

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

Present:

The Hon'ble Justice Ajay Kumar Gupta

**C.R.R. 553 of 2017
With
CRAN 4/2017 (Old CRAN 5459/2017)**

**Bhabatosh Biswas
Versus
The State of West Bengal and Another**

For the Petitioner : Mr. S.M. Obaidullah, Adv.
Mr. Sudarshan Roy, Adv.

For the Opposite Party No. 2

: Mr. Asraf Mondal, Adv.
Md. Bani Israil, Adv.

For the State : Ms. Faria Hossain, Adv.
Ms. Mamata Jana, Adv.

Heard on : 19.03.2024

Judgment on : 30.04.2024

Ajay Kumar Gupta, J:

1. This instant revisional application has been filed by the petitioner/accused under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the Charge Sheet being Charge Sheet No. 15/2014 dated 31st January, 2014 in connection with Karimpur Police Station Case No. 186/2013 dated 22/11/2013 submitted under Sections 417/376 of the Indian Penal Code, 1860 against the petitioner/accused.

2. The factual matrix of the instant case is that on or about 22/11/2013 the opposite party no. 2 herein lodged a complaint with the Karimpur Police Station against the petitioner alleging, inter alia, therein that the petitioner induced the opposite party no. 2 believing that he will marry her after securing a job and based on such assurance, petitioner from time to time cohabited with the opposite party no. 2 at different places.

2a. It is further alleged that the petitioner, taking advantage of innocence of the opposite party no. 2, cohabited on the pretext of false promise of marriage. Accordingly, the petitioner has committed an offence of cheating and cohabitation with the opposite party no. 2 as a result, a Karimpur Police Station Case No. 186/2013 dated

22/11/2013 under Sections 417/376 of the Indian Penal Code has been registered and, subsequently, after completion of investigation, a charge sheet was submitted being Charge Sheet No. 15/2014 dated 31st January, 2014 against the petitioner in connection with Karimpur Police Station Case No. 186/2013 dated 22/11/2013 under Sections 417/376 of the Indian Penal Code though the contention of the petitioner is that the petitioner is totally innocent and has been falsely implicated into this case. The opposite party no. 2 being a married lady having matrimonial relation still subsisting, so, the question of marriage with opposite party no. 2 does not arise. The opposite party no. 2 as well as petitioner are adults and their physical relationship developed with her free will and consent. She made physical relation with the petitioner on consent as she is matured married lady as such it does not constitute offences under Sections 417/376 of the IPC. The question of cheating by personation as contemplated under Section 416 or rape under Section 375 of the IPC does not arise in the present facts and circumstances of this case. But, the investigating officer has filed charge sheet without proper application of mind or considering the materials available during the investigation and finally submitted charge sheet mechanically only on the basis of table work. As such, the petitioner

praying for quashing of the said charge sheet. Hence, this criminal revisional application.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. Learned counsels appearing on behalf of the Petitioner submitted that the allegation, levelled by the married lady, does not disclose the ingredients of the alleged offences. She has falsely implicated the petitioner though she knows very well that she is a matured married lady and issue of inducing her to cohabitation on pretext of false promise of marriage is patently false and inherently in-probable. As such, charge sheet and proceeding thereof is patently abuse of process of law and to secure the end of justice, the case is deserved to be quashed at the threshold.

4. Learned counsel places reliance of a judgment passed by the Hon'ble Supreme Court on 06.03.2024 in ***Criminal Appeal No. 3431 of 2023 in XXXX vs. State of Madhya Pradesh and Another*** to bolster his submission that the prosecutrix, who herself was a married woman having two children, could not be said to have indulged herself in physical relation with the petitioner under the alleged false promise given by the petitioner or under the misconception of fact while giving the consent to have sexual relationship with the petitioner.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY No. 2:

5. Learned counsel appearing on behalf of the opposite party no. 2 submitted a prima facie case has been established against the present petitioner after investigation by the investigating officer and a charge sheet has been submitted against the present petitioner under Sections 417/376 of the IPC. The learned Court below, after considering the materials available in the CD, took cognizance and framed charges against the petitioner. The case is still pending for final adjudication as such, the instant revisional application is liable to be dismissed.

