

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

**Appellate Side**

**Present:**

**The Hon'ble Justice Ajay Kumar Gupta**

**C.R.R. 100 of 2017**

**Faruk Laskar**

**Versus**

**The State of West Bengal & Ors.**

**For the State** : Ms. Faria Hossain, Adv.  
Mr. Anand Kesari, Adv.

**Heard on** : 20.12.2023

**Judgment on** : 09.01.2024

**Ajay Kumar Gupta, J:**

1. Petitioner filed this application under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of proceeding being G.R. Case No. 3745 of 2015 in connection with Mathurapur Police Station Case No. 333 of 2015 dated 27.08.2015 under Section 376 of the IPC in which charge sheet No. 391/2015 dated 28.10.2015

has been filed and the said proceeding is pending before the Learned 4<sup>th</sup> Fast Track Court, Diamond Harbour, South 24-Parganas being SC Case No. 7(7)/2016.

**FACTS OF THE CASE:**

**2.** The brief fact of this case is relevant for disposal of the instant case as follows:

On 27.08.2015 the de-facto complainant being the mother of the victim girl made a written complaint before the Officer-in-Charge, Mathurapur Police Station alleging inter alia that her daughter aged about 19 years was married after negotiation but due to her illness, she returned from the matrimonial home to her parents' home. In the meantime, the petitioner herein acquainted with her daughter through mobile call. He represented himself as Dharma son of her mother and started to come in her house and became close to her daughter and started physical relationship with her daughter without her consent. Consequently, she became pregnant. The accused has committed rape upon the victim girl. Upon such complaint, Mathurapur P.S. Case No. 333/2015 dated 27.08.2015 under Section 376 of the IPC was started.

3. After investigation, the said case was finally culminated by filing charge sheet No. 391/2015 dated 28.10.2015 under Section 376 of the IPC, 1860 and the said case was committed for trial. It is the case of petitioner that entire allegation is false. No rape was committed by the petitioner/accused upon the victim.

4. It is further contended by the petitioner that charge sheet was mechanically filed by the investigating officer though the case is totally false and the physical relations between the two adults was with their free will and consent as such, the impugned FIR and Charge Sheet are liable to be quashed.

**SUBMISSION ON BEHALF OF THE PETITIONER:**

5. Learned advocate appearing on behalf of the petitioner submitted that the instant case is totally based on false allegation. No ingredient of Section 376 even fulfilled to initiate this case. In spite of exonerating confessional statement of the victim girl, the investigating officer filed the charge sheet without properly assessing the materials collected during investigation rather it would have been ended with FRT as 'mistake of fact'.

6. It is further submitted that the victim girl also refused medical examination and admitted before the learned Magistrate in

her confessional statement recorded under Section 164 of the CrPC that no force and/or inducement inflicted by the petitioner for such physical relations. She had given her consent of physical relations due to fall in love with the petitioner. Accordingly, this case is nothing but owing to fear and threat from the local people, which is required to be quashed. Furthermore, continuation of this case would put the accused to great prejudice and extreme injustice if the proceeding would not quash by this court

**SUBMISSION ON BEHALF OF THE OPPOSITE PARTY**

**NO.2/VICTIM:**

7. On the other hand, learned advocate appearing on behalf of the opposite party no. 2/victim also supported the contention of the learned advocate appearing on behalf of the petitioner and further submitted that there is no allegation against the present petitioner. The complaint was lodged by her mother due to fear of local people as they had beaten her as well as petitioner/accused person. As such, this proceeding may be quashed as there is no allegation against the present petitioner from the side of victim girl, who is adult.

**SUBMISSION ON BEHALF OF THE STATE:**

8. Ms. Faria Hossain along with Mr. Anand Kesari appearing on behalf of the state submitted that the allegation against the petitioner is serious one. He had committed rape upon her and due to such incident, she became pregnant. The Hon'ble Supreme Court in various judgements reiterated the legal position that in heinous and serious offences like murder or rape, the court should not quash the proceedings though, the opposite party/victim supported the petitioner's case but crime is heinous and that cannot be compounded or quashed. Therefore, this application may be dismissed with costs. Ld. Advocate also produced the CD.

