsequently, he also tried to revise the defacto complainant but failed. On the basis of such allegation police registered the above case Belghoria P.S Case No.504/2022 under Section 417/376 IPC and took up the case for investigation.

3. Subsequently, the petitioners and the opposite party have filed a joint petition stating, inter alia, that the dispute has been amicably settled between them and the defacto complainant does not want to proceed with the case against the accused/petitioner.

4. It is submitted by Mr. Bhattacharjee, learned Advocate on behalf of the petitioner that both the petitioner and the defacto complainant are grown up major person. The defacto complainant is a divorced lady. Physical relationship was established on the consent of the parties. There is ailment of cheating allegedly committed by the petitioner upon the

opposite party/defacto complainant. Under such circumstances, the agreement case pending against the petitioner may be quashed on the basis of amicable settlement by and between the parties.

5. In support of his contention Mr. Bhattacharjee refers to a decision of the Hon'ble Supreme Court in the case of **Shambhu Kharwar vs. State of Uttar Pradesh & Anr.** reported in **2022 (12) SCALE 33**. In the said report under the backdrop of consensual relationship between two educated adults, the Hon'ble Supreme Court was pleased to observe that the issue which had to be addressed by the High Court was whether assuming all the allegations in the charge-sheet are correct as they stand, an offence punishable under Section 376 IPC was made out. Admittedly, the appellant and the second respondent were in a consensual relationship from 2013 until December, 2017. They are both educated adults. The second respondent, during the course of this period, got married on 12th June, 2014 to someone else. The marriage ended in a decree of divorce by mutual consent on 17th September, 2017. The allegations of the second respondent indicate that her relationship with the appellant continued prior to her marriage, during the subsistence of the marriage and after the grant of divorce by mutual consent. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge-sheet, the essential ingredients of an offence under Section 376 IPC. The crucial issue which is to be considered is whether the allegations indicate that the appellant had given a promise to the second respondent to marry which at the

inception was false and on the basis of which the second respondent was induced into a sexual relationship. Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 375 IPC are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent. Under such factual background, the Hon'ble Supreme Court was pleased to allow the appeal and quash the criminal proceeding under Section 417/376 of the IPC against the appellant.

6. The Hon'ble Supreme Court in **Daxaben vs. State of Gujarat** reported in **2002 SCC OnLine SC 936** was pleased to hold that a criminal proceeding cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C only there is settlement between the accused and the complainant.

7. The FIR of this case does not disclose any allegation of false promise of marriage by the petitioner to the opposite party No.2. On the other hand, it is stated that both the petitioner and the defacto complainant had friendship and taking advantage of such friendship he forcibly entered into the room of the opposite party No.2 and committed rape upon her against her wish. Thus, in the FIR there is no element of consensual relationship between the parties. In view of such circumstances, this Court cannot quash Belghoria Police Station Case

No.504 dated 7th October, 2022 on the basis of joint petition for compromise.

8. Accordingly, the application for amicable settlement of the dispute is rejected and the instant revision is dismissed.

(Bibek Chaudhuri, J.)