

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CRIMINAL REVISIONAL JURISDICTION)
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 198 of 2023

**Sri Biswadeep Sarkar
Vs.
The State of West Bengal & Anr.**

For the petitioners : Mr. Tapan Kumar Dey
Ms. Susmita Mondal
Mr. Deborshi Dhar

For the State : Mr. Ujjal Luksom,

Heard on : 12.08.2024

Judgment on : 19.08.2024

Ajoy Kumar Mukherjee, J.

1. This is an Application wherein petitioner prayed for quashing of the FIR being Matigara Police Station Case no 786 of 2022 dated 15.07.2022 under section 417,376 and 506 of the Indian Penal Code.

2. A complain was lodged by the *de facto* complainant/opposite party no. 2 alleging that the petitioner during their college life made physical relationship with her by giving false promise of marriage and also brutally molested her on several occasions and exposed her nude photos in order to

defame her. He also attempted to kill her and also tried to destroy evidences by deleting message and by breaking her device. Thereafter petitioner herein denied to marry her. It is further alleged that subsequently after breaking their relationship with the petitioner another person namely Diptasis Sarkar allured her and thereby he also brutally molested her by giving false promise of marriage and thereafter refused to marry her and fled away in Cooch Behar. As a result the instant complaint has been lodged against both the accused persons. After completion of investigation police submitted charge sheet against both the accused persons namely the present petitioner and said Diptasis Sarkar on 25.07.2023 under section 417,376 and 506 IPC.

3. Mr Dey learned counsel appearing on behalf of the petitioner argued that the *de facto* complainant/opposite party no. 2 herself committed wrong being engaged with Diptasis Sarkar and now she cannot take advantage of her own wrong. Therefore first part of FIR involving present petitioner is liable to be quashed. He further submits that relationship between the petitioner and opposite party no. 2 was of a consensual in nature. It is settled law that consensual sexual relationship could not be said to have made under misconception of fact to attract section 90 of IPC and as such it does not amount to rape under section 375 of the Indian Penal Code. He further submits that mere breach of promise to marry cannot be said to be a false promise. To establish a false promise the maker of the promise should have had no intention of upholding his word at the time of giving his promise. In other word to establish whether the consent is vitiated by a misconception of fact arising out of a promise to marry, two propositions must be established i.e. the promise to marry must have a false promise

given in bad faith and with no intention to being adhered to at the time, it was given and secondly such false promise itself must be immediate relevance or bear a direct nexus to the victim's decision to engage in the sexual act.

4. He further argued in the present context from the contents of FIR it is clear that there was subsequent refusal on the part of the petitioner to marry the opposite party no. 2 which gives rise to the registration of the FIR and it suggest that there was no initial deception. However the police authority initiated and continued the illegal proceeding against the present petitioner and ultimately filed charge sheet against the petitioner which is not tenable in the eye of law. He further submits that the incident alleged to have taken place in the year 2018 but the complain has been lodged in the year 2022, without explaining delay and as such FIR itself is bad in law and liable to be set aside. Petitioner in support of his contention has relied upon Supreme Court judgment in ***Ansaar Mohammad Vs. The State of Rajasthan and another*** reported in **2022 LiveLaw (SC) 599** and ***Sonu @ Subhas Kumar Vs. State of Uttar Pradesh and another***.

5. Mr. Ujjal Luksom learned counsel appearing on behalf of the State raised strong objection and he placed the case diary and pointed out the relevant materials therein which includes victim's statement recorded under section 164 of the Code, statement of other witnesses recorded under section 161 and also the medical report collected during investigation. He therefore argued that sufficient materials have been collected by investigating officer during investigation and he further submits that there

is every likelihood that the accused person would be convicted after conclusion of trial.

6. I have considered submissions made by the parties and perused the material in the case diary. In her statement before magistrate, victim had categorically stated her case about misconception of fact which would be a subject matter of trial to decide as to whether the allegation levelled in the FIR and materials available during investigation attracts section 90 read with 375 of the IPC or not. The victim also stated the name of the assailants before the medical officer.

7. Investigation has already been culminated into a charge sheet and at this stage it is not permissible for the High Court to judge the issue of free consent, the acceptability of which is essentially a matter for trial. Needless to say that while exercising jurisdiction under section 482 of the Code, the High court is not supposed to take the role of a Trial judge. At this stage the High court has only to see, as to whether a *prima facie* case exists to proceed for trial against the accused and for that limited purpose the High court can evaluate material and documents on record but it cannot appreciate evidence at this stage in order to come to a conclusion that the materials collected during investigation are sufficient or not for convicting the accused. When the factual position in the present case is considered in the light of materials in the complain as well as case diary, the inevitable conclusion is that there are sufficient grounds to proceed for trial against the present petitioner. In her statement before Magistrate she has made specific allegation in regard to the misconception of fact and thereby committing rape by the petitioner during continuance of their relationship

and as such the High court ought not to scrutinize the material in the manner in which the Trial Court would do in the course of criminal trial after evidence is adduced. Infact the High court is entitled to quash a proceeding if it comes to a conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the end of justice required that the proceeding ought to be quashed.

8. Though Mr. Dey during argument has pointed out certain contradiction and/or inconsistencies in the statement of the victim and the statement of the witnesses but that are essentially an issue relating to appreciation of evidence and the same can be gone into by the Session Judge during trial when the entire evidence would be adduced by the parties.

9. Having regard to the material placed before me and also keeping in mind the guideline laid down by the Apex Court in ***State of Haryana and others Vs. Bhajanlal and others*** reported in **1992 Supp. (1) SCC 335**, I do not find that this is a fit case where the criminal proceeding against the present petitioner is liable to be quashed.

10. In view of aforesaid discussion **CRR 198 of 2023** is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)