

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2269 of 2022

Kavish Shabbir Ahmed

Vs.

The State of West Bengal & Anr.

For the Petitioners : Mr. Daanish Haque,
Mr. Abdul Zahid.

For the State : Ms. Fariya Hossain,
Mr. Anand Keshari.

For the Opposite Party No.2 : Moyukh Mukherjee.

Hearing concluded on : 28.11.2024

Judgment on : 12.12.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceedings in C.G.R Case No.2464 of 2020 pending before the Court of the learned Chief Judicial Magistrate at Alipore, South 24 Parganas, corresponding to Karaya Women Police Station Case No.07 of 2020 dated July 27, 2020 under Sections 376/417/313 & 506 of the Indian Penal Code, 1860.

2. The present case has been initiated on a complaint filed by the private opposite party defacto complainant wherein the allegations are as follows:-

“.....I got to know the above named Kavish Shabbir Ahmed at my work place in the year 2013, wherein from he became friends with me. In due course of time he proposed me in the year 2015 and promised me to marry him and after few days I agreed to his proposal. Later on he started insisting in having physical relationship and often offered me to go outstation and live with him. At first I denied and insisted him for letting our family members know about our relationship. After a month of proposal on my birthday on 26.05.2015 he took me to his friend’s flat at Picnic Garden and told me that he has planned a surprise party for me. I went along and found the flat vacant and insisted on leaving the place. But he started making hues and cries and persuaded me to have sexual intercourse and out of blind faith and love I consented to the same.

*The ploy and plays went along and the said Kavish Shabbir Ahmed on several occasions **procured my consent** by threat of breaking the relationship or making me face the wrath of the society by defaming my name. In the due course he has booked many hotel rooms and sometimes in my name also and I have the details of the same. I also got pregnant as per the report of August, 2016 and Kavish convinced me and gave me pills to get it aborted and finally the pregnancy was aborted on 26th August, 2016. These activities and emotional turmoil went along for few years and in the year 2018 I insisted in getting married or to break the relationship.*

The said Kavish Shabbir Ahmed came along with his mother Shaheda Zarin to my house and both family members agreed to the relationship and talks about engagement went along. Again the said Kavish Shabbir Ahmed started insisting having sexual intercourse. In such course the above named maternal uncles Feroze Alamir and Ayaz Alamir came into the picture and started defaming me. Later on Kavish Shabbir Ahmed started making excuses of getting married in the name of his father and mother claiming that they are threatening him to commit suicide if he gets married to me. But Kavish in the meantime insisted on keeping relationship with me by any means and get married to me and by making such false promises he procured my consent dishonestly to have sexual intercourse. The evil intention and veil of the above named offenders were not known to me.

*Later in the beginning of the year 2019 I tried to contact Kavish family members and clear all the clouds over any dispute and later came to know that his family members are seeing another girl to get their son married and are very greedy for dowry. I tried to contact Kavish but he denied the same. This emotional turmoil have taken a toll upon me and my family members. After few months Kavish again started of getting things right and upon good faith I again tried to reconcile the issue without having knowledge of the malafide intention of Kavish. In the month of November, 2018 when my family members were out of station he came to my house and convinced me to marry him by making promise sort out all the disputes or to do court marriage. Taking advantage to the situation of me alone in the home he insisted of having sex and **procured my consent.....”***

3. The State has placed case diary, wherein it appears that the statement of the defacto complainant has been recorded under Section 164 of the Cr.P.C. The pregnancy test at page 165 is also positive and medical report at page 165 shows that she is a person who has had the experience of sexual intercourse.
4. Considering the materials on record including the case diary and on hearing the parties the following is evident:-

- i) The defacto complainant in her written complaint dated 27.07.2020 has stated as follows:

“.....I got to know the above named Kavish Shabbir Ahmed at my work place in the year 2013, wherein from he became friends with me. In due course of time he proposed me in the year 2015 and promised me to marry him and after few days I agreed to his proposal.....”

