

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

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R. No. 147 of 2024

Dipu Oraon.

Vs.

The State of West Bengal & Anr.

For the petitioner : Mr. Narendra Nath Das,
: Mr. Shyamal Barman,
: Mr. Pragyadip Roy Basunia,
: Ms. Tanushri Roy

For the State : Mr. Aditi Shankar Chakraborty, Ld.
APP,
: Mr. Abhijit Sarkar.

Hearing concluded on : **14/02/2025**

Judgment on : **20/02/2025**

Rai Chattopadhyay, J.

1. In this revision the petitioner has sought for quashing of the proceedings in the Sessions Case No. 35/2024, pending before Additional District & Sessions Judge at Malbajar [connected G.R.Case No. 5380 of 2023 and connected FIRE is Mal Police Station Case No. 832 of 2023 dated 15/10/2023, under sections 417 and 372(2) of the Indian Penal Code].
2. Mr. Das learned advocate for the petitioner has submitted emphatically that, admittedly in this case the sexual relationship, if any, between the parties have

been as a result of consensual opinion of them. He says that there would not be any ingredient of offence as alleged against the petitioner, available in this case. Hence, according to him, proceeding further in this case or committing the petitioner for trial, would amount to abuse of the process of court. To buttress, his argument Mr. Das relies on the **following judgments:**

3. The state has raised strong objection as to the contentions and prayers of the petitioner in this case, as above. According to the state, the materials on record, including the F.I.R, the statements of the witnesses and the victim's statement recorded under section 164 of the Cr.P.C, shall specifically imply petitioner's involvement in the alleged crime. Mr. Sarkar appearing for the state, submits the DNA test result of the child of the defecto complainant, which he says, matches with the DNA of the present petitioner/accused person. He seeks that the present case by the petitioner seeking quashing of the proceeding now pending before the trial court, may be dismissed. Let the repost as above, be taken on record.
4. Heard submissions and perused the records, including the results of DNA test of the child of the defecto complainant/victim.
5. The crux of allegation against the present petitioner in FIR is that the petitioner has established physical relationship with the complainant, which continued for about two years and resulted into birth of a child, but only forcefully and without consent of the victim. That, though the petitioner has earlier held out a promise of

marriage to the complainant, but later on he has reversed back from his words. When after conceiving, the complainant approached the petitioner and his family for marriage, she has been denied out rightly. The allegations made in the FIR as above are substantiated by adequate evidence during investigation, in the form of statements of the witnesses as well as that of the victim recorded under section 164 of the Cr.P.C.

6. The law is now well settled that in view of the prima facie materials available in the complaint in support of the allegations made against the offender and such allegations, not being only the bald and non-specific averments there, the High Court, in exercise of the inherent power under section 482 of the Cr.P.C. should not interfere in order to quash the proceedings. The High Court in order to quash the proceedings should have to come to a decision that sending the petitioner for trial would be an abuse of the court's process and that the allegation against the petitioner, even if taken on its face value, does not disclose a cognizable offence against him. This is however, not a case at this instance. On the contrary, the court finds that the materials available, including the FIR as well as the statements of the witnesses and the victim, have disclosed sufficiently the ingredients of offence against the petitioner, with which he has been charged in this case. The last but not least is the DNA report of the child of the victim, which has revealed that DNA profile of the said child duly matches with the DNA profile of the present petitioner. That conclusively establishes paternity of the petitioner as to the child of the victim. Mr Das argues that any false promise to marry or

cheating by petitioner allegedly perpetrated to the victim shall only be an extraneous factor in the case, not to be available from records. However, he does not deny that the victims approach towards the petitioner for marriage after having conceived, has gone in vain. In that event, his submissions as above cannot be accepted. A relationship which has gone so far as to give birth to a child, can never be a relationship of only well grounded friendship or casual expression of emotional outburst.

7. In this regard it is required to discuss the judgments referred to by the petitioner. Firstly, in none of those cases, the DNA profile report of the child of the parties was before the court, unlike this case, where the said report has added a different dynamic to the case, altogether. Secondly, in all the matters the court has discussed with the effect of consensual sexual activity between the grown up adults, who are duly competent to understand the immediate and long lasting effect of their activity. The court has discussed as to how the statutory definition of “consent” is to be interpreted and applied in a case of alleged rape. In all of those, the courts have ultimately come to the conclusion that consensual sexual contact should not be termed as rape, in accordance with the law. The court, though finds that the points as raised by the present petitioner on the basis of the judgments as referred to by him, may be good points at the time of trial of the case, but is unable to accept the petitioner’s submission, that a criminal proceeding is liable to be quashed, on the basis of the same. On the contrary, the court considers that, in view of the prima facie material of offence being

available against the petitioner on the face of the records, as discussed above, the instant should be a competent case to be sent for trial.

- 8.** On the said premise, the present revision being CRR No.147 of 2024, is dismissed. Let the trial court be directed to proceed with the trial in the case, as expeditiously as possible.
- 9.** Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents including the private respondents.
- 10.** Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)