

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

**BEFORE:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 4269 of 2022

**Md. Noor Alam
Vs.
State of West Bengal**

For the Petitioner : Mr. Indrajit Bhattacharjee

For the State : Mr. R. Mukherjee, A.P.P,
Ms. Puspita Saha

Hearing Concluded on : 21st March, 2025

Judgment on : 02nd May, 2025

UDAY KUMAR, J.: –

1. This is an application under Sections 401 and 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) filed by the petitioner, Md. Noor Alam, seeking quashing of Rajabagan Police Station Case No. 106 of 2022 dated 16.06.2022 (ACGR Case No. 2572 of 2022) under Sections 417 and 376 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and charge-sheet No. 105 dated 18.07.2022, presently pending before the Court of the Learned District and Sessions Judge, South 24-Parganas at Alipore.
2. The case was initiated on the basis of a written complaint lodged by the de facto complainant/victim on 16th June, 2022 with the Officer-in-Charge of Rajabagan Police Station, alleging that the petitioner had established sexual relations with her on 13th January, 2020 at a guest

house in Khidirpur on the promise of marriage. She also alleged that this was not an isolated incident as the petitioner exploited the complainant physically over time under the same pretext, and eventually he refused to marry her.

3. After registering this case, the Officer-in-Charge of Rajabagan Police Station, endorsed it to S.I. Subhankar Das for investigation. Investigation culminated into a charge-sheet submitted under Sections 417/376 IPC against the petitioner.
4. The petitioner challenged the proceedings on the ground that the physical relationship between the parties was consensual in nature and was borne out of mutual affection and intimacy and that they were in a romantic relationship over a period of time and not induced by any fraudulent assurance of marriage. Moreover, the victim was fully aware of the nature and consequences of the relationship. Therefore, he prayed for quashing of this FIR, instituted with mala fide intent to falsely implicate him due to a failed romantic relationship, which amounts to an abuse of the process of law.
5. Mr. Indrajit Bhattacharjee, Learned Counsel for the petitioner submitted that:
 - a. There existed a consensual and intimate relationship between the parties spanning over several years.
 - b. There is no material to establish that the petitioner had no intention to marry the victim from the inception of the relationship.

6. The continuation of the proceedings amounts to a gross abuse of the process of law as no offence under Section 376 IPC is made out, in view of the recent decision of the Hon'ble Supreme Court in ***Prashant v. State of NCT of Delhi***, SLP (Crl.) No. 2793 of 2024. He relied on the paragraphs 19, 21–23, wherein the Hon'ble Supreme Court has observed that –

“Even if the prosecution's case is accepted at 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... The continuation of prosecution would amount to gross abuse of process of law.”

7. Therefore, he prayed for quashing of the criminal proceeding initiated on a false ground, by exercising its inherent powers enshrined under Section 482 Cr.P.C.
8. Per contra, Mr. R. Mukherjee, learned A.P.P, while opposing the quashing petition, submitted that:
- a. The allegations, as disclosed from the statements recorded under Sections 161 and 164 Cr.P.C., clearly indicate that the victim was subjected to sexual intercourse on multiple occasions under the threat of abandonment and repeated false promises of marriage.
 - b. The statement of the petitioner to the Investigating Officer reveals an admission of physical relations under the pretext of marriage and that he later refused to marry her.
 - c. The medical report, though lacking recent signs of force, confirms habitual sexual activity which supports the

longstanding physical relationship and suggests coercion or inducement by a false promise.

- d. These are all matters requiring trial and examination of evidence, and cannot be conclusively determined in revisional jurisdiction.

9. In support of his contention, reliance is also placed on the decisions of the Hon'ble Supreme Court in:

- a. *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608, wherein the Hon'ble Apex Court held that:

"A promise to marry which is not intended to be fulfilled and is made in bad faith, solely with a view to obtain consent for sexual intercourse, falls within the ambit of Section 375 IPC."

- b. *Uday v. State of Karnataka*, (2003) 4 SCC 46, and
- c. *Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675.

10. Therefore, he submitted that quashing of such serious offences at the pre-trial stage would not only defeat the victim's right to justice but also set a dangerous precedent encouraging impunity.

