

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2630 of 2023

**Victor Bulbul
Vs.
The State of West Bengal & anr.**

For the Petitioners	:	Mr. Sabir Ahmed Mr. Shraman Sarkar Mr. Tasnim Ahmed Mr. Dhiman Banerjee Mr. Quazi Ezaz Ahmed
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For Opposite Party no. 2	:	Mr. Uttam Kumar Shaw
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For the State	:	Mr. Debasish Roy, Ld. P.P Mr. Imran Ali Ms. Debjani Sahu
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Heard on	:	20.08.2025
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Judgment on	:	16.12.2025
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Dr. Ajoy Kumar Mukherjee, J.

1. The petitioner herein has prayed for quashing of the proceeding being Bidhannagar Women Police Station case no. 12 dated 26.05.2023 under section 376/354C/506/509 of the Indian Penal Code (in short IPC).

2. The allegation labelled in the FIR *interalia* is that in the Year, 2016 in course of searching some employment, complainant came in contact with the Revisionist. She was offered for job of modelling and when she gave consent, some photographs and video were taken which appeared to be bold. The Revisionist kept those video and bold Photographs in his custody and started blackmailing her. The opposite party no.2 was forced to have physical intimacy with the petitioner and some other persons out of which petitioner made money. She requested for relieving her from his clutch by returning those bold photographs but failed. In 2021 she came out form his area and took one flat but he anyhow came to know about this place too. She got married in December, 2021 but bold photographs and videos were shown to husband and in-laws by the petitioner and for which her matrimonial life got spoiled. Still in facebook and social media she is being humiliated. Hence she prayed for Justice.

3. Petitioner's contention is that the petitioner was arrested in connection with the aforesaid case on 29.05.2023. Thereafter on 04.06.2023, the aforesaid *de facto* complainant/opposite party herein filed a withdrawal letter of the complaint supported by notarised affidavit dated 03.06.2023 before officer in charge Bidhannagar women police station. The court concerned was pleased to enlarge the petitioner on bail on the basis of no objection petition filed by opposite party no. 2. Thereafter on 27.06.2023, the investigating officer made a prayer for recording the statement of opposite party no. 2 once again under section 164 of the Code, but such prayer was rejected. The Investigating Officer on 24.07.2023 submitted a

charge sheet in connection with the present case under section 376/354C/506/509 of IPC against the petitioner.

4. Being aggrieved by the impugned proceeding Mr. Ahmed learned counsel appearing for the petitioner submits that the opposite party has a tendency to lodge false complaint against persons to extort money from them. The opposite party no. 2 previously filed a case against one Sohail Ashik with a similar allegation being Haroa Police Station Case no. 467 of 2020 dated 31.12.2020 under section 376/417/506 of IPC which was subsequently quashed by this High Court in CRR no. 1120 of 2021. In the said case also the allegation of the father of the victim is that her daughter had relationship with the accused of the said case for a long period and they wanted to get themselves married and they also visited many places as if they are husband and wife. In the said case also the father of the victim gave a statement before concerned Police Station on 29.05.2023 in a similar nature. Not only that the *de facto* complainant herein had also lodged another case against one Rabiul Haque with almost self-same allegations before Rajarhat Police Station, being case no. 350 of 2024 dated 10.09.2024 under section 376/417/506 of IPC, alleging that the self-same victim /complaint herein was blackmailed by the said accused with some obscene picture of the victim and it was further alleged that the accused of the said case took her to one hotel on 29.03.2023.

5. Mr. Ahmed submits that cumulative appreciation of the prosecution story undoubtedly indicate concern on the part of the complainant/opposite party for performing alleged sexual act with the accused petitioner. The fact and circumstances of the case denotes an active will in the mind of a person

to permit the doing of an act complained of. The term “Consent” for the purpose of section 375 of the IPC requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent.

6. He further submits that admittedly the *de facto* complainant lodged the complaint after six months of alleged incident. The complainant had taken no endeavour to explain the reasons of such inordinate delay. The fact of delay in lodging of complaint together with the serious contradictions made the complaint an exaggerated version of any alleged incident. The promise to marry is a concocted story labelled against the petitioner without any evidence. Moreover the complainant submitted her marriage certificate which also annexed licence agreement dated 29.01.2021. The entire allegation of promise to marry remains unsubstantiated and the chain of events and/or admitted documents clearly reveals that the allegation under section 376 and 354C was an afterthought and has been advanced with ulterior motive.

