

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

CRR 45 of 2025

Sri Mithu Adhikary

Vs.

The State of West Bengal & Anr.

For the petitioner

:Mr. Gobinda Saha, Adv.

Mr. Tamal Kr. Sen, Adv.

Ms. Priyanka Dey, Adv.

Mr. Milan Ch. Laskar, Adv.

For the opposite
party no. 2

:Mr. Arijit Ghosh, adv

Mr. Chattu Roy, Adv.

Ms. Angana Rakshit, Adv.

For the State

:Mr. Aditi Shankar Chakraborty, Ld. APP

Mr. Aniruddha Biswas, Adv.

Heard On :

:03.04.2025

Judgment On :

:11.04.2025

Bibhas Ranjan De, J. :

1. A criminal proceeding pursuant to the FIR Being Maynaguri Police Station Case no. 394 of 2024 dated 08.09.2024 under Sections 69/351(2) of the Bharatiya Nyaya Sanhita 2023 (for short BNS) has been assailed in the instant revision application with a prayer for quashment of the same by invoking inherent jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023 (for short BNSS).
2. The genesis of the criminal prosecution which is a written complaint lodged at the behest of the defacto complainant/opposite party no. 2 herein on 08.09.2024. The allegation contained in the complaint is to the effect that the petitioner by giving false assurance of marriage entered into an intimate physical relationship with the defacto complainant. Consequently, when the husband of the opposite party no. 2 came to know about such relationship, he denied to keep the defacto complainant any more. Thereafter, when the opposite party no. 2 went to the petitioner to approach him for marriage but he vehemently denied it. Moreover, allegedly the family members of the petitioner continuous threatened the opposite party no. 2 and her husband.

- 3.** In response to the aforesaid complaint a specific case was registered by the Maynaguri Police Station being no. 394 of 2024 under Sections 69/351(2) of the BNS. Upon investigation a specific charge sheet vide no. 424 of 2024 dated 06.11.2024 under Sections 69/351(2) of the BNS was submitted against the petitioner. Thereafter, on 08.01.2025 a supplementary charge sheet was also filed against the accused who was eventually arrested on 20.09.2024 but was granted bail by this Hon'ble Court vide an order dated 04.10.2024. Being aggrieved with such criminal prosecution the petitioner has filed the instant revision application.
- 4.** Ld. Counsel, Mr. Gobinda Saha appearing on behalf of the petitioner has meticulously contended that the averments in the FIR are absolutely frivolous in nature as both the parties to this application i.e. the defacto complainant/opposite party no. 2 as well as the petitioner are married, living in the same locality for a considerable period of time.
- 5.** It is further submitted that the petitioner and the opposite party no. 2 have known each other for a long time and gradually became close which resulted in a consensual physical relationship without any assurance of marriage on

the part of the petitioner. It is also contended by Mr. Saha that the opposite party no. 2 knew all along that the petitioner was married and thereby concludes his argument by stating that the allegations leveled against the petitioner are unconceivable and accordingly prays for quashment of the baseless criminal proceeding.

6. In support of his contention, Mr. Saha has tried to seek assistance of the following cases:

- ***Mahesh Damu Khare vs. The State of Maharashtra & Anr*** reported in **2024 SCC OnLine SC 347**
- ***Nitin B. Nikhare vs. The State of Maharashtra and Anr*** in **SLP (CrL.) No. 1889/2025**

7. Per contra, Ld. Counsel, Mr. Arijit Ghosh, appearing on behalf of the opposite party no. 2 has strongly opposed the contention adduced on the behalf of the petitioner and submits that there was an admitted relationship between the parties and the petitioner time and again on the pretext of false promise of marriage took advantage of the innocence of the opposite party no. 2 and had intercourse with her. But, when the husband of the opposite party no. 2 finally got to know about such relationship, the defacto complainant

approached the petitioner for marriage. But, the petitioner outrightly denied to marry the defacto complainant and his family members even threatened the opposite party no. 2 with dire consequences. The petitioner even threatened to circulate objectionable photographs of the defacto complainant if she proceeded any further with the issue. All such contentions, have been duly highlighted in the course of investigation wherein statement of as many as five (5) witnesses including the defacto complainant were recorded under Section 180 of the BNSS which prima facie is sufficient to make out a case against the petitioner.

