

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

Present: - Hon'ble Mr. Justice Subhendu Samanta.

In Re: An application under Section 482 of the Code of Criminal Procedure

IN THE MATTER OF

CRR 112 of 2024

Ran Vijay Azad@ Ranvijay Azad
Vs.
State of West Bengal

For the Petitioners : Mr. Arnab Saha, Adv.,

For the State : Mr. Aditi Shankar Chakraborty, Ld APP.,
Mr. Sourav Chakraborty, Adv.
Mr. Sourav Ganguly Adv.

Reserved on : 01.10.2024

Judgment on : 10.01.2025

Subhendu Samanta, J.

1. This is an application u/s 397/401 read with Section 482 of the Code of Criminal Procedure for quashing a criminal proceeding being Sessions Case No. 114(7) 2022 arising out of Matigara Police Station Case No. 1190 of 2021 dated 16th of October, 2021 u/s 417/376 of IPC currently pending before the Learned Additional District and Sessions Judge, 1st Track Court at Siliguri.

2. The brief fact of the matter is that the respondent No. 2 lodged a written complaint on 16th October 2021 with the OC Matigara PS, containing inter alia that on 10th February, 2019 the petitioner bring de facto complainant at his PWD quarter Siliguri, and in a

mandir/temple, he put vermilion at forehead of de facto complainant and also put a mangalsutra. It has been assured by the petitioner that he will marry her later on. Thereafter the petitioner started cohabitation with de facto complainant, thereafter the petitioner sent the de facto complainant to her house and he left for Sikim. It is the further contained of the petition of compliant that thereafter they started residing at different guest house in Siliguri as a husband and wife thereafter the date of registration of Marriage was fixed on 9th of October 2021 but on the said date, the petitioner never appeared before the Registry Office and stopped contact with the de facto complaint; on query the petitioner stated that he did not like the de facto complainant anymore and denied her to be wife.

3. On the basis of the said written complaint Matigara PS case No. 1190 of 2021 dated 16.10.2021 u/s 417/376 IPC was started. After completion of investigation police has submitted charge sheet.

4. The petitioner has approached this court for quashing the entire criminal proceedings on several grounds. It is the case of the petitioner that complainant and the petitioners were well known to each other since October 2018, through Face Book and became friend. They personally met with each other in the month of December 2018 and the said relationship subsequently turned into a love affairs. It is the further case of the petitioner since complainant and the petitioner regularly travel great distance to met each other resided at official quarter at great length of time and also stayed several hostels and guest houses and engaged in sexual relationship regularly for two

continuous years. The petitioner further denied the fact in the petition of complaint regarding the purported marriage held on 10th February 2019 at Mandir a purported date of marriage registration on 9th October 2021.

5. Mr. Arnab Saha Learned Counsel appearing for the petitioner submits that the law of the land regarding allegation of rape on false promise of marriage has been settled by several pronouncement of the Hon'ble Supreme Court. He submits that the Hon'ble Supreme Court as well as the different High Court in several cases has decided the issue very clearly. Mr. Shah further argued that the present petitioner as well as respondent No. 2 are the major persons and are well aware about the consequences of their sexual relationship. He further submits that they are developed love and affairs between each other which resulted to consensual relationship between each other. In all cases of like nature, FIR lodged u/s 376 IPC has been quashed by the Hon'ble Supreme Court in each case. Mr. Saha argued that the allegation u/s 376 IPC has not made out in this case. The police has conducted perfunctory investigation and submitted charge sheet. He submits that in the several cases the Hon'ble Supreme Court has specifically guided that the consensual relationship and thereafter the cohabitation between the two major persons does not fulfil the criteria of Section 376 of IPC.

6. In support of his contention he cited several decisions of Hon'ble Supreme Court as follows:-

(1) Pramod Suryabhan Pawar Vs. The State of Maharashtra and Ors. AIR 2019 SC 4010

(2) Sonu Vs. State of UP and Ors. AIR 2021 SC 1405

(3) Shambhu Kharwar Vs. State of UP and Ors.

MANU/SC/1011/2022

(4) Maheswar Tigga Vs. State of Jharkhand.

MANU/SC/0725/2020

(5) XXXX Vs. State of Madhya Pradesh and Anr.

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(6) Avishek Asit Mitra Vs. State of Maharasthra.

MANU/SCOR/98359/2022

(7) Mandar Deepak Pawar Vs. State of Maharastra and Ors.

MANU/SC/0999/2022

(8) Atanu Kumar Dey Vs. State of West Bengal and Ors.

MANU/WB/0491/2023

(9) Prashant Bharti Vs. State of NCT Delhi.

MANU/SC/0063/2013

(10) Golam Mohiuddin Vs. State of West Bengal and Ors.

