

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1578 of 2020

With

CRAN 1 of 2020

With

CRAN 2 of 2021

Sagnik Dey

Vs

The State of West Bengal & Anr.

For the Petitioner

: Mr. Joydip Kar, Sr. Adv.,
Mr. Rajdeep Mazumder,
Mr. Mayukh Mukherjee,
Mr. Abhijit Singh.

For the State

: Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.

For the Opposite Party No. 2

: Mr. Sabyasachi Banerjee,
Mr. Sourav Chatterjee,
Mr. Soumya Nag.

Heard on

: 02.05.2023

Judgment on

: 04.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been filed praying for quashing of the proceedings in ACGR Case No. 5731 of 2019, arising out of Survey Park Police Station Case No. 221 of 2019 dated 30.11.2019 under Sections 376/328/323/417 of the Indian Penal Code now pending before the Court of the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas.
2. The petitioner's case is that, a written complaint was lodged by one Sukla Das, wife of Dr. S.K. Das, resident of Santoshpur Avenue, Kolkata – 700075, with the Joint Commissioner of Police, Crime Branch, Kolkata, enclosing the complaint of her daughter Dr. Riyal Das (the alleged victim) alleging the commission of offences punishable under Sections 323/328/376/417 of the Indian Penal Code. The allegations leveled in the said complaint of Dr. Riyal Das are to the effect that:-

*The petitioner exploited the victim mentally and physically for over a period of three years by being in a relationship with her, during which period, the petitioner allegedly made false promises of marrying her in the near future, however, the petitioner got married secretly without informing the victim about the same. **That even after his marriage, the petitioner continued to be in regular contact with the victim and also continued with the said relationship in a normal manner,** during the subsistence of the said relationship, it was alleged that the victim suffered multiple incidents of mental and physical abuse by the petitioner, including an occasion when she almost broke her hand and sustained serious injuries. It was alleged that on 2.11.2019, the petitioner met the victim, and got her intoxicated and thereafter the petitioner went ahead to have physical intercourse with the victim without her consent. It was further*

alleged that the petitioner also deleted their conversations on Facebook Messenger from the victim's phone. It was alleged that on 26.11.2019, the victim came to learn that the marriage of the petitioner was fixed and was about to undergo a social marriage within the next few days.

3. On the basis of the aforesaid allegations, Survey Park Police Station Case No. 221 of 2019 dated 30.11.2019 under Sections 376/328/323/417 of the Indian Penal Code, was registered for investigation against the petitioner herein.
4. It is submitted by the petitioner that the story brought forward by the victim, is of a consensual relationship between two adults (though the same is denied and disputed by the petitioner).
5. Upon completion of investigation, the investigating agency submitted its report in final form being Charge Sheet No. 12/2020 dated 28.01.2020 under Sections 376/328/323/417 of the Indian Penal Code, against the petitioner.
6. **Mr. Joydip Kar, learned senior counsel for the petitioner** has submitted that it is exceedingly clear that on a conjoint reading of the written complaint along with the charge sheet, it would become palpable that there are no ingredients which would establish the case under Section 376/417 of the Indian Penal Code as well as the other penal sections. The victim in the instant case is an adult lady, and applying such aforementioned legal principle, the story projected by her (though fallacious and concocted) cannot be said to constitute an offence where consent has been taken by fraudulent means.

7. The impugned proceeding is a product of suppression of material facts, which has been purportedly suppressed by the Opposite Party No. 2 and the victim herein.
8. It is evident that the Opposite Party No. 2 has taken a spiteful attitude in respect of the petitioner herein thereby rendering further proceedings vulnerable in law.
9. That the allegations leveled in the First Information Report suffer from contradictions and absurdity and **the prayer in the revision is for quashing of the proceedings** in connection with ACGR Case No. 5731 of 2019, arising out of Survey Park Police Station Case No. 221 of 2019 dated 30.11.2019 under Sections 376/328/323/417 of the Indian Penal Code now pending before the Court of the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, **which is clearly an abuse of the process of law.**
10. **All this stage three separate affidavits have been filed by the parties in this case.**

I. Affidavit by the defacto Complainant, Smt. Sukla Das.

She is the mother of the alleged victim Riyal Das who is now aged about 33 years. It is stated on affidavit that she and her daughter have decided not to pursue the said case or any other case be it civil or criminal any further as her daughter who is a medical practitioner wants to focus on her profession and avoid any further legal entanglements that may hinder her professional pursuits and

have no objection if this Hon'ble Court quashes the said criminal case being Survey Park Police Station Case No.221 of 2019 dated 30.11.2019 under Sections 376/328/323/417 of the Indian Penal Code filed against the petitioner. They also do not wish to go through the embroil of a trial and are desirous of putting an end to criminal proceedings against Mr. Sagnik Dey/ the petitioner in CRR No. 1578 of 2020. She has arrived at this decision voluntarily and without any coercion or undue influence from any person or party.

