

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 3573 OF 2022

SRI ANINDYA DAS
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioner	: Mr. Krishnendu Bhattacharya, Ms. Somali Mukhopadhyay.
For the State	: Mrs. Anusuya Sinha, Ld. APP Mrs. Subhasree Patel.
For the Opposite Party No.2	: Mr. Dipayan Kundu.
Hearing concluded on	: 21.11.2024
Judgment on	: 03.12.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the criminal proceeding in GR case no.1232 of 2019 arising out of Uluberia PS case no.222 of 2019 dated 14.06.2019 under Sections 376 and 506 read with Section 34 of the Indian

Penal Code (IPC) and the charge sheet therein, presently pending before the learned Additional Chief Judicial Magistrate at Uluberia.

2. The petitioner's case is that he has been arraigned as accused person in the impugned proceeding being GR case no.1232 of 2019 arising out of Uluberia PS case no.222 of 2019 dated 14.06.2019 under Sections 376 and 506 read with Section 34 of the Indian Penal Code (IPC) presently pending before the learned Additional Chief Judicial Magistrate at Uluberia at the behest of the de facto complainant / opposite party no.2 herein.
3. **It is further stated that the de facto complainant filed an application under Section 156(3) of the Code of Criminal Procedure (Cr.P.C.) before the learned Additional Chief Judicial Magistrate at Uluberia on 28.05.2019 whereby alleging:-**

"That the de facto complainant had got acquainted with the petitioner two years ago when she attended in one of her friend's wedding. Phone numbers got exchanged between them. Consequently, both the complainant and the petitioner started talking to each other and they used to meet outside on or often. The petitioner took the de facto complainant to his aunt's house and had compelled her to undergo physical intercourse with him and said that the petitioner recorded intimate pictures and videos. The petitioner started threatening the de facto complainant that he would propagate these pictures and videos online if the de facto complainant did not participate in further physical relation with him. The petitioner also demanded money from the de facto complainant and he also used to physically assault her.

*On 21.04.2019, the petitioner threatened to kill the de facto complainant. On 22.04.2019, the petitioner tried to molest the complainant near the railway track wherein the **complainant** managed to escape with the help of the local people. A GDE Entry was lodged before the GRP being **GDE No.653 of 2019** dated 22.04.2019 and the petitioner was arrested.”*

4. The petitioner's further case is that the de facto complainant had earlier accentuated and scolded the petitioner and coerced him to enter into a relation by reasons of which the **petitioner** was compelled to lodge a GD before the Uluberia PS and the same was recorded vide **GDE No.102 of 2019**. Subsequently, being harassed by the said complainant, the petitioner had written a letter dated 15.03.2019 addressed to the father of the de facto complainant wherein the petitioner had brought to his notice in detail about the bizarrely conduct and infatuation and persuasive nature of the complainant towards the petitioner and he expressed his apprehension that he might be implicated in false criminal cases due to the unnatural obsessive conduct of the de facto complainant.
5. The learned counsel for the State has placed the case diary and has submitted that though from the petition of complaint, it can be seen that though there was no promise to marry prior to being in a physical relationship but there is sufficient material to show that the petitioner herein compelled the de facto complainant to have a physical relationship against her wish. It has been further alleged by the de facto complainant that on the

first occasion she was compelled to have forcible physical relationship with him and on the subsequent occasions she was threatened by the petitioner that her physical act with him had been recorded by him and he is going to circulate the same and being put in fear of such circulation of any video, the de facto complainant allegedly continued to have physical relationship with the petitioner.

6. **Whatsapp chats from the petitioner's mobile show that the de facto complainant and the petitioner were prima facie in love.**
7. Written notes of argument has been filed by the petitioner along with judgment relied upon.
8. A copy of the statement of the de facto complainant recorded under Section 164 of Cr.P.C. has been placed by the State. From the said statement it appears that she came in touch with the petitioner in **2017**. The present case has been registered in the year **2019**. From the case diary it appears that the phone of the petitioner was seized by the police and the State has fairly submitted that no such video as alleged by the de facto complainant was found by the investigating agency.
9. In her statement recorded under Section 164 of Cr.P.C., the de facto complainant had categorically stated that **she entered into the relationship with the petitioner herein as she trusted**

him and visited several places with him even though she somehow understood that he wanted physical relationship rather than marriage.

10. In spite of the said fact the de facto complainant continued going with the petitioner to various places including the petitioner's aunt's house, where allegedly the petitioner tied her hands and raped her.
11. There are several other connected allegations made along with the said allegation. It is also stated by her that she had to take I-pill three times. In spite of the said alleged incidents, the de facto complainant continued to go along with the petitioner and have physical relationship allegedly out of fear that some obscene video relating to her physical act would be circulated **but the said allegation of the de facto complainant has not been substantiated prima facie through the investigation.**
12. 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.”

13. 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.
14. The facts in the present case is similar to the facts (Para 17, 18 & 19) in ***Prashant vs. State of NCT of Delhi (Supra)***.
15. **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 2017. The relationship continued till 2019.**
16. The allegation of the forceful sexual inter course on the first occasion and thereafter being threatened into subsequent incidents of sexual relationship out of fear of video of their sexual act being circulated, has not been substantiated even though the mobile phone of the accused/petitioner has been seized.

17. A GDE prior in date to the complaint filed by the victim girl has been filed by the petitioner herein allegedly being coerced to enter into a physical relation by the victim girl.
18. The petitioner states that he informed the victim girl's father regarding her conduct.
19. Thus 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.
20. **The content of the WhatsApp Chat between the parties in this case also does not show anything to support the allegation of the complaint about forcible rape committed by the petitioner herein.**
21. 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.
22. **Criminal Revision being CRR 3573 of 2022 is allowed.**
23. The proceedings being GR case no.1232 of 2019 arising out of Uluberia PS case no.222 of 2019 dated 14.06.2019 under Sections 376 and 506 read with Section 34 of the Indian Penal Code (IPC) and the charge sheet therein, presently pending before the learned Additional Chief Judicial Magistrate at

Uluberia, **is hereby quashed in respect of the petitioner herein namely, Anindya Das.**

- 24.** All connected application, if any, stands disposed of.
- 25.** Interim order, if any, stands vacated.
- 26.** Let a copy of the Judgment be sent to the learned trial Court for compliance.
- 27.** 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.]