MANU/WB/1091/2022

7. Mr. Saurav Ganguly Learned Counsel appearing on behalf of the State submits that the cases relied by the Learned Counsel for the petitioner is factually different, the observation of Hon'ble Supreme Court in **Swami Vs. State Chhattisgarh** reported in **2019 (1)** Supreme Court Cases has discussed the law and which is squarely applicable in the present fact situation of this case. He submits that the Hon'ble Supreme in different cases discussed that when two adult persons engaged in sexual relationship with each other with a promise to marry, that may not tantamount to an offence punishable u/s 376

IPC. Mr. Ganguly explained that in present case the sexual intercourse started after the sham marriage between the parties at a mandir. The cohabitation between the parties would not have happened if the alleged marriage was made. He submits the consent of the prosecutrix was not free in the case. Thus the instant case has factual differences.

8. He further argued at the time of deciding quashing application u/s 482 Cr.P.C. The High Court is not empowered to evaluate the evidences collected by prosecution during the course of investigation. At this juncture, Mr. Ganguly submits CRR is liable to be dismissed.

9. In **Pramod Suryabhan Pawar Vs State of Maharashtra** the Hon'ble Supreme Court has held that –

Ratio Decidendi : A breach of a 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 it.

16. where promise itself marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact that vitiates the woman's "consent". On the other hand, a breach of promise 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 it. The "consent" of a woman Under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati this Court observed:

21. There is a distinction between the mere breach of a promise, and not fulfilling a false

promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the Accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the Accused, and not solely on account of misrepresentation made to her by the Accused, or where an Accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every Intention to do so. Such cases must be treated differently.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the Accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 Indian Penal Code cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the Accused had never really intended to marry her.

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.

10. In **Sonu Singh Vs. State of UP** the Hon'ble Supreme Court has again adopted the same view of **Pramod Suryabhan Pawar**

11. In **Shambhu Kharwar Vs UP** the Hon'ble Supreme Court has set aside the observation of concerned High Court and quashed the charge sheet filed u/s 376 of IPC on the observation that

12. In the present case, the issue which had to be addressed by the High Court was whether, assuming all the allegations in the charge-sheet are correct as they stand, an offence punishable Under Section 376 Indian Penal Code was made out. Admittedly, the Appellant and the second Respondent were in a consensual relationship from 2013 until December 2017. They are both educated adults. The second Respondent, during the course of this period, got married on 12 June 2014 to someone else. The marriage ended in a decree of divorce by mutual consent on 17 September 2017. The allegations of the second Respondent indicate that her relationship with the Appellant continued

13. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge-sheet, the essential ingredients of an offence Under Section 376 Indian Penal Code. The crucial issue which is to be considered is whether the allegations indicate that the Appellant had given a promise to the second Respondent to marry which at the inception was false and on the basis of which the second Respondent was induced into a sexual relationship. Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence Under Section 375 Indian Penal Code are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in

existence prior to the marriage of the second Respondent and continued to subsist during the term of the marriage and after the second Respondent was granted a divorce by mutual consent.

14. The High Court, in the course of its judgment, has merely observed that the dispute raises a question of fact which cannot be considered in an application Under Section 482 of Code of Criminal Procedure. As demonstrated in the above analysis, the facts as they stand, which are not in dispute, would indicate that the ingredients of the offence Under Section 376 Indian Penal Code were not established. The High Court has, therefore, proceeded to dismiss the application Under Section 482 of Code of Criminal Procedure on a completely misconceived basis.

12. In **Maheswar Tigga Vs. State of Jharkhand** the Hon'ble Supreme Court in a case of consensual relationship between the appellant and prosecutrix who were of different religion but have engaged themselves in consensual relationship, the Hon'ble Supreme Court, following the observation of **Pramad Suryavan Powar** has quashed the proceeding

17. This Court recently in **Dhruvaram Murlidhar Sonar v. The State of Maharashtra and Ors.** MANU/SC/1518/2018: AIR 2019 SC 327 and in **Pramod Suryabhan Pawar v. State of Maharashtra and Anr.** MANU/SC/1142/2019: (2019) 9 SCC 608 arising out of an application Under Section 482 Code of Criminal Procedure in similar circumstances where the relationship originated in a love affair, developed over a period of time accompanied by physical relations, consensual in nature, but the marriage could not fructify because the parties belonged to different castes and communities, quashed the proceedings.

18. We have given our thoughtful consideration to the facts and circumstances of the present

case and are of the considered opinion that the Appellant did not make any false promise or intentional misrepresentation of marriage leading to establishment of physical relationship between the parties. The prosecutrix was herself aware of the obstacles in their relationship because of different religious beliefs. An engagement ceremony was also held in the solemn belief that the societal obstacles would be overcome, but unfortunately differences also arose whether the marriage was to solemnised in the Church or in a Temple and ultimately failed. It is not possible to hold on the evidence available that the Appellant right from the inception did not intend to marry the prosecutrix ever and had fraudulently misrepresented only in order to establish physical relation with her. The prosecutrix in her letters acknowledged that the Appellant's family was always very nice to her.

