

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

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 155 of 2026

Sri Supratim Paul

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Arjun Chowdhury,
Mr. Uday Shankar Sarkar,
Ms. Sunayana Parveen,
Ms. Riya Agarwala,
Mr. Mantu Mandal.

For the State : Mr. Avrojoyoti Das, Ld. APP,
Ms. Panchali Deb Sikdar.

For the De facto Complainant : Mr. Rajeh Kr. Sharma,
Mr. Mithun Prasad,
Mr. Bickey Sharma.

Judgment reserved on : 11.06.2026

Judgment delivered on : 16.06.2026

Shampa Dutt (Paul), J.:

1. The revisional application has been preferred praying for quashing of proceeding in Bhaktinagar P.S. Case No. 120 of 2023 dated 19.02.2023 corresponding to G.R. Case No. 807 of 2023 and Sessions Case No. 254 of 2023, under sections 341 /342 /343 /344 /346 /347 /376 /363 /365 /366 /367 /368 /379 /384 /386 /387 /506 /34 /120B of the Indian Penal Code, pending in the court of the Learned Additional District and Sessions Judge (4th Court) at Jalpaiguri.
2. **Petitioners' case is that the petitioner No. 01 is aged about 26 years at present and the age of the Opposite Party No. 02 is 45 years at present.**
3. The case of the complainant in the written complaint under Section 156(3) Cr.P.C. which led to the registration of the FIR in this case is based on the allegation that on 31.12.2000, the accused no. 1 aged about 22 years, on discreetly taking obscene, indecent, and offensive photographs on his mobile of the complainant aged 42 years, who is a married woman with a child and by allegedly threatening to circulate and or publish them extorted money amounting to Rs. 5 (five) Lacs.
4. It is further alleged that subsequently on the complainant refusing to pay any further, the petitioner no. 1 allegedly threatened the petitioner no. 1 to have physical relationship with her against her will and/or consent on

several occasions at various places, as stated all allegedly under threat, even of murder of the complainant's husband and daughter.

5. It is further stated that on 02.04.2022, the petitioner no. 1 allegedly sent the offensive pictures to his mother's mobile phone, who sent the same to the complainant's husband's phone and others.
6. The written compliant in the present case has been filed on 23rd April, 2022.
7. The complainants rely upon the following judgments:-
 - i. ***Muskan vs Ishaan Khan (Sataniya) and Ors. 2025 INSC 1287.***
 - ii. ***Vijay Kumar & Ors vs State of Rajasthan (SLP Criminal Diary no. 71965/2025).***
8. **It is thus submitted on behalf of the complainant/opposite party no. 2 that:-**

“The petition for quashing is devoid of merit and amounts to abuse of process of law as there is overwhelming prima facie material in the chargesheet, 164 statement, medical report, and electronic evidence and also that the offences are heinous, non-compoundable, and affect the conscience of society and that quashing at this stage would result in grave miscarriage of justice to the victim and set a dangerous precedent.”

9. The petitioners' case herein is that the petitioner No. 01 is the son of the petitioner No. 02 and he is aged about 26 years at present and the age of the Opposite Party No. 02 is 45 years at present.

10. It is the further case that petitioners and the complainant being neighbours had good relationship and subsequently the petitioner no. 1 and the complainant developed an intimate relationship. **They also opened a joint savings bank account on 17.01.2022 in the Post Office Savings Bank (India Post), Deshbandhu Para Branch, bearing Account No. 010011961923.**
11. On 14.02.2022, they went to Kolkata and **the father of the petitioner No. 01 and the husband of the Opposite Party No. 02 both lodged separate missing diaries before the Siliguri Police Station, being Missing G.D.E. No. 863 of 2022 dated 16.02.2022 filed by the father of the petitioner No. 01 and the copy of the other missing diary filed by the husband of the Opposite Party No. 02 is in the custody of the husband of the Opposite Party No. 02.** After a few days, the Opposite Party No. 02 and the petitioner No. 01 was recovered from Kasba, with the help of the Lalbaazar Police Station and they were brought back to Siliguri.
12. The petitioner no. 1 states that it was in Kolkata that they had clicked some intimate pictures on each other phones.
13. The said fact is corroborated by the materials in the case diary, which shows that allegedly some pictures were sent on whatsapp in March, 2022.
14. It is further stated that while the petitioner No. 01 was in Nagaon, Assam, the younger brother of the petitioner No. 01 found one pen drive.

