

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 102 of 2020

Radheshyam Shukla @ Radheshyam

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Soumya Basu Roy,
Mr. Soumyajit Das Mahapatra.

For the State : Mr. Rana Mukherjee,
Mr. Imran Ali.

For the Opposite Party No. 2 : None.

Hearing concluded on : 19.03.2024

Judgment on : 23.04.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings in G.R. Case No. 3787 of 2019, currently pending before the Court of the Learned Chief Judicial Magistrate, Murshidabad at Berhampore, arising out of Jalangi Police Station Case No. 609 of 2019 dated 31.08.2019 under Sections 448/417/376 of the Indian Penal Code, 1860.
2. **The allegation in the Written Complaint filed by the Opposite Party No. 2 are to the following extent:-**

“I met the Assistant Manager of UCO Bank, Sagarpara Branch, 3 years back and while visiting the Bank frequently he promised me to marry. Thereafter, he used to come to our house, while no one was there and cohabited with me. Not only that, he used to take me to various places and cohabited with me in Hotels. On 12.06.2019, while no one was present at our house, he came to our house and had sex with me. I asked him to marry me, he promised that he will marry me within 2 or 3 days and thereafter he left our house. After that day, he did not contact with me. On 25.07.2019, I visited the Bank and came to know that he joined at Nabagram Post Office more, UCO Bank Branch, under Kandi Police Station after taking transfer order from here. He cheated me with a promise to marry me and defame me”.

3. The petitioner states that all such allegations as disclosed in the complaint are denied in totality. The entire story is a manufactured one, and in any event is one where it is clear that there is no involvement or role of the petitioner whatsoever as will be completely

apparent from a scrutiny of the First Information Report in this present case.

4. The petitioner/accused has denied the entire case as stated by the victim/opposite party no.2.
5. The petitioner states that he is the actual victim of this proceeding as the opposite party no. 2 has made a habit of making money by way of making false and fabricated allegations. The petitioner is a respectful person in his working life but this false case has ruined his life completely. Petitioner's employer i.e. the UCO Bank authority has declared to expel him from service for this case.
6. There is delay of almost 45 days to register this complaint without any explanation. Allegedly the date of incident was on 12.06.2019 and the complaint lodged on 31.08.2019, it is alleged in the complaint that the complainant used to visit the Bank frequently, where the petitioner used to work earlier but from 12.06.2019, (the date she disclosed) she did not state about her activity till 25.07.2019, when she came to know about this petitioner's transfer to another branch.
7. The petitioner states that on 16.07.2019 his transfer order to Nabagram Branch has been issued and on 20.07.2019 he joined his new branch, thereafter the complainant planned to earn money by way of blackmailing the petitioner as she did earlier many times.
8. Hence the revision.

- 9.** The opposite party no.2 has categorically stated that when she used to visit the Bank for her work, the petitioner/accused had proposed marriage to her and started visiting her house, when no one was present, and used to cohabit with her by having sexual Inter course. He allegedly took her to various places and stayed in hotels, where he also cohabited with her.
- 10.** The petitioner also visited her on 12.06.2018 and also had sexual inter course with her and when at that time, she asked him about marriage, he assured to marry her, in a day or two.
- 11.** Since then the petitioner did not keep any contact with her.
- 12.** When the complainant/victim visited the bank on 25.07.2019, she was told that the petitioner had left on transfer.
- 13.** From the case diary it appears that the victim/complainant is aged about 35 years as per medical report. The medical report of the victim prima facie supports her case of cohabitation.
- 14.** The fact of the petitioner being the Assistant Manager of Sagarpara UCO Bank has also not been denied.
- 15.** The copy of the attendance sheet of the petitioner in the case diary shows that the petitioner has been absent on several days.
- 16.** The complainant has filed the present case after some delay when she found that the petitioner had been transferred to another branch and he did not keep any contact with her, realizing that the petitioner was not going to keep his promise of marriage.

17. There are statements of witnesses on record and also the statement of the victim recorded under Section 164 of Cr.P.C.

18. The petitioner was unmarried and aged about 35 years. This led the victim to believe the petitioner's promise of marriage.