13. In **Anurag Soni Vs. State of Chattisgarh** The Hon'ble Supreme Court in an appeal against conviction u/s 376 IPC wherein on the appreciation of evidences, the Learned Sessions Court observed and held that the prosecutrix gave consent in sexual inter course on misrepresentation of fact and the promise by the accused that he would marry the prosecutrix and therefore the said consent cannot be free consent and therefore accused committed the offence u/s 376 thereupon Learned Sessions Court convicted the accused for the offence u/s 376 IPC sentence to him undergo 10 years rigorous imprisonment. The Hon'ble Supreme Court after perusing the entire facts and also considering the provision of Section 114 A of Evidence Act has held that:-

12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the

prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 IPC and can be convicted for the offence under Section 376 IPC.

14. I have perused the CD placed before me, it appears from the evidences collected by the IO during the course of investigation that de facto complainant was cited as CS witness No. 1 she supported entire prosecution case as she stated in the petition of complaint; CSW 2 has heard the fact from de facto complainant; CSW 3 also heard the fact from de facto complainant; CSW 4 also heard from the de facto complainant, CSW 5 is a landlord who gave rent to the petitioner and has seen de facto complainant with petitioner on several occasions. There are some seizure lists in respect of the seizure of registers of different guest houses, where the petitioner and the de facto complainant stayed, Mangalsutra and different photographs, the medical examination report of the de facto complainant dated 18th October was also collected during investigation and placed on record.

15. Let me consider whether instant fact of the FIR can come under the category of cases decided by the Hon'ble Supreme Court in **Pramod Suryabhan Pawar**. In all the cases as referred by the Learned Advocate for the petitioner, there are promise to marry on such promise the adult persons intimated to their physical relationship; later on, there are a breach of promise and the prosecutrix has lodged FIR. It is the *Ratio Decidendi* of the Hon'ble Supreme Court in **Pramod**

Suryabhan Pawar that “a breach of promise to marry cannot be termed as said to be false promise. To establish a false promise, maker should have had no intention of upholding his word at the time of giving it”. In the present case the petition of complaint has specifically disclosed that there were marriage between the prosecutrix and the petitioner at a mandir/ temple. It is the case of the prosecutrix/ prosecution that the sexual relation started after the “sham marriage” between the petitioner and the prosecutrix at the mandir/temple.

16. Hon’ble Supreme Court in State of **Haryana Vs. Bhajanlal [1992 Supp (1) SCC 335]** conducted a detailed study of the situations where High Court may exercise its extraordinary jurisdiction and laid down a list of illustrative examples of where quashing may be appropriate.

102(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an Investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2).

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with

an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal grudge.

The deciding factor of entertaining quashing application it is to be looked into whether on the face of FIR, the allegation constitute cognizable offence.

17. In deciding the *ratio decidendi* of **Pramod Suryabhan Pawar**, it is quite difficult to assess on the face of the instant FIR whether petitioner's promise to marry prosecutrix was made only to exert misconception to accord consent of prosecutrix. At this stage, if it is hold that sexual relationship of petitioner and prosecutrix was consensual, consent of prosecutrix to the relationship was not misrepresented, the fact of the FIR has to be construed false. It is not permitted for this court in the stage of deciding quashing application to decide facts of FIR to be untrue.

18. In **Anurag Singh** the Hon'ble Apex Court uphold the decision of Learned Sessions Judge, and observed that prosecutrix given consent for sexual intercourse on basis of misrepresentation of the fact. Whether consent of prosecutrix for sexual intercourse in this case was of misrepresentation of fact or not, is to be decided in the trial. Moreover, in my view, the fact of **Pramod Suryabhan Pawar** is entirely different to that of the present case. There are several materials in the CD to establish the fact that the maker of the promise (petitioner) had no intention of upholding his ward at the time of making it. At the stage of deciding a quashing application u/s 482 Code of Criminal Procedure, this court shall not evaluate the evidences collected by the

prosecution during the course of investigation. In a plain perusal and reading of petition of complaint it can be prima facie presumed that the sexual relationship between the party was stated only after alleged marriage held between the parties at temple. Thus, in my view, the present fact situation is not similar to that of the cases decided by the Hon'ble Supreme Court in **Pramod Suryabhan Pawar (supra)**. Resulting thereof, I find no justification to entertain the petitioner. Accordingly, the instant criminal revision, being meritless, is dismissed.

19. CRR is disposed of. Connected applications if pending are also disposed of.

20. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)