11. The central issue is

- i. whether the sexual relationship between the complainant and the petitioner constitutes rape under Section 376 IPC, specifically considering the element of consent obtained under a false promise of marriage.
- ii. The secondary issue is whether continuation of the impugned criminal proceedings amounts to an abuse of process of law warranting the High Court to quash it under Section 482 Cr.P.C.?

- 12.** The entire case hinges around the physical relationship of the petitioner with the victim girl on the promise of marriage and his later refusal to marry her. On her written complaint, an FIR was lodged and the impugned criminal proceedings were started against the petitioner. During investigation, the I.O. had recorded the statement of the victim girl under Section 161 of the Code of Criminal Procedure, wherein she explicitly alleged that petitioner Md. Noor Alam took her to a guest house in Khidirpur, on January 13, 2020, for his birthday celebration and forcefully had sexual relations with her despite her protests. She stated that he repeatedly threatened not to marry her if she refused. Eventually, he denied to marry her. She tried to involve his father, who initially said things would be alright. She claimed Noor had sexual intercourse with her multiple times.
- 13.** Police also recorded the statement of Meherun Nisa, the mother of a friend of the victim girl under Section 161 of Cr.P.C, who corroborated the statement of the victim girl.
- 14.** She stated in her statement recorded under Section 164 Cr.P.C that she had a friendship with the petitioner for four years. On June 14, 2022, he forcefully had sexual intercourse with her, resulting in pregnancy. She informed his father, who advised her to get an abortion and move on. When she requested marriage, they both refused.
- 15.** Moreso, the petitioner admitted in his statement recorded by the Investigating Officer on June 21, 2022 that -

 - a) He had a love affair with the victim and had assured her that he would marry her.

- b) Acknowledged having sexual intercourse with her multiple times at different locations based on the promise of marriage.
- c) Stated that the victim repeatedly asked him to marry her, but he did not want to.
- d) Admitted to using false ID proof to book hotel rooms for their encounters.

16. The report of the medical examination of the victim girl held on June 24, 2022, by Dr. Niladri Mondal, reveals that -

- a) Indicated that the victim is a deflorated woman with experience of sexual intercourse.
- b) Found no signs of sexual assault, foreign particles, injury, or violence, including in her genitals.
- c) Confirmed she was not suffering from any venereal disease.
- d) Vaginal swab and smear were preserved for FSL testing for sperm and STDs.
- e) Noted a loose introitus, suggesting possible regular sexual intercourse.

17. Based on the aforesaid materials, the Investigating Officer submitted a charge-sheet, as sufficient evidence was present to suggest the case was not one of consensual sexual intercourse but rather forceful intercourse under the false promise of marriage.

18. The petitioner prayed for quashing of the impugned criminal proceedings. Section 482 of the Code of Criminal Procedure (CrPC) grants High Courts inherent powers to secure the ends of justice and

prevent abuse of Court process. Section 482 Cr.P.C. provides that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

- 19.** This Section allows the High Court to make orders necessary to give effect to other Cr.P.C provisions or to prevent the misuse of the Court and quash a criminal proceeding which is clearly motivated by malice or ulterior motives and where the evidence is insufficient to support the charges.
- 20.** This power of the High Court for quashing of a proceeding is an extraordinary power in nature, which should be exercised sparingly and with circumspection. The Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 laid down categories where such powers may be invoked, inter alia, category number VIII has been referred to by the petitioner. It is as follows:

“(vii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive.”

- 21.** However, it is equally well-settled that when disputed questions of fact arise, the matter ought to be left to the Trial Court for adjudication.
- 22.** The role of consent is very important in the determination of an offence under Section 375 of the IPC. It defines “rape”, and its explanation makes it abundantly clear that “consent” must be an act of reason and

deliberation. Consent obtained under a misconception of fact, such as a false promise of marriage, may not constitute valid consent.

