

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 665 of 2023

Rakesh Prakash Sonawane @ Rakesh Prakash Sonawane

Vs.

The State of West Bengal & Anr.

**For the petitioner : Mr. Anirban Dutta,
Mr. Ahin Chakraborty.**

**For the State : Mr. Saryati Datta,
Ms. Nandini Chatterjee.**

Judgment reserved on : 17.03.2026

Judgment delivered on : 22.04.2026

SHAMPA DUTT (PAUL), J. :

1. The revisional application has been preferred praying for quashing and/or setting aside of the proceeding in connection with G.R. case No. 923 of 2017, arising out of Electronic Complex Police Station Case No. 127 of 2017 dated 20th November, 2017, under section 376 of the Indian Penal Code, pending before the Learned Additional Chief Judicial Magistrate at Bidhannagar, along with order dated 23.8.2018, whereby the Learned Magistrate was pleased to take cognizance on filing of charge sheet and fixed 04.01.2019 for appearance of the accused person.

2. In the present case the proceedings was initiated by the de facto complainant, on the basis of the written complaint filed by her. It is stated that she came in contact with the petitioner through social media. The petitioner states that in course of time the de facto complainant being informed about the business skills of the petitioner, had expressed her willingness to meet the petitioner. While the petitioner being resident of Pune had visited Kolkata in connection with his work, he met the complainant, in two different hotels. On the 2nd visit the complainant had indulged in personal conversations to which the petitioner asked her to leave. Two days thereafter the petitioner had left Kolkata, and severed all communication with the complainant, which the complainant tried to secure multiple times. After near about two months the instant case had been lodged by the complainant, who refused medical examination and stated in her statement under section 164 of the code that she can't remember the incident at hotel. Subsequently the petitioner was released on anticipatory bail vide order dated 10.5.2018 passed by this Hon'ble court on certain conditions, which were subsequently relaxed by this Hon'ble court vide order dated 25.1.2019.

3. After investigation the investigating agency had submitted charge sheet being Electronic Complex police station Charge Sheet No 69/18, under section 376 of the Indian Penal

Code against the petitioner on 22/7/2018, of which the learned magistrate has taken cognizance vide order dated 23/8/2018. After receiving copy under section 207 of the Code, the petitioner came to learn that, apart from the delay in lodging the complaint and the fact of refusal of medical examination by the complainant, and also the content of the statement under section 164 of the Code, the authorities of the concerned hotel had also sent a letter to the investigating agency on 22/11/2017, stating important facts improbably negating the allegations mentioned in the complaint. But without considering such facts, the investigating agency had mechanically submitted the charge sheet against the petitioner, and without considering such glaring infirmities in the purported charge sheet, the Learned Magistrate has taken cognizance of the impugned charge sheet. Hence this revisional application.

4. Written notes have been filed by the petitioner herein and the State has placed the case diary.

5. On perusal of the said written notes it appears that the following judgment are relied upon by the petitioner:-

(i) 2025 SCC Online SC 628 Jothiragawan versus State Rep. by the Inspector of Police & Anr., (Para 12 and 13).

“12. On a reading of the statements made by the victim before the Police, both the First Information Statement and that recorded later on, we are not convinced that the **sexual relationship admitted by both the parties was without the consent of the victim.** That they were closely related and were in a relationship is admitted by the victim. The allegation is also of threat and coercion against the victim, to have sexual intercourse with the accused, which even as per the victim's statement was repeated thrice in the same manner, when she willingly accompanied the accused to a hotel room. The victim had also categorically stated that after the first incident and the second incident she was mentally upset, but that did not caution her from again accompanying the accused to hotel rooms.

13. Having heard both sides in this case, we have absolutely no doubt in our mind that **the criminal proceedings initiated against the present appellant are nothing but an abuse of process of the court. This is precisely a case where the High Court should have interfered in exercise of its inherent and extraordinary powers under Section 482 of the Cr.P.C.** These proceedings cannot go on. Hence, we direct

that the proceedings initiated at the instance of the complainant which are presently going on before Sessions Judge (Mahila Court), Erode in S.C. No. 49 of 2022, be hereby quashed.”

- (ii) 2025 SCC Online SC 1258, Batlanki Keshav (Kesava) Kumar Anurag versus State of Telangana & Anr., (Para 28).**

“28. Hence, even assuming that the accused appellant retracted from his promise to marry the complainant, it cannot be said that he indulged in sexual intercourse with the de-facto complainant under a false promise of marriage or that the offence was committed by him with the de-facto complainant on the ground that she belonged to the Scheduled Castes/Scheduled Tribes community.”

- (iii) 2023 SCC Online Cal 759, Shiv Prakash versus State of West Bengal & Anr.**

- (iv) 2025 SCC Online SC 2528, Samadhan versus State of Maharashtra & Anr.**

“39. In State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426, this Court formulated the parameters in terms of which the powers under Section 482 of the Criminal Procedure Code, 1973 (now Section 528 of the BNSS) could be exercised. While it is not necessary to revisit all these parameters, a few that are

relevant to the present case may be set out. The Court held that quashing may be appropriate:

“102.

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(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) of the Code.

xxx”

40. *In view of the foregoing analysis, we are unable to concur with the findings recorded by the High Court, inasmuch as the present case pertains to a consensual relationship, and the acts of respondent No. 2 clearly manifest consent to such a relationship devoid of any coercion, fraud, or misrepresentation as contemplated in Section 19 of the Indian Contract Act, 1872. In our opinion, the High Court's refusal to exercise its jurisdiction under Section 528 of BNSS is unsustainable. The acts complained of in the present case occurred within the contours of a relationship that was, at the time, voluntary and willing. The continuation of the prosecution in such facts would be nothing short of an abuse of the court machinery.”*

6. From the written complaint, as seen from the case diary it appears that the de facto complainant knew the accused through social media and was in touch with the accused for

three months on whatsapp stating that she was intending to make some investment. The de facto complainant has stated that she trusted him and when the accused came to Kolkata she went to meet him on 26th October, 2017. She went to meet him at a Hotel named Base Group Hotels Pvt. Ltd. and again went with him to this hotel at Salt Lake Sector V on 28th October, 2017. She even went to a room and had a drink and had discussion on casual topic and states that as she felt heavy headed, she called a cab and went to her house at 10.45 p.m. The de facto complainant states that only after she went her house, she found some marks on her body and then she realized that she had been raped.

7. It appears that nowhere has the de facto complainant stated that she had become unconscious at any time, while she was in the hotel voluntarily with the accused persons and had a drink.

8. The statement of the de facto complainant that she realized that she was raped only after she reached her home does not find any support from the contents in the written complaint and prima facie appears to be an afterthought.

9. It appears from the medical report at page 22 of the case diary that the de facto complainant **did not agree to medical examination.**

10. Considering the said facts, it is clear that none of the ingredients required to constitute the offence alleged has been prima facie brought on record by the prosecution.

11. Accordingly the proceeding G.R. case No. 923 of 2017, arising out of Electronic Complex Police Station Case No. 127 of 2017 dated 20th November, 2017, under section 376 of the Indian Penal Code, pending before the Learned Additional Chief Judicial Magistrate at Bidhannagar, along with order dated 23.8.2018, whereby the Learned Magistrate was pleased to take cognizance on filing of charge sheet and fixed 04.01.2019 for appearance of the accused person, **is hereby quashed.**

12. CRR 665 of 2023 is allowed.

13. All connected applications, if any, stand disposed of.

14. Interim order, if any, stands vacated.

15. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

16. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]