- II. **Dr. Riyal Das (alleged victim)**, has stated on oath that she as well as her family members, have decided not to pursue the said case or any other case both civil and criminal any further as she wants to focus on her profession and avoid any further legal entanglements that may hinder her professional pursuits and **has no objection if this Hon'ble Court quashes the said criminal case being Survey Park Police Station Case No. 221 of 2019 dated 30.11.2019 under Sections 376/328/323/417 of the Indian Penal Code filed against the petitioner.** She will not raise any claim, demand or objection against **Mr. Sagnik Dey**/the petitioner in CRR No. 1578 of 2020 in connection with the said case or initiate or pursue any other case either civil or criminal in the future and has arrived at this decision voluntarily and without any coercion or undue influence from any person or party.

- III. **In the affidavit filed by the petitioner/accused**, it has been stated that he shall not make any claim or demand against Ms. Riyal Das or the opposite party no. 2 nor will he initiate any proceedings against the said persons either civil or criminal in future and that he arrived at this decision voluntarily and without any coercion or undue influence from any person or party.
11. **As one of the offences alleged is under Section 376 IPC a little discussion on merit is required.**
 12. The Supreme Court has cautioned in numerous decisions including in ***Gian Singh vs State of Punjab and Another, (2012) 10 SCC 303, SLP (Crl.) No. 8989 of 2010, on 24 September, 2012 and Daxaben vs The State of Gujarat & Ors., (2022 LiveLaw (SC) 642), Criminal Appeal No..... of 2022, on July 29, 2022*** regarding compromise in respect of serious offences.
 13. Thus the following observation of this court is essential in the present case, as the offences alleged include Section 376 IPC (RAPE).
 14. **From the materials on record the following facts are before this Court:-**
 - i) That the parties, herein, being the petitioner and the alleged victim were major at the time of the alleged occurrence.
 - ii) It has been alleged in the written complaint that the petitioner and the alleged victim were in a relationship for over a period of three years, **when it is alleged that the**

petitioner had made false promise of marrying the alleged victim. But the petitioner secretly got married to someone else.

- iii) The allegation in the complaint written by Riyal Das and filed by her mother is follows :-

*“I Dr. Riyal Das, would like to state charges of fraud, sexual harassment, sexual deception and sexual assault against Mr. Sagnik Dey. He has exploited me mentally and physically for 3 years by being in a romantic relationship with me on the grounds of love and false promises of marriage in the near future. He has stalked, chased and pursued me for all these 3 years. He continued the relationship with me by keeping me and my family in darkness regarding his true intentions and his marriage plans. He got married secretly without informing me in spite of still being in a relationship with me. **Throughout, he kept communication and relationship with me normally making sure that I do not suspect anything, till I found out the truth.** During the course of the relationship there were multiple incidents of mental and physical abuse to the extent that he almost broke my hand and I sustained serious injuries. On November 2nd, 2019 he met me and intoxicated me with alcohol and possibly drugs to have physical intercourse without my consent hiding the fact that he was already married by then. He also deleted our conversation on facebook messenger from my phone to remove evidence. **The relationship was still being maintained normally from his side till I found out on 26th November that he is married on paper & is getting married socially this weekend in Kolkata. I would like to seek justice for the mental physical & sexual exploitation I had to face because of this person.**”*

15. (a) In **Shambhu Kharwar vs State of Uttar Pradesh & Anr., Criminal Appeal No. 1231 of 2022, on August 12, 2022**, the Supreme Court held:-

“10. An offence is punishable under Section 376 of the IPC if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 along with Section 90 of the IPC is relevant which is set out below.

“375. Rape – A man is said to commit “rape” if he –

[...]

under the circumstances falling under any of the following seven descriptions

Firstly ...

Secondly. – Without her consent.

[...]