**DISCUSSIONS AND FINDINGS OF THIS COURT:**

9. Having heard the submissions of all the parties and on perusal of the materials collected during investigation including the statement of the victim recorded under Section 164 of the CrPC, it reveals she specifically confessed before the Ld. Magistrate that the accused Faruk Laskar is the Dharma son of her mother, who used to visit her home. During his visit, she fell in love with him and due to such love affairs, both had made physical relation and she became pregnant. She further confessed that Faruk did not use force or inducement for such relation. She also confessed that the petitioner

did not rape her. She further stated that her mother had lodged complaint against the petitioner due to fear of the local people because local people had assaulted her mother as well as petitioner/accused, Faruk Laskar.

**10.** In view of the confessional statement of the victim, she exonerated the petitioner from the alleged offence. There physical relation was made due to their love affairs and consented by her. When there is consent from the side of two adult, no basic ingredient fulfils for an offence of rape punishable under Section 376 of the IPC.

**11. "Section 375. – Rape. - A man is said to commit "rape" if he-**

(a) Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of

body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

Under the circumstances falling under any of the following seven descriptions: -

**First.** - Against her will.

**Secondly.** - Without her consent.

**Thirdly.** - With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

**Fourthly.** - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

**Fifthly.** - With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to

understand the nature and consequences of that to which she gives consent.

**Sixthly.** - With or without her consent, when she is under eighteen years of age.

**Seventhly.** - When she is unable to communicate consent.

Explanation 1. - For the purposes of this Section, “vagina” shall also include labia majora.

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.

Exception 1. - A medical procedure or intervention shall not constitute rape.

Exception 2.- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Thus, the prosecution must establish the following essential ingredients of the offence of rape are as follows: -

- i. Accused committed sexual intercourse with a woman;
- ii. He did so against her will or without her consent;
- iii. If there was consent it was obtained by putting her or any of her relations or person interested in fear of death or hurt;
- iv. Where consent was taken in the deceitful belief that the accused was husband;
- v. If consent was taken when the victim was incapable of understanding its nature and consequences due to-
  - (a). Unsoundness of mind,
  - (b). Intoxication,
  - (c). Administration of any stupefying drug or substance by the accused either personally or through some agents.

**12.** In the present case, no such ingredients fulfil to constitutes an offence of rape punishable under Section 376 of the Indian Penal code, 1860. Ld counsel appearing on behalf of the Opposite party no.2/victim also supported the case of the Petitioner. Furthermore,

upon careful examining of all materials available in the case diary, there is bleak and remote possibility of conviction.

**13.** We should not forget about the observation made by the Hon'ble Supreme Court in **Paramjeet Batra v. State of Uttrakhand** reported in **(2013)11 SCC 673** wherein it has been held:

*“While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High court....”*

**14.** In the light of above discussions, it appears the Investigation officer filed Charge Sheet No. 391/2015 dated 28.10.2015 without considering the statement of the victim , other witnesses and other materials collected during investigation.

**FINAL RESULT:**

**15.** In such a situation, the proceeding should not be allowed to be continued otherwise it would be gross abuse of process of law and it needs to be quashed to secure ends of justice even at the initial stage of proceeding.

**16.** The application has strong merit. Accordingly, **CRR 100 of 2017** is allowed without order as to costs.

**17.** FIR and charge sheet No. 391/2015 dated 28.10.2015 and proceeding thereof now pending before the Learned 4<sup>th</sup> Fast Track Court, Diamond Harbour, South 24-Parganas being SC Case No. 7(7)/2016 is hereby quashed. Accused Faruk Laskar is hereby discharged. He may also be discharged from his bail bonds.

**18.** Interim order, if any, shall be vacated.

**19.** Let the copy of this judgment and order be sent to the learned Court below for information and taking necessary action. CD be returned.

**20.** Parties shall act on the server copies of this order uploaded on the website of this Court.

**21.** Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

**(Ajay Kumar Gupta, J)**