

**23.03.2026**  
**Serial no. 10**  
**Court No. 29**  
**[G.S.D]**

## **CRR 3437 of 2024**

**In the matter of : Ashok Malik**

**... .. Petitioner(s)**

Mr. Riju Ghosh  
Mr. Sumitava Chakraborty

... for the Petitioner(s)

Mr. Debasish Roy, Id. PP  
Mr. Saryati Datta  
Ms. Paramita Sahu

... for the State-respondent(s)

In this application, the petitioner has prayed for quashing of the proceeding being GR Case No. 1211 of 2021 presently pending before learned 15<sup>th</sup> Judicial Magistrate, Kolkata.

Petitioner's counsel submits that the petitioner and complainant had been in a 'live-in-relationship' from 2013 to 2021 and during continuance of their relationship, the petitioner took the role of a guardian of the children of the complainant. They were also part of a partnership beauty parlour business. The complainant thereafter willfully resigned by a letter dated 15<sup>th</sup> February, 2021 from the business.

After such resignation, the complainant filed a title suit before the learned Civil Judge (Jr. Divn.), 2<sup>nd</sup> Court at Sealdah being TS No. 352 of 2021 against the petitioner on 27<sup>th</sup> September, 2021 for declaration that she is still a partner of the said partnership business and the petitioner also filed another suit being TS 353 of

2021 before the learned Civil Judge (Jr. Divn.), 2<sup>nd</sup> Court at Sealdah against the complainant herein.

In the above background, the complainant thereafter on 18<sup>th</sup> November, 2021 lodged the instant complaint alleging that the petitioner had committed rape on the pretext of false promise of marriage and also cheated her hard-earned money. Thereafter, the police submitted charge-sheet against the petitioner after conclusion of the investigation under Sections 376/417 of the IPC and the case was committed before the Court of Sessions.

The petitioner preferred a discharge application before the Sessions Judge, City Sessions Court, Kolkata. The learned Sessions Court by an order dated 10.11.2022 discharged the petitioner from the allegations of 376 of the IPC but transmitted the case records to the learned Magistrate directing him to go through the ingredients of Section 415 of the IPC and materials on record and thereafter will make charge hearing on 09.12.2022. Petitioner again filed discharge application before Trial Judge, who has rejected his prayer by the impugned order dated 29.07.2024 on the ground that offence under section 417 is a summons triable offence, which does not provide any provision for discharge in the Code.

Being aggrieved by the said order for not discharging him from the offence Punishable under section 417 and also challenging the entire proceeding, learned counsel for the petitioner herein submits that the petitioner never gave any promise to marry or false promise to marry to the prosecutrix. He further submits that the criminal law cannot be set into motion as a matter of course.

According to him, no prima facie case has been made out against him and the ingredients of the offence could not be established. Moreover, two civil suits are pending between the parties and the essential ingredients for an offence of cheating are conspicuously absent in the present petition. Learned advocate emphasizes that there is neither any allegation of false representation with deceiving intention or deceiving her nor there appears to be any evidence which can suggest that the petitioner had induced the complainant to deliver any property. He, as such, submits that continuance of the impugned proceeding shall be mere abuse of the process of the court.

Learned counsel appearing on behalf of the State, on the other hand, places the Case Diary and leaves the prayer to the discretion of the Court.

I have considered the submissions made on behalf of both the parties. It appears from the Order no.06 dated 10.11.2022 that the Sessions Judge has made clear observations that the allegations in the FIR do not, on their face, indicate that the promise by the accused was false or the complainant was engaged in sexual relationship on the basis of any promise. There is also no allegation in the FIR as to when the accused promised to marry the complainant or it was done in bad faith or with the intention to deceive her. Furthermore, the complainant was aware that she is married and though abandoned by her husband but not divorced. The complainant was also aware that there existed obstacles to marry the accused as the complainant's marriage was also not dissolved

but still then the complainant continued to engage in sexual relationship. Thereby, the Court below rejected the allegation under Section 376 of the IPC and such order has attained its finality in the absence of challenge by the complainant.

Now, in order to constitute the offence under Section 417 of the IPC, the prosecution is to prove that:

- (i) Accused voluntarily or dishonestly induced the complainant.
- (ii) He did so for delivery of some property either to the accused or some other person.
- (iii) He dishonestly induced the complainant to do a thing which she would not do or omit to do – a thing which she would not have done, if induced.
- (iv) Such act caused was likely to cause some damage or harm to his body, mind, reputation or property.

However, from the materials collected during the investigation, I do not find any iota of evidence that such allegation of cheating has been substantiated during the investigation. In fact, police did not find any document, to show that being induced by the words of the petitioner, the complainant has delivered any property to the petitioner.

Complainant alleged that petitioner made her purchase the beauty parlour, where about 43 lakh was invested in joint venture and though he assured to share profit from business but thereafter when lock down started during COVID Pandemic, petitioner left her

and her children and when she asked about the money, she has invested, he refused to repay and wanted full ownership of the business. She further stated that she needs her valuable belongings back as early as possible, which is allegedly kept under petitioner's custody and she also wants to get back her entire life savings of Rs. 43 lakh, which she had spent to buy and decorate the beauty parlour in the Joint Venture.

Therefore, the dispute between the parties is purely civil in nature and for which parties have already approached before the competent Civil Court. During investigation neither dishonest inducement nor delivery of any property to the petitioner by the complainant have been established to even prima facie show the ingredients of the offence.

It also appears that despite several notices under section 91 of Cr.P.C. to the complainant, she failed to produce any document to the investigating authority in support of alleged cheated sum of Rs.43,00,000/- by the petitioner,.

It is further submitted that in the above title suit complainant as plaintiff admitted that the property where they used to run business was rented and not bought and has not made any further allegation therein against petitioner except that the complainant herein was driven out from partnership business, though it is specific case of petitioner that she voluntarily resigned,. The charge sheet is also ambiguous with regard to how the offence of cheating has been committed by the petitioner and there is nothing in the charge sheet or in the recorded statements as to how

the investigating agency had come to the conclusion that allegation of cheating has been prima facie established against the petitioner.

In view of the materials available in the case diary, there is hardly any chance of conviction of the present petitioner under Section 417 of the IPC. Therefore, I find that further continuance of the impugned proceeding shall be mere abuse of the process of the court.

In such view of the matter, CRR 3437 of 2024 is Allowed. The impugned proceeding being GR No. 1211 of 2021 presently pending before the learned 15<sup>th</sup> Judicial Magistrate, Calcutta under Section 417 of the IPC is hereby quashed.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

**(DR. AJOY KUMAR MUKHERJEE, J.)**