

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

Present:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 478 OF 2024

**Tanmay Majumder
VS.
The State of West Bengal & Anr.**

For the Petitioner	: Mr. Sandeep Kumar Dutta, Mr. Ajoy Kumar Singhanian, Mr. Anirban Banerjee.
For the State	: Mr. A.S. Chakraborty, Mr. Kallol Acharyee.
For the Opposite Party No.2	: Dr. Arjun Chowdhury, Mr. Bikash Singha, Mr. Riya Agarwal.
Hearing concluded on	: 28.04.2025
Judgment on	: 30.04.2025

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of impugned proceeding and impugned First Information Report (in brevity F.I.R) in connection with G.R. Case No. 5471 of 2023 arising out of Kotwali Police Station Case No. 777 of 2023 Dated, 20.10.2023 under Sections

417/376(2)(n)/506 of the Indian Penal Code, 1860 pending before the Court of the Learned Chief Judicial Magistrate, Jalpaiguri.

2. The petitioner is a distinguished scientist and the Head at the Centre for Excellence in the Vaccine Department at the National Institute of Immunology, Aruna Asaf Ali Marg, New Delhi-110067.

3. **The allegations in the written complaint are as follows:-**

- I. The complainant alleges that she and the Petitioner were acquainted during their university days in 2003 when they were both students at Visva-Bharati University in Bolpur, West Bengal. During this period, they shared a cordial and friendly relationship.*
- II. After a prolonged hiatus of nearly two decades, the Petitioner and the complainant reconnected in the year 2022 through the social media platform Facebook. It is alleged that this renewed connection gave rise to a friendly and communicative relationship. Both parties engaged in frequent conversations, which the complainant describes as warm and amicable.*
- III. During one of their meetings, the Petitioner sought to reassure her of his commitment by promising marriage once again.*
- IV. According to the complainant, the Petitioner, after a period of frequent interactions, requested the complainant to meet in person. In response, **the complainant traveled to***

Bolpur on 16.05.2023, where she alleges they checked into a hotel. It is claimed by the complainant that during this meeting, the Petitioner established a physical relationship with her. The complainant further asserts that this act occurred under the pretext that the Petitioner had expressed his intent to marry her.

- V.** She accuses the Petitioner of establishing a physical relationship with her on multiple occasions at various locations, including Bolpur, Siliguri, and Jalpaiguri. These instances, according to the complainant, were characterized by repeated assurances by the Petitioner that he would marry her.
- VI.** That she eventually learned of the Petitioner's marital status, which he had not disclosed to her initially. This revelation, she claims, caused her to feel deceived and led her to distance herself from the Petitioner.
- VII.** The complainant further alleges that despite being a married individual with familial responsibilities, the Petitioner continued to pursue her and persuade her to maintain the relationship. **She accuses the Petitioner of using manipulative tactics to sustain their physical relationship even after she became aware of his marital status.**
- VIII.** The complainant claims that she demanded the Petitioner fulfill his promise to marry her, despite his marital status. She alleges that the Petitioner initially continued to provide verbal assurances of marriage but subsequently began to avoid her.

***IX.** The complainant further accuses the Petitioner of making threats when she persisted in her demands for marriage. She claims that the Petitioner used intimidation to maintain their physical relationship and to dissuade her from taking any action against him.*

4. The Petitioner herein vehemently denies the allegations, asserts that the relationship was consensual and mutually maintained between two married adults.

5. It appears from the medical report at page 27 and the victim's statement at page 46 of the case diary that the victim lady is separated from her husband since 2007. So the victim admittedly being only separated and not divorced legally from her husband was aware that marriage, with the petitioner at that stage of physical relationship was not possible.

6. The Supreme Court in *Prashant vs. State of NCT of Delhi, 2024 SCC OnLine SC 3375, decided on November 20, 2024*, held:-

***"17.** In the present case, the issue that had to be addressed by the High Court was whether, assuming all the allegations in the FIR are correct as they stand, an offence punishable under Sections 376 and 506 IPC were made out. A bare perusal of the FIR reveals that the appellant and the complainant first came in contact in the year 2017 and established a relationship thereafter. The parties met multiple times at various places during the years*

2017 and 2019, including at parks and their respective houses. Although the complainant stated that the appellant had a forceful sexual relationship with her, neither did she stop meeting the appellant thereafter, nor did she file a criminal complaint during the said period.

18. It is inconceivable that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself. It is also revealed that, at one point, both parties had an intention to marry each other, though this plan ultimately did not materialize. The appellant and the complainant were in a consensual relationship. They are both educated adults. The complainant, after filing the FIR against the appellant, got married in the year 2020 to some other person. Similarly, the appellant was also married in the year 2019. Possibly the marriage of the appellant in the year 2019 has led the complainant to file the FIR against him as they were in a consensual relationship till then.

19. In our view, taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 376 (2)(n) IPC are absent. A review of the FIR and the complainant's statement under Section 164 CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its 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 from the appellant. **The relationship between the parties was cordial and also consensual in nature. A mere breakup of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution.***

***22.** Recently this Court in XXXX v. State of Madhya Pradesh, (2024) 3 SCC 496 held that when the relationship between the parties was purely consensual and when the complainant was aware of the consequences of her actions, the ingredients of the offence of rape were not made out. Similarly, in Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 arising out of identical facts, this Court has enumerated the following:*

***“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.”

7. **From the said materials, in the case diary,** this Court finds that the de facto complainant (aged 42 years) was aware that the petitioner was not interested in marriage but still continued the relationship and was herself a married woman.
8. The facts in the present case is similar to the facts (Para 17, 18 & 19) in ***Prashant vs. State of NCT of Delhi (Supra)***.
9. **Here in this case too, there is no allegation in the FIR/ Charge Sheet about any promise of marriage at the outset of their relationship.**
10. Thus the relationship between the parties (both still married) prima facie appears to be **consensual** and as such the ingredients required to constitute the offences alleged are prima facie not made out against the accused/ petitioners herein.
11. Thus relying upon the Judgment in ***Prashant vs. State of NCT of Delhi (Supra)***, the present proceeding is liable to be quashed in respect of petitioner herein.
12. **Criminal Revision being CRR 478 of 2024 is allowed.**
13. The proceedings in connection with G.R. Case No. 5471 of 2023 arising out of Kotwali Police Station Case No. 777 of 2023 Dated, 20.10.2023 under Sections 417/376(2)(n)/506 of the Indian

Penal Code, 1860 pending before the Court of the Learned Chief Judicial Magistrate, Jalpaiguri, **is hereby quashed in respect of the petitioner herein namely, Tanmay Majumder.**

- 14.** All connected application, if any, stands disposed of.
- 15.** Interim order, if any, stands vacated.
- 16.** Let a copy of the Judgment be sent to the learned trial Court for compliance.
- 17.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]