7. Mr. Ahmad further argued that there appears to be no allegation to satisfy the essential ingredients for which the accused/petitioner could be asked to face the ordeal of trial for commission of the alleged offences punishable under section 506 or 509 of the IPC. Infact before expiry of the licence period i.e. 30.11.2021, there was no whisper of any allegation from anywhere. The allegations were made after the COVID period, when the petitioner asked the opposite party to vacate the licenced premises.

8. Mr. Ahmed further argued in this context that it would be evident from the alleged dates of incident that the present case against the petitioner was lodged on 26.05.2023 alleging that the offence committed in between the period of 2016 to 2021 but it is evident that during the same period she went to hotel with one Sohail Ashik on 27.07.2020 and the other complaint lodged against another accused Rabiul Haque on 10.09.2024, which discloses that said accused allegedly took her to a hotel on 29.03.2023, which was two months prior to the lodging the instant complaint against the petitioner.

9. Therefore Mr. Ahmed submits that it is clear that she had kept amorous relationships with many people during the period she mentioned in the three separate complaints and on perusal of all these documents, it is clear that the *de facto* complainant while lodging the present complaint against the present petitioner, she was in a relationship with one Sohail Ashia and one Rabiul Haque at the same time. Therefore it is evident that the victim has been misusing the court of law to squeeze money from the petitioner and the others and subsequently filed withdrawal and also no objection letter and the petitioner is the victim along with said Sohail Ashique whose case has been quashed and Rabiul Haque whose case is pending for adjudication.

10. In support of his aforesaid contentions, Mr. Ahmed relied upon following judgments :

a) ***Babulal and another Vs. State of Rajasthan*** reported in **2001**

Cri.L.J 2282

b) ***Apren Joseph Vs. State of Kerala***, reported in **(1973) 3 SCC 114**

- c) ***Uday Vs. State of Karnataka*** reported in (2003) 4 SCC 46
- d) ***Deelip Singh Vs. State of Bihar*** reported in (2005) 1 SCC 88
- e) ***Deepak Gulati Vs. State of Haryana*** reported in (2013) 7 SCC 675
- f) ***Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others*** reported in (2019) 18 SCC 191
- g) ***Maheshwar Tigga Vs. State of Jharkhand*** reported in (2020) 10 SCC 108
- h) ***Naim Ahmed Vs. State (NCT of Delhi)***, reported in (2023) 15 SCC 385
- i) ***Md. Sahajan Molla @ Sajahan Molla Vs. The State of West Bengal***, CRA 9 of 2008.

11. Learned counsels appearing on behalf of the *de facto* complainant and the State submit that the principal accused is the petitioner against whom the allegation is that after taking bold picture, videography, he blackmailed her and had raped her on several occasions and though the victim is desirous to come out from the clutch of the petitioner but failed. The petitioner/accused was having his office in the name of Creative Eye Production House and photo shoot was done with the assurance that the photographs and the videographs would be beneficial for the modelling purpose. The petitioner/accused has taken total control of her WhatsApp through WhatsApp Web. Accused threatened her and took the advantage of WhatsApp chat and also took control of all her movements. She was practically in his captivity for a considerable period of time. Subsequently on her request petitioner allowed her to stay in a flat from January 2021 till the

end of November 2021. The petitioner/accused promised to return those bold photographs and videographs but it was never returned.

12. In the context of the allegations levelled against Sk. Sohail Asique learned counsel for the opposite party no. 2. Mr. Shaw submits that she was taken to a shop of Sk. Sohail Asique by the petitioner and in course of time he took her to a hotel accompanied by a girlfriend on the plea of a party and booked a separate room for which she did not suspect anything but accused Sohail Asique had raped her there taking advantage of her loneliness and then promised her for marriage. When he failed to his commitment, she filed the case against Sk. Sohail Asique.

13. However in order to get rid of the present petitioner, she got married with one Mehboob Alam on 21.12.2021 but the present petitioner having come to know about her marriage as her WhatsApp already been hacked by him with the help of WhatsApp web, he contacted with her husband and spoiled her marriage by showing intimate bold photographs and videographs to her husband and father in law and for which the said marriage was dissolved in the year 2022.