8. Therefore, Mr. Ghosh has tried to make this Court understand that this case is not fit for exercise of inherent jurisdiction as such power can only be considered when the allegations in the FIR do not disclose commission of cognizable offence. In this regard Mr. Ghosh has referred to observation of the Hon'ble Apex Court in the case of ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and ors.*** reported in ***MANU/SC/0272/2021*** wherein it was held that the Courts while exercising inherent power are not required to consider the merit of the allegations. The Courts only need to be

satisfied with the fact that whether the FIR prima facie points towards the commission of cognizable offence.

9. Ld. Additional Public Prosecutor, Mr. Aditi Shankar Chakraborty appearing on behalf of the State has strongly argued that the charge sheet submitted in connection with this case would clearly suggest that there is sufficient incriminating material to prima facie make out a case against the petitioner. Mr. Chakraborty has further drawn the attention of this Court to the statement of the defacto complainant recorded under Section 164 of the Code of Criminal Procedure and submits that whether there was any pretext of false promise of marriage is a mixed question of law and fact which can only be decided during trial.

10. In support of his submission, Mr. Chakraborty has relied on case of ***Central Bureau of Investigation vs. Aryan Singh and others*** reported in ***(2023) 18 Supreme Court Cases 399***.

11. Having heard the Ld. Counsel appearing on behalf of the parties as well as after going through the material intricacies of the case at hand, the only determining factor that comes up for deliberation is whether a case can be made out against

an accused for having sexual intercourse by extending false promise of marriage when both parties are already married.

12. If I come to the case at hand, at the very outset both parties are *ad idem* of the fact that when the alleged physical relationship is stated to have been made, both the petitioner as well as the opposite party no. 2 were married and knew about their respective marital status as admittedly they were known to each other for a considerable period of time and lived in the same locality.

13. Since the respective marriages of the parties were still subsisting there could be no reasonable apprehension to belief that physical relationship was made on the pretext of fake promise of marriage. Admittedly, the opposite party no. 2 has stated that she was involved in an intimate physical relationship as they gradually became close. This fact would be crystally clear if the deposition of the witnesses including the mother in-law of the opposite party no. 2 are considered wherein all of them have ratified the fact that the parties developed an intimate relation for almost two years. All these material evidence has been duly collected by police during investigation. Therefore, a careful perusal of the case diary

would point towards the fact that the relationship was consensual.

14. In view of the facts as emerging between the parties, it is clear that the petitioner as well as the opposite party no. 2 were already married when they developed a relationship so it is hard to believe that at the very inception of the relation the opposite party no. 2 on the assurance of false promise of marriage, gave her consent to have physical intimacy. As the defacto complainant is a mature lady, she was very well knowing the pros and cons of the such relationship. After a relationship for a considerably long period of time, when the husband of the opposite party no. 2 came to know and refused to keep the defacto complainant with him anymore, then only the main problem escalated. Therefore, the relationship that the parties to this revision application shared would be considered as 'extra marital relationship'. Therefore, the consent of the defacto complainant based on misconception of fact i.e. promise of marriage stands vitiated.

15. In the above conspectus it would be pertinent to mention that the Courts while dealing with issues of similar nomenclature have consistently held that both parties are

married and aware of each other's marital status then the consent given under such circumstances shall be deemed consensual rather than coerced or misled by a false promise as the initial consent for physical relation will be perceived to be based on mutual attraction as it is expected that both the parties should have been aware of their respective marital obligations.

16. Sum and substance of the aforesaid discussion clearly boils down to the position that there is no sufficient ground to pursue the case any further against the petitioner as the culpable mentality and clandestine motives of the accused is not made out.

17. In the aforesaid view of the matter, the instant revision application being no. CRR 45 of 2025 stands allowed.

18. As a sequel, the impugned First Information Report stemming out of Maynaguri Police Station Case no. 394 of 2024 hereby stands quashed against the petitioner.

19. Connected applications, if there be any, stand disposed of accordingly.

20. Photocopy of the case diary be returned at once.

- 21.** All parties to this revision application shall act on the server copy of this order downloaded from the official website of this Court.
- 22.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]