He opened the said pen drive, and found some obscene photographs, which he showed to his mother, i.e., the petitioner No. 02 herein and upon seeing the photographs, the petitioner No. 02 being shocked to see such photographs of the Opposite Party No. 02 and the petitioner No. 01, informed the same to the husband of the Opposite Party No. 02 (neighbour). **Thereafter, the husband of the Opposite Party No. 02 came to the house of the petitioners and the petitioner No. 02 handed over her phone to the husband of the Opposite Party No. 02 and thereafter the husband of the Opposite Party No. 02 himself send/took/transferred such photographs through whatsapp messenger to his own phone.**

15. The **first FIR** was lodged on 07.05.2022 being Siliguri P.S. Case No. 438 of 2022, of which quashing has been prayed for in the present revision.
16. It appears that subsequently on **18.11.2022** the complainant and petitioner no. 1 again got together and went and stayed at Goa.
17. During this period, on 12.11.2022, the uncle (mama) of the petitioner No. 01 lodged a missing diary at Haiborgaon Town Out Post under Sadar Police Station, Nagaon. Thereafter, on 22.11.2022 the husband of the Opposite Party No. 02 lodged a complaint before the Bhaktinagar Police Station, which was received on 23.11.2022 and thereafter on 14.12.2022, the Opposite Party No. 02 and the petitioner No. 01 were arrested from BG 62/2, Rabindra Pally, Hanapara, P.S.-Baguihati,

Bidhanagar, Kolkata and the Opposite Party No. 02 herein was recovered as the victim from the said address.

18. It is stated that the Opposite Party No. 02 in order to prove her love and affection towards the petitioner No. 01 also filed a divorce suit against her husband on 14.12.2022 under section 27 of the Special Marriage Act before the Learned District Judge at Barasat, which was registered as Matrimonial Suit No. 2814 of 2022 and the same is still pending adjudication.
19. The relationship then continued even after all these events.
20. Another complaint was registered by the complainant's husband as Bhaktinagar P. S. Case No. 1265 of 2022 dated **23.11.2022** corresponding to G. R. Case No. 6568 of 2022 against the petitioner No. 01 herein. This is the **second FIR**, in which the I.O. with respect to the aforesaid case has filed the **Final Report being Bhaktinagar P.S. F.R.T. No. 1336 of 2022** dated 31.12.2022, under section 365 of the Indian Penal Code before the Learned Chief Judicial Magistrate at Jalpaiguri.
21. On **16.02.2023** the Opposite Party No. 02 filed another complaint which was registered as Bhaktinagar P.S. Case No. 120 of 2023 dated 19.02.2023 being the **third FIR** corresponding to G.R. Case No. 807 of 2023, now Sessions Case No. 254 of 2023.
22. The following judgments have been relied upon by the petitioner:-
 - i. ***Maheshwar Tigga vs State of Jharkhand, (2020) 10 SCC 108.***

- ii. Amol Bhagwan Nehul vs State of Maharashtra & Anr. 2025 SCC OnLine SC 1230.*
- iii. Pramod Suryabhan Pawar vs State of Maharashtra & Anr. (2019) 9 SCC 608.*
- iv. Mandar Deepak Pawar vs State of Maharashtra & Anr., 2022 SCC OnLine SC 2110.*
- v. Mariam Fasihuddin & Anr. Vs State by Adugodi Police Station & Anr. (2024) 11 SCC 733.*
- vi. Salib alias Shalu alias Salim vs State of Uttar Pradesh & Ors. (2023) 20 SCC 194.*
- vii. Dipak Banki vs State of West Bengal & Anr. 2023 SCC OnLine Cal 320.*