14. Mr. Shaw on behalf of *de facto* complainant further submitted that while the petitioner was in custody, he promised for returning of all the bold photographs and videographs and by misrepresentation of actual state of affair, her signature was obtained and placed before the Hon'ble Court to facilitate his bail order. The contents of affidavit clearly reflect that she was in no way had the power to dictate the affidavit in the way, it is placed before the court. Moreover the seizure list dated 26.05.2003 clearly suggest that some bold photographs were seized from google account of the

petitioner in presence of wife of the petitioner and lady constable. The petitioner also confessed regarding his possession of bold photo in his Google Account and at his instance the investigating officer got access to his account, wherefrom these photographs were recovered. Therefore section 27 of the Evidence Act comes into play for the purpose of admissibility of evidence and those materials kept in his google account not yet been deleted.

15. Mr. Shaw further argued that though it is alleged that she is in the habit of filing false cases against several accused persons to squeeze money on the self-same ground of rape but regard may be had to the fact that she filed a case against Rabiul Haque too. He was resident of the same building on 4th floor while she resided in the first floor. Petitioner herein had contact with Rabiul Haque with whom he shared all the bold photographs and videographs. He also hacked her mobile phone in the similar manner and used the same against her taking advantage of the same. Rabiul Haque asked her to meet for rendering assistance in the matter of deleting photographs and videographs, but instead of helping her in the crucial time, he ravished her too and therefore considering the gravity of the offence she filed the case against Rabiul Haque also.

16. She never received a single penny from the person against whom she lodged the allegations. She only wanted to get back or at least to delete those bold photograph videographs, voice recording from the google account of petitioner. The charge sheet filed by the prosecution against the petitioner is having clarity regarding those bold photographs and videographs which is still lying in possession and control of petitioners. Therefore prima facie case

is existing against the petitioner, who has not only committed rape taking advantage of the dominant attitude but also took several bold photographs and videographs while he circulated to several person through WhatsApp and on different modes. His further contention is factual aspect are twisted and distorted without having any clarity over the actual incident. No explanation is given as to under what authority he kept those bold photographs and videographs and for what purpose.

17. While explaining the delay learned counsel for the complainant submits that in order to save her life she entered into a marriage but when she found that her marriage has spoiled at the instance of the petitioner, she has been compelled to file the case against him to get justice against the person who is in possession of bold photographs and videographs. There appears to be no discrepancy or omission or falsity in FIR and it can be relied upon as there was seizure of bold photographs from google account of petitioner. Conduct of the petitioner has been revealed from the way of storing and till retaining bold photographs of the victim and thus *mens rea* is very much evident from the facts and circumstances of the case.

18. Mr. Shaw also relied upon the judgment of State of ***Uttar Pradesh Vs. Manoj Kumar Pandey*** reported ***(2009) 1 SCC 72*** and contended that the consistent view of the court is that apart from the normal rule regarding the duty of the prosecution to explain the delay in lodging FIR and consideration of the prejudice caused because of such delay in lodging FIR, does not per se apply to cases of rape.

19. Mr. Imran Ali, counsel for State also submits that the trial has already commenced in the instant proceeding with the framing of charge on

19.09.2024. He further submits that cyber forensic and digital evidence examiner submitted his report on 31.07.2025, where while answering in respect of query, he submitted that during analysis of the extracted data of exhibits some image files and some of the video files have been found which are visually obscene in nature. Accordingly learned counsel for both opposite party no. 2 and State submits that there are sufficient material against the petitioner to go for trial in the instant case and this is not a fit case where the proceeding can be quashed invoking court's jurisdiction under section 482 of Cr.P.C.

20. From the aforesaid contents of FIR, it is clear that the averments made in the complaint has disclosed the commission of cognizable offence. After completion of investigation, police has submitted final report in the form of charge sheet where they have categorically stated that during investigation, on 29.05.2023 police conducted raid and arrested the accused petitioner who allegedly on interrogation confessed his guilt and thereby his statement was recorded under section 161 Cr.P.C. and his mobile phone and sim card were also seized under proper seizure list. Charge sheet further discloses that during police custody, leading to the statement of the petitioner they again conducted raid at the house of the petitioner at Rajarhat, wherefrom one laptop of his own, one chip and one story telling book written by the petitioner having illustrated photo of the complainant found on the cover page and some bold picture of the complainant printed in the book were recovered. After searching the mobile phone with police assistance from Bidhan Nagore Cyber Crime Police Station some screen shot/print out were taken from the google account of the petitioner which

were seized under the proper seizure list, which identifies and expressing the complainant and the petitioners intimate moments. The seized 'alamat' electronic gadget were sent for expert opinion and after filing the charge sheet police also collected forensic examination report which discloses that during analysis of various exhibits, some video files have been found which are visually obscene in nature and they also stated that it may be relevant to the case . Though at the same time the expert also has expressed opinion that the picture and video is found to be not visually similar to the face of the specimen photograph but that does not lead to any final conclusion.