SUBMISSION ON BEHALF OF THE STATE:

6. Learned counsel appearing on behalf of the State also submitted as similar fashion as submission made by the learned counsel appearing on behalf of the opposite party no. 2. Learned Counsel further submitted that the opposite party no. 2 was a married lady but due to quarrel between the opposite party no. 2 and her husband, namely, Bablu Biswas, went to her father's house and started living separately where petitioner/accused contacted with the complainant over telephone and developed relation and subsequently, the said relation was converted to physical relationship with the opposite party no. 2 at different places on different times on the

pretext that he would marry her when he would get job. He also got appointment as School Teacher but denied her to marry. Accordingly, the opposite party no. 2 lodged a complaint against the present petitioner under Sections 417/376 of IPC. On the basis of said complaint, Karimpur Police Station Case No. 186/2013 dated 22/11/2013 under Sections 417/376 of the Indian Penal Code has been registered and finally after conclusion of investigation, a charge sheet has been submitted when found a prima facie case against the petitioner. The learned Court below also satisfied and framed charges. The case is still pending for evidence. Under such circumstances, the instant case is liable to be dismissed. Learned counsel also produced the case diary showing the materials against the present petitioner.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

7. Having heard the rival submissions of all the parties and on perusal of the application as well as annexures thereto, this Court finds it is admitted fact that the opposite party no. 2/victim is a married lady. She got married with one Bablu Biswas. It is also admitted fact that the opposite party no. 2 left the matrimonial home and started living separately at her father's house four years back when a dispute arose between the complainant and her husband.

There is no any document to show the marriage was dissolved. It is further admitted fact that the petitioner and opposite party no. 2 had developed intimacy and later turned to physical relation at different places in different times.

8. Now, the question arises before this Court whether the physical relation, which was developed on pretext of marry to the opposite party no. 2 by the petitioner, constitutes offences punishable under Sections 417/376 of the IPC?

9. It appears from the Case Diary that IO has examined the complainant and recorded her statement under Section 161 of the CrPC. The IO also recorded statement of other witnesses under Section 161 of Cr.PC. However, no statement under Section 164 of the Cr.PC of the victim was recorded. Furthermore, the victim refused medical examination, when she was produced before the Medical Officer, Karimpur Rural Hospital, Nadia.

10. Upon perusal of the statement recorded under Section 161 of the CrPC of the victim and other witnesses, it reveals she is a married lady and now she is residing in her parent's house. She left the matrimonial home due to quarrel took place between her and her husband four years ago and she has two children who are living with her at her father's house. During staying at her father's house, she

developed friendship with the petitioner, who assured her to marry. On such promise to marry, on 12.10.2013 petitioner developed physical relation and, thereafter, at different places on different times on assurance to marry her after getting service. The said cohabitation was continued till getting service by the petitioner. In spite of getting service, petitioner refused to marry her. Accordingly, she lodged a complaint. She further alleged the said physical relation was without her consent, which apparently contradictory statements. Furthermore, she is a matured lady having two children. No dissolution of marriage was declared till the date of complaint. When her earlier marriage was subsists, how a lady can marry to another person is a big question. There could not be any question of promise to marry given by the petitioner to her at that stage. She was matured and capable enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of her earlier marriage.

11. Under the above facts and circumstances, this Court does not find any sufficient materials against the present petitioner. No sufficient ingredients brought on record during the investigation to constitute offences under Section 417/376 of the IPC. From the entire materials, it appears she had given consent for cohabitation not only a single day but on several occasions on different dates in

different places. Undisputedly and undoubtedly she continued to have such relationship with the petitioner for a long period.

12. Judgment relied by the petitioner is squarely applicable in the present case in hand because the Hon'ble Supreme Court has held in Paragraph No. 9 as under:

“9. Similar issue was considered by this Court in Naim Ahamed v. State (NCT of Delhi) reported in 2023 SCC OnLine SC 89 on almost identical facts where the prosecutrix herself was already a married woman having three children. The complaint of alleged rape on false promise of marriage was made five years after they had started having relations. She even got pregnant from the loins of the accused. Therein she got divorce from her existing marriage much after the relations between the parties started. This Court found that there cannot be any stretch of imagination that the prosecutrix had given her consent for sexual relationship under misconception. The accused was not held to be guilty. Relevant paragraph 21 thereof is extracted below:

21. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at

least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as 'rape' by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when

some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 of Cr.P.C. had stated that she had filed the complaint as he refused to fulfill her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 of IPC.”

13. Accordingly, the Charge Sheet being Charge Sheet No. 15/2014 dated 31st January, 2014 in connection with Karimpur Police Station Case No. 186/2013 dated 22/11/2013 under Sections 417/376 of the Indian Penal Code and all subsequent proceedings thereto are hereby quashed.

14. Accordingly, **CRR 553 of 2017** is, thus, **allowed** without order as to costs. Consequently, **CRAN 4/2017 (Old CRAN 5459/2017)** is also, thus, disposed of.

15. Case Diary, if any, is to be returned to the learned Advocate for the State.

16. Let a copy of this judgment and order be sent to the learned Court below for information.

17. Interim order, if any, stands vacated.

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

19. 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)

P. Adak (P.A.)