23. In the present case the following facts are admitted:-

- i. The petitioner no. 1 and the complainant herein have an age difference of about 20 years.
- ii. The parties are neighbours.
- iii. Admittedly there has been a continuing relationship (3 years) between the parties with physical intimacy and on several occasions missing diaries have been lodged by the respective family members of the petitioner no. 1 and the complainant.
- iv. The petitioner no. 1 and the complainant have also been arrested and recovered from the same place by the local P.S. on missing diaries being registered.

- v. The complainant is a married woman with a child and was aged about 42 years at the time of first entering into the relationship with the petitioner no. 1 who was 22 years of age at that relevant time.

24. In **Samadhan S/O Sitaram Manmothe vs State of Maharashtra & Anr., in Criminal Appeal No. 5001 of 2025 (arising out of SLP (Crl.) No. 6906 of 2025), decided on November 24, 2025**, the Supreme Court held:-

“31. This Court is conscious of the societal context in which, in a country such as ours, the institution of marriage holds deep social and cultural significance. It is, therefore, not uncommon for a woman to repose complete faith in her partner and to consent to physical intimacy on the assurance that such a relationship would culminate in a lawful and socially recognised marriage. In such circumstances, the promise of marriage becomes the very foundation of her consent, rendering it conditional rather than absolute. It is, thus, conceivable that such consent may stand vitiated where it is established that the promise of marriage was illusory, made in bad faith, and with no genuine intention of fulfilment, solely to exploit the woman. The law must remain sensitive to such genuine cases where trust has been breached and dignity violated, lest the protective scope of Section 376 of the IPC be reduced to a mere formality for those truly aggrieved. At the same time, the invocation of this principle must rest upon credible Page 16 of 24 evidence and concrete facts, and not on unsubstantiated allegations or moral conjecture.

*35. We deem it appropriate to refer to the decision of this Court in **Rajnish Singh vs. State of Uttar Pradesh, (2025) 4 SCC 197**, whereby it was held that when a woman who willingly engages in a long-term sexual relationship with a man, fully aware of its nature and without any cogent evidence to show that such relationship was induced by*

misconception of fact or false promise of marriage made in bad faith from the inception, the man cannot be held guilty of rape under Section 376 of the IPC. The relevant portion of the judgment is extracted as under:

“33. There is no dispute that from the year 2006 onwards, the complainant and the appellant were residing in different towns. The complainant is an educated woman and there was no pressure whatsoever upon her which could have prevented her from filing a police complaint against the accused if she felt that the sexual relations were under duress or were being established under a false assurance of marriage. On many occasions, she even portrayed herself to be the wife of the appellant thereby, dispelling the allegation that the intention of the appellant was to cheat her right from the inception of the relationship.

34. We cannot remain oblivious to the fact that it was mostly the complainant who used to travel to meet the appellant at his place of posting. Therefore, we are convinced that the relationship between the complainant and the appellant was consensual without the existence of any element of deceit or misconception.

35. Further, the application filed by the complainant at One Stop Centre, Lalitpur on 23-3-2022, makes it abundantly clear that she was in a consensual relationship with the appellant since 2006. It is alleged in the complaint that when she had proposed that they should marry and live together, the appellant physically abused her and beat her up. If at all there was an iota of truth in this allegation then the FIR should have been registered immediately after this incident. However, it is only when it came to the knowledge of the complainant that the appellant was getting married to another woman, in an attempt to stop his marriage, she filed aforesaid complaint at the One Stop Centre wherein she also admitted that she was equally guilty as the appellant and therefore, his marriage must be stopped.

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39. It is, therefore, clear that the accused is not liable for the offence of rape if the victim has wilfully agreed to maintain sexual relations. The Court has also recognised that a

prosecutrix can agree to have sexual intercourse on account of her love and passion for the accused.”