21. Victim's Statement also recorded under section 161 & 164 of the Code in support of the prosecution case. It also appears that the victim while brought for medical examination stated before the doctor that she was in a relation with the accused in 2016 while he convinced her for modelling and clicked bold pictures and videos and started to blackmailing her and also sexually assaulted her. She has made specific statements before the police that the petitioner after taking bold pictures/videography blakmailed her and had also committed forceful sexual intercourse with her on several occasions. She also stated that she was desirous to come out from the clutch of the petitioner but the petitioner has taken total control through WhatsApp web and she also alleged that she was in his captivity for a considerable period of time and thereafter on her request petitioner gave her licence to reside a flat from January 2021. Complainant specifically alleged that the petitioner promised to return those photograph and videograph but he still retained those photograph and videograph in his custody without any authority. She has also stated to police that in order to get rid of the

petitioner, she got married with one Mehboob Alam on 21.12.2021 but the petitioner coming to know regarding her marriage has hacked his WhatsApp with the help of WhatsApp Web and he made contact with her husband and spoiled her marriage by showing intimate bold photograph and videogarph to her husband and father in law and thereby her marriage got dissolved. After dissolving her marriage she had initiated the instant proceeding and thereby explained the reason for delay in lodging the instant FIR.

22. It is true that petitioner filed an affidavit before the trial court during bail hearing of the petitioner where she has stated that she has no objection if the bail in favour of petitioner is granted as she has amicably settled the dispute with the petitioner. Learned counsel for the defacto complainants in the context of filing such affidavit by the petitioner, contended that the petitioner promised for returning of all the bold photographs and videographs and by mis representing the actual state of affair her signature was obtained and was placed before the court below to facilitate his bail in the instant case. In this context he further argued that the contents of affidavit clearly reflects that she is in no way have the power to dictate the affidavit in the way it was place before the court.

23. It is true that the case against another person namely Sk. Sohel Ashik was quashed by this High Court but it is submitted on behalf of the complainant that she was not represented at the time of hearing. However, quashing of a particular proceeding is no ground for quashing the instant proceeding because each case has it's own merits and demerits. The specific case of the prosecution as appearing from the investigation is that the petitioner is still having the possession of bold photographs and videographs

of the complainants which prima facie discloses *mens rea* of the petitioner. The allegation is that the petitioner has not only committed forceful sexual intercourse with the petitioner taking advantage of the dominant attitude but he also captured several photo and video which he also shared with different persons through different modes. The petitioner need to explain the circumstances during trial which the complainant has put forth in her complaint.

24. From the aforesaid facts and circumstances of the case it cannot be said that the FIR or the materials collected during investigation does not disclose the commission of any cognizable offence. Now whether the allegations made in the complaint are otherwise correct or not has to be decided on the basis of the evidence to be led during the course of trial. Simply because on earlier occasion petitioner filed an affidavit sworn before a notary public that she has no objection in granting bail in favour of the petitioner as she has amicably settled the dispute with him, does not by itself cloth the court to come to a conclusion that prosecution will not be able to prove their case. After all the offence alleged in the instant proceeding is an offence against the State and the offence is also not a compoundable offence and therefore there appears to be hardly any scope to say that the continuance of the instant criminal proceeding in any manner will be an abuse of the process of the court.

25. It is not a case where it could be said that even if the allegations made in the complaint and the materials collected during investigation if accepted in entirety, no case is made out. The High Court at this stage is not supposed to analyse the case of the complainant in the light of all

probabilities, in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceeding are to be quashed. It would also be erroneous to assess the materials before it and to conclude that the complaint should not be proceeded with.

26. The defacto complainant has specifically alleged that the petitioner took her in his captivity and committed forceful sexual intercourse with her. Therefore the allegation made in the complainant discloses a dishonest conduct on the part of the accused, which if supported by the materials would disclose commission of a cognizable offence.