19. Written notes of argument has been filed on behalf of the petitioner relying upon the following rulings:-

- i. *Jayanti Rani Panda vs State & Anr., 1983 SCC OnLine Cal 98.*
- ii. *Uday vs State of Karnataka, (2003) 4 SCC 46.*
- iii. *Jugal Chandra Saikia vs State of Assam and Anr., (2003) 4 SCC 59.*
- iv. *Pramod Suryabhan Pawar vs State of Maharashtra & Anr., (2019) 9 SCC 608.*
- v. *Binod Banik vs State of West Bengal & Anr., 2023 SCC OnLine Cal 421.*
- vi. *Tilak Raj vs State of Himachal Pradesh, (2016) 4 SCC 140.*
- vii. *Maheshwar Tigga vs State of Jharkhan, (2020) 10 SCC 108.*
- viii. *Shambhu Kharwar vs State of Uttar Pradesh & Anr., 2022 SCC OnLine SC 1032.*
- ix. *Naim Ahamed vs State (NCT of Delhi), 2023 SCC OnLine SC 89.*

20. The Supreme Court in ***Deepak Gulati vs State of Haryana, Criminal Appeal No. 2322 of 2010, on 20 May, 2013***, held:-

“15. Section 114-A of the Indian Evidence Act, 1872 (hereinafter referred to as the ‘Act 1872’) provides, that if the prosecutrix deposes that she did not give her consent, then

the Court shall presume that she did not in fact, give such consent. The facts of the instant case do not warrant that the provisions of Section 114-A of the Act 1872 be pressed into service. Hence, **the sole question involved herein is whether her consent had been obtained on the false promise of marriage.** Thus, the provisions of Sections 417, 375 and 376 IPC have to be taken into consideration, alongwith the provisions of Section 90 of the Act 1872. Section 90 of the Act 1872 provides, that any consent given under a misconception of fact, would not be considered as valid consent, so far as the provisions of Section 375 IPC are concerned, and thus, such a physical relationship would tantamount to committing rape.

16. This Court considered the issue involved herein at length in the case of *Uday v. State of Karnataka*, AIR 2003 SC 1639; *Deelip Singh @ Dilip Kumar v. State of Bihar*, AIR 2005 SC 203; *Yedla Srinivasa Rao v. State of A.P.*, (2006) 11 SCC 615; and *Pradeep Kumar Verma v. State of Bihar & Anr.*, AIR 2007 SC 3059, and came to the conclusion that in the event that the accused's promise is not false and has not been made with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act(s) would not amount to rape. **Thus, the same would only hold that where the prosecutrix, under a misconception of fact to the extent that the accused is likely to marry her, submits to the lust of the accused, such a fraudulent act cannot be said to be consensual, so far as the offence of the accused is concerned.**

17. Rape is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. **Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness.** Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.

18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. **There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused 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 a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. 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 mis-representation made to her by the 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 so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

19. In *Deelip Singh* (supra), it has been observed as under:

“20. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of Section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the court should also be satisfied that the person doing the act i.e. the alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception,

the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology.”

20. *This Court, while deciding Pradeep Kumar Verma (Supra), placed reliance upon the judgment of the Madras High Court delivered in N. Jaladu, Re ILR (1913) 36 Mad 453, wherein it has been observed:*

“We are of opinion that the expression “under a misconception of fact” is broad enough to include all cases where the consent is obtained by misrepresentation; the misrepresentation should be regarded as leading to a misconception of the facts with reference to which the consent is given. In Section 3 of the Evidence Act Illustration (d) states that a person has a certain intention is treated as a fact. So, here the fact about which the second and third prosecution witnesses were made to entertain a misconception was the fact that the second accused intended to get the girl married..... “thus ... if the consent of the person from whose possession the girl is taken is obtained by fraud, the taking is deemed to be against the will of such a person”. ... Although in cases of contracts a consent obtained by coercion or fraud is only voidable by the party affected by it, the effect of Section 90 IPC is that such consent cannot, under the criminal law, be availed of to justify what would otherwise be an offence.”

21. *Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance.” Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.”*

21. The Supreme Court in ***Naim Ahamed vs State (NCT of Delhi)***,

Criminal Appeal no. 257 of 2023, on 30.01.2023, 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.**”*

22. The petitioner being a bank official started the relationship with its customer, which again is morally wrong. The petitioner prima facie induced the complainant an unmarried woman of about 35 years to a physical relationship with assurance of marriage.

23. Thus, there being a prima facie case against the petitioner for the offences alleged, the case should be permitted to proceed towards trial.

Interference at this stage shall be an abuse of the process of law.

24. CRR 102 of 2020 is thus dismissed.

25. All connected applications, if any, stand disposed of.

26. Interim order, if any, stands vacated.

27. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

28. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)