- 23.** The Hon'ble Supreme Court has consistently held that consent obtained under a false promise of marriage, if it is a deliberate deception and not intended to be honoured at the outset, would vitiate the "consent" under Section 375 IPC. In *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608, it was held that to establish whether the consent was vitiated by a misconception of fact, two conditions must be fulfilled: (i) the promise of marriage must have been false; (ii) the false promise must be of immediate relevance made in bad faith, and with no intention of being fulfilled at the time it was given or must bear a direct nexus to the woman's decision to engage in the sexual act.
- 24.** In *Uday v. State of Karnataka* (2003) 4 SCC 46, the Hon'ble Supreme Court held:

"If the accused had no intention of marrying the prosecutrix and the promise was a mere hoax, then the consent is vitiated consent."

- 25.** The victim has consistently asserted in her statement recorded under Sections 161 and 164 of Cr.P.C., that she consented under the promise of marriage, which was subsequently retracted, with the medical report confirming habitual sexual intercourse and corroborated by statements of independent witnesses. The victim has stated in her statement recorded under Section 164 Cr.P.C. that she was in a relationship with the petitioner for four years, that she became pregnant as a result of

forced intercourse, and that upon being approached, the petitioner's father advised her to abort and move on.

- 26.** Moreover, the petitioner in his own statement recorded under Section 161 Cr.P.C. admitted to having intercourse on the pretext of marriage, which he eventually refused.
- 27.** It is true that the medical report dated 24.06.2022, although not conclusively establishing sexual assault, confirms that the victim is habituated to sexual intercourse, which corroborates the long-standing physical relationship. However, it does not indicate any signs of recent sexual violence or injuries, but the absence of such findings does not *ipso facto* exonerate the petitioner from the charge under Section 376 IPC. Courts have consistently held that the absence of physical injuries or delayed reporting does not by itself discredit the version of the prosecutrix.
- 28.** In essence, while the medical report does not indicate physical signs of forceful sexual assault at the time of examination, the statements, particularly the petitioner's own admission of repeated sexual intercourse under the false promise of marriage, are being presented as evidence of "forceful intercourse" in the context of Section 376 of the Indian Penal Code, which can include intercourse obtained by deceitful means like a false promise of marriage. The law says that sex obtained through deception, like a false promise of marriage, can be considered rape. The discrepancy in the victim's statements regarding the nature of the initial incident at the guest house in 2020 and the later incident in

2022 might be a point of contention, which might be something to look at during the trial.

- 29.** Whether the petitioner harboured any intention of marriage from the inception, or whether the promise was made in bad faith, are questions of fact which can only be adjudicated on the basis of evidence during trial.
- 30.** Thus, the prima facie material on record indicates that the consent, if any, may have been vitiated by deception or coercion. The assertion that the relationship was entirely consensual and devoid of deception is not a matter for summary disposal in revisional jurisdiction.
- 31.** The factual complexity and disputed nature of the statements and evidence cannot be adjudicated at the stage of a petition under Sections 401/482 Cr.P.C. The appropriate course is to allow the matter to proceed to trial, where evidence will be led and cross-examined, and the truth ascertained.
- 32.** Having regard to the totality of circumstances and in view of the principles laid down by the Hon'ble Supreme Court, this Court finds no merit in the prayer for quashing the criminal proceeding at this stage. The allegations require judicial scrutiny by the Trial Court and cannot be pre-emptively nullified on the basis of contested facts.
- 33.** I am of the considered view that the allegations made in the complaint, coupled with the petitioner's own statement and other materials collected during investigation, disclose a prima facie case which warrants a full-fledged trial. The issue of whether the complainant gave valid and informed consent or was induced by a fraudulent promise is a

matter of evidence. At this juncture, the Court cannot weigh the probative value of evidence, nor substitute its view on disputed facts.

- 34.** In view of the aforesaid deliberations, I conclude that the continuation of the impugned criminal proceedings does not amount to an abuse of process of law. As such, it does not warrant interference under Section 482 Cr.P.C.
- 35.** The revisional application being C.R.R. No. 4269 of 2022 is hereby dismissed.
- 36.** Interim orders, if any, stand vacated.
- 37.** There shall be no order as to costs.
- 38.** Applications, if any, stand disposed of accordingly.
- 39.** Learned Trial Court shall proceed with the trial of this case and shall take an endeavour for its expeditious disposal.
- 40.** Let a copy of this judgment be sent to the Learned Court below for information and necessary action.
- 41.** Urgent Photostat certified copy of this judgment, if applied for, may be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)