Explanation 2. – Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

xxx

90. Consent known to be given under fear or misconception - *A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or...”*

11. In *Pramod Suryabhan Pawar v. State of Maharashtra*, a two Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in ***Sonu @ Subhash Kumar v. State of Uttar Pradesh***, observed that :

“12. This Court has repeatedly held that consent with respect to Section 375 of the 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...

[...]

14. [...] 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...

[...]

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman’s “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. **The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act...**

[...]

18. 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.**

(emphasis supplied)

(b) ***Naim Ahamed vs State (NCT of Delhi), Criminal Appeal No. 257***

of 2023, on 30.01.2023, the Supreme Court held:-

“20. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause – Secondly of Section 375 IPC. In this regard, it is pertinent to note that **there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of**

breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.”

16. **In the present case**, the Statements in the written complaint prima facie show that the alleged victim continued with the relationship till 26th November, 2019, in spite of allegedly being abused, being allegedly intoxicated with alcohol and possibly drugs to have physical intercourse without her consent on 2nd November, 2019.
17. Finally it is stated that the relationship was still being maintained normally from his side till she found out on 26th November that he is married on paper (till then she allegedly knew of the secret marriage) and will be having a social marriage. **Hence the Complaint.** Thus it prima facie appears that in spite of having knowledge of the petitioner’s alleged secret marriage, the alleged victim Riyal Das continued in the relationship, **having the knowledge that the petitioner will not be in a position to marry her (Shambhu Kharwar vs State of Uttar Pradesh & Anr. (Supra)).**
18. There was thus prima facie no false promise to marry by the petitioner as the alleged victim continued in the relationship in spite of the knowledge

of his marriage and other acts as already discussed above and as such there is prima facie no materials on record and in the case diary of the alleged commission of offence under Section 376 IPC against the petitioner.

19. **The parties have now stated on affidavits that the dispute between them has been amicably settled and the complainant and the alleged victim in this case have no objection if the proceedings against the petitioner being ACGR Case No. 5731 of 2019, arising out of Survey Park Police Station Case No. 221 of 2019 dated 30.11.2019 under Sections 376/328/323/417 of the Indian Penal Code now pending before the Court of the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, is quashed.**
20. A Three Judge Bench of the Supreme Court in ***Gian Singh vs State of Punjab and Another (Supra)*** has cleared the position in respect of the power of the High Court in quashing a criminal proceedings in exercise of its inherent jurisdiction (compromise/compounding) in para 61 of the judgment, which is reproduced here in:-

Para 61. *“The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in*

accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the

criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

21. In Anita Maria Dias & Anr. Vs The State of Maharashtra & Anr.

(2018) 3 SCC 290. The Court held:-

(a) Offences which are predominant of civil character, commercial transaction should be quashed when parties have resolved their dispute.

(b) Timing of settlement would be crucial for exercise of power or declining to exercise power (stage of proceedings).

22. The affidavits filed by the parties clearly show that an amicable settlement and compromise has been arrived at between the parties and the complainant does not wish to proceed with ACGR Case No. 5731 of 2019, arising out of Survey Park Police Station Case No. 221 of 2019 dated 30.11.2019 under Sections 376/328/323/417 of the Indian Penal Code now pending before the Court of the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas.

23. From the materials on record, it is clear that dispute in the present case is a private dispute relating to a consensual relationship and the parties have now resolved their entire dispute by way of a compromise/settlement on affidavit and as such the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice could be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the complainant. (As in the words of the Supreme Court in ***Gian Singh Vs. State of Punjab and another (Supra)***).
24. As such this court is of the view that it would be unfair and contrary to the interest of justice to continue with the criminal proceedings which would tantamount to abuse of process of law in view of the settlement arrived at between the parties in respect of their dispute and to secure the ends of justice it would be prudent to quash the proceedings in the case as prayed for. There is also no prima facie material on record (as discussed earlier) against the petitioner for the offence alleged under Section 376 IPC.
25. **CRR 1578 of 2020 is accordingly allowed.**
26. The proceeding being ACGR Case No. 5731 of 2019, arising out of Survey Park Police Station Case No. 221 of 2019 dated 30.11.2019 under Sections 376/328/323/417 of the Indian Penal Code now pending before the Court of the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, is hereby quashed.

27. There will be no order as to costs.
28. **All connected Applications stand disposed of.**
29. Interim order if any stands vacated.
30. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
31. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)