- ii) It is further stated in the written complaint that she consented to the sexual intercourse **out of love and blind faith and the defacto complainant continued physical relationship with the accused till 2018.**
- iii) After a few months the matter was settled between the petitioner and the defacto complainant and they continued the relationship till November, 2018.
- iv) It is alleged that in the year 2019 she came to know that the petitioner's family was trying to get the petitioner married elsewhere being greedy for dowry.
- v) The petitioner filed the present case after she was allegedly insulted on 29.06.2020.

5. The Supreme Court in ***Prashant vs. State of NCT of Delhi, 2024 SCC OnLine SC 3375, decided on November 20, 2024***, held:-

“17. In the present case, the issue that had to be addressed by the High Court was whether, assuming all the allegations in the FIR are correct as they stand, an offence punishable under Sections 376 and 506 IPC were made out. A bare perusal of the FIR reveals that the appellant and the complainant first came in contact in the year 2017 and established a relationship thereafter. The parties met multiple times at various places during the years 2017 and 2019, including at parks and their respective houses. Although the complainant stated that the appellant had a forceful sexual relationship with her, neither did she stop meeting the appellant thereafter, nor did she file a criminal complaint during the said period.

18. It is inconceivable that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself. It is also revealed that, at one point, both parties had an intention to marry each other, though this plan ultimately did not materialize. The appellant and the complainant were in a consensual relationship. They are both educated adults. The complainant, after filing the FIR against the appellant, got married in the year 2020 to some other person. Similarly, the appellant was also married in the year 2019. Possibly the marriage of the appellant in the year 2019 has led the complainant to file the FIR against him as they were in a consensual relationship till then.

19. In our view, taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 376 (2)(n) IPC are absent. A review of

the FIR and the complainant's statement under Section 164 CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. **The relationship between the parties was cordial and also consensual in nature. A mere breakup of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution.**

22. Recently this Court in *XXXX v. State of Madhya Pradesh*, (2024) 3 SCC 496 held that when the relationship between the parties was purely consensual and when the complainant was aware of the consequences of her actions, the ingredients of the offence of rape were not made out. Similarly, in *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608 arising out of identical facts, this Court has enumerated the following:

“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.””

6. From the said materials, in the case diary, this Court finds that the de facto complainant was aware that the petitioner was not interested in marriage but still continued the relationship being a major aged about 25 years at the time of the incident. The allegation of being put in fear has not been prima facie substantiated. The relationship started in the year 2013. The complaint has been lodged in 2020.
7. The facts in the present case is similar to the facts (Para 17, 18 & 19) in ***Prashant vs. State of NCT of Delhi (Supra)***.
8. **Here in this case too, there is no allegation in the FIR/ Charge Sheet about any promise of marriage at the outset of their relationship in the year 2013. The relationship continued till 2018.**
9. There is no allegation of forcible sexual intercourse. The alleged assurance of marriage in this case was also not the only reason to enter into a physical relationship.
10. Thus as the relationship between the parties prima facie appears to be **consensual** the ingredients required to constitute the offences alleged are prima facie not made out against the accused/ petitioners herein.
11. Thus relying upon paragraph 17, 18, 19 and 22 of the Judgment in ***Prashant vs. State of NCT of Delhi (Supra)***, the present proceeding is liable to be quashed in respect of petitioner herein.
12. **Criminal Revision being CRR 2269 of 2022 is allowed.**

13. The proceedings in C.G.R Case No.2464 of 2020 pending before the Court of the learned Chief Judicial Magistrate at Alipore, South 24 Parganas, corresponding to Karaya Women Police Station Case No.07 of 2020 dated July 27, 2020 under Sections 376/417/313 & 506 of the Indian Penal Code, 1860, **is hereby quashed in respect of the petitioner namely Kavish Shabbir Ahmed.**
14. All connected application, if any, stands disposed of.
15. Interim order, if any, stands vacated.
16. Let a copy of the Judgment be sent to the learned trial Court for compliance.
17. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)