27. It is not disputed that the petitioner was already married when he came in contact with the complainant and therefore the parties were required to go for trial, if it is to be established that at the very inception of the making of promise the accused really had the intention of marrying her and the promise to marry as alleged by the complainant was not a mere hoax. Petitioner herein specifically alleged that she came to the decision to have a sexual affair only after being convinced that the petitioner would marry her, which the prosecution should get an opportunity to prove, since it is settled proposition that the consent given pursuant to a false representation that the accused intends to marry, could be regarded as a consent given under mis conception of fact. Therefore it depends on case to case as to what is the evidence led in the matter to come to a conclusion as to whether the consent was obtained willingly or consent has been obtained by holding a false promise, which the accused never intended to fulfil.

28. The instant case as has been articulated is not a case where it could be said that even if the allegations are accepted in its entirety the complaint could not be proceeded with. The question whether the complainant was infact forced to make sexual affair with the petitioner and thereby she was harassed and was taken in his captivity are true or not is a matter of trial but at this stage it cannot be said that no case has been made out. This is not the stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise it is also not the appropriate stage for determining how weighty the defences raised on behalf of the petitioner/accused are.

29. Even if it is true that the accused is successful in showing some suspicious or doubtful circumstances but for that reason it would not be proper to quash the proceeding specially when the prosecution has made out prima facie case from the complaint as well as from the materials collected during investigation. The petitioner/accused would get the opportunity to succeed by establishing his defence by producing evidence in accordance with law. Therefore, when the prosecution/complainant has specifically levelled imputations in the complaint bringing out the ingredients of the offence levelled in the charge sheet and the investigating agency have also placed material before the court prima facie in support of the truthfulness of allegation, I am of the view that parties should go for trial. Time and again it has been emphasised by the Apex Court that the jurisdiction under section 482 Cr.P.C. does not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused.

30. During the course of hearing, learned counsel for the petitioner strenuously laid emphasis on his submissions that when the licence is withdrawn and the complainant was asked to vacate, she has instituted the instant proceeding with *malafide* intention with the help of a complaint which is full of contradictions. Now whether there are contradictions and or inconsistencies in the statement of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the court below during trial, when the entire evidence would be adduced by the parties. But that stage has not come as yet. Moreover, it is settled law in view of ***Renu Kumari Vs. Sanjay Kumar and Ors.*** reported in **(2008) 12 SCC 346** that when an information is lodged at the police station and an offence is registered then the *malafides* of the informant would be secondary importance. It is materials collected during the investigation and evidence produced in the court, which decides the fate of the accused person. The allegations of *malafide* against the complainants are of no consequence and cannot by themselves be the basis for quashing the proceeding.

31. It is well settled that at the stage, when the High Court considers the petition for quashing criminal proceeding under section 482 of the Cr.P.C., the allegations in the FIR must be read as they stand and it is only if on the face of the allegations and from the materials collected during investigation, that no cognizable offence has been made out, the court would be justified in exercising its inherent jurisdiction. At this stage High court is not supposed to go into the merits and demerits of the allegations simply because the petitioner has alleged *malus animus* against the complainant.

Such a course may result miscarriage of justice and may encourage such accused of committing crimes to repeat the same.

32. Therefore, the allegations made in the complaint, in my opinion constitute cognizable offence, justifying the continuance of the proceeding and does not fall under any of the categories laid down for invoking jurisdiction under section 482 of Cr.P.C in the case of ***State of Haryana Vs. Bhajan Lal*** reported in **(1992) Supp (1) SCC 335**. Furthermore in any event malafide if any on the part of complainant is a pure question of facts which required to be established by evidence.

33. In the instant case I am informed that the charge has been framed and the trial has started. At this stage while exercising jurisdiction under section 482, it is not permissible for this court to act as if it is a trial court. When the charge is framed this court is only required to be prima facie satisfied about the existence of sufficient ground for proceeding against the accused and for that purpose this High Court certainly can evaluate materials and documents on record but it cannot appreciate evidence to conclude whether the materials produce are sufficient or not for convicting the accused because the materials relied by the prosecution are required to be proved by prosecution or disproved by the petitioner and no inference needs to be drawn on the basis of those material to conclude that the complaint is not acceptable and at this stage, Court is also not expected to act on annexures to the petition under section 482 of the Cr.P.C, which cannot be termed as evidence without being tested and proved.

34. Therefore, the inevitable conclusion is that the instant application is liable to be dismissed. In such view of the matter **CRR 2630 of 2023** stands dismissed.

35. However this dismissal order will not preclude the petitioner to agitate all the points referred herein, before the trial Court at any appropriate stage. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)