(underlining by us)

37. *The said finding of the High Court, however, fails to appreciate that a plain reading of the FIR in question itself reveals that the relationship between the parties was, in fact, consensual, inasmuch as respondent No.2 met the appellant whenever he expressed a desire to meet her. Furthermore, respondent No. 2, being a major and an educated individual, voluntarily associated with the appellant and entered into physical intimacy on her own volition. It is also pertinent to note that, at the relevant time, the marriage of respondent No.2 was subsisting. In light of the foregoing circumstances, even upon a bare reading of the material on record, it is manifest that the relationship between the parties was consensual, and therefore, the absence of an express statement to that effect in the memo of application, as emphasised in the impugned order, cannot be held against the appellant when the same can be otherwise clearly discerned.*

38. *At this stage it is material to refer to the decision of this Court in **Mahesh Damu**, wherein the following observations were made:*

“29. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent. In this regard we may refer to Deepak Gulati v. State of Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] , in which it was held as follows: (SCC pp. 682-84, paras 21 & 24)

“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine

whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. 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. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

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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 IPC 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.”

(underlining by us)

39. In *State of Haryana vs. Bhajan Lal*, 1992 Supp (1) SCC 335, this Court formulated the parameters in terms of

which the powers under Section 482 of the Code of Criminal Procedure, 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. xxx

(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.

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25. From the materials on record it appears that in the present case, three FIRs have been registered against the petitioner no. 1, on the basis of three complaints filed, on the self same allegations which are dated and numbered as follows:-

- i. Siliguri P.S. Case No. 438/22 dated 07.05.2022 (CRR 154 of 2026).
- ii. Bhaktinagar P.S. Case No. 1265 of 2022 dated 23.11.2022 (ended in FRT).
- iii. Bhaktinagar P.S. Case No. 120/23 dated 19.02.2023 (CRR 155 of 2026).

26. The second FIR dated 23.11.2022 ended in FRT no. 1336 of 2022.

The said FIR was lodged between the FIR dated 7.5.22 and 19.02.2023.

27. It appears that in spite of filing the first FIR, the parties continued their relationship and visited several places and were also recovered by the

police from the same place/address on filing of missing diaries by the respective families.

28. After every incident of going away with the petitioner no. 1 and being recovered, the complainant filed an FIR. And has also filed a matrimonial suit for divorce, on 14.12.22, that is after the second complaint was filed on 23.11.22 by the complainant's husband.
29. The conduct of the complainant who continued her consensual relationship with the petitioner no. 1, who was almost half her age and also continued to file one complaint after the another creates a doubt on the genuinity of the allegations made by the complainant against the petitioner no. 1.
30. It is prima facie clear that the parties were in a consensual relationship and the complaints, one after another, could have been filed due to the pressure of the husband of the complainant or for whatever reasons best known to the complainant.
31. The facts of the present case and the acts of the complainant being the opposite party no. 2 herein, clearly shows consent to the relationship and there is no materials to show that the petitioner no. 1 coerced or forced the complainant either into or to continue the relationship which continued for a long period **being a period spanning 3 years.**
32. Accordingly, this Court finds that the ingredients has required to constitute the offences as alleged which appears to be most unfortunate

considering the facts and circumstances, calls for quashing of the proceedings against the petitioners herein.

33. CRR 155 of 2026 is allowed.

34. The proceeding in Bhaktinagar P.S. Case No. 120 of 2023 dated 19.02.2023 corresponding to G.R. Case No. 807 of 2023 and Sessions Case No. 254 of 2023, under sections 341 /342 /343 /344 /346 /347 /376 /363 /365 /366 /367 /368 /379 /384 /386 /387 /506 /34 /120B of the Indian Penal Code, pending in the court of the Learned Additional District and Sessions Judge (4th Court) at Jalpaiguri, **is hereby quashed in respect of the petitioner namely Supratim Paul.**

35. All connected applications, if any, stands disposed of.

36. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)