

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 3937 OF 2022

ANIRBAN MUKHERJEE

VS

THE STATE OF WEST BENGAL & ANR.

For the Petitioner : **Mr. Rajdeep Mazumder, Sr. Adv.**
Mr. Pritam Roy, Adv.
Ms. Triparna Roy, Adv.

For the Opposite

Party no. 2 : **Mr. Gouranga Kumar Das, Adv.**
Mr. Indubhusan Das, Adv.
Ms. Poulami Dutta, Adv.
Ms. Tithli Piplai, Adv.

For the State : **Mr. Madhusudan Sur, Ld. A.P.P.**
Mr. Manoranjan Mahata, Adv.

Last heard on : **16.02.2026**

Judgement on : **16.02.2026**

Uploaded on : **16.02.2026**

CHAITALI CHATTERJEE DAS, J. :-

1. This revisional application has been filed for quashing of the chargesheet being chargesheet No. 185 of 2022 dated 31.7.20 22 under Section 417/376/313/506 of the Indian Penal Code and the injured proceedings arising out of Shalbani Police Station Case No. 38/2022 dated 16.2.20 22 which is presently pending before the Learned Chief Judicial Magistrate at Pashim Mednipore.

Factual Matrix of the case

2. The genesis of this case lies on a complaint lodged by the victim lady all 16.2.20 22 with the Officer-in-Charge Shalbani Police Station alleging inter alia that she developed a friendship in the year 2017 with one her senior qua the present petitioner and pursuant to a proposal made on his behalf the romantic relationship developed between them. On March 10, 2018 the petitioner forced her to consume liquor and she lost her sense and next morning she found herself in a hotel room with the petitioner and understood of being raped not in conscious state of mind. Thereafter the petitioner promised her to marry and on such assurance she further continued such relation and went to Digha in the month of June 2018 and had sexual intimacy with the petitioner and thereafter also on several occasions went to the house of the petitioner as well as Hotels and spent nights and lastly after they returned from Goa, she got pregnant. The petitioner after being appraised of such fact compelled her to get an abortion with the assurance to marry her in future. Unfortunately the petitioner lastly refused to marry her and also threatened her to upload her photographs and videos lying in his laptop.

3. After the petitioner was arrested on 23.2.20 22 in connection with this case a writ petition was filed by the mother of the present petitioner before the High Court and the petitioner was released by an order dated March 3, 2022 with certain terms and conditions. Challenging such order an appeal was preferred by the Opposite Party no. 2 before the Division Bench and after hearing the rival submissions, the Learned Division Bench of this court did not interfere with the order passed by the learned Single Bench. Meantime on completion of the investigation the charge sheet was submitted on 21.7.20 22 against the petitioner and hence the petitioner has come before this court for quashing of the entire proceeding.

Submission

4. The learned Senior Advocate Mr Rajdeep Majumder appearing on behalf of the petitioner would submit that the factual scenario as depicted in this case clearly portrays the picture which runs contrary to the basic ingredients to constitute an offence punishable under Section 417/376/313/506 of the Indian penal code. The complainant/victim lady being major and educated lady voluntarily entered into a physical relationship being aware about the consequences and maintained that since 2017 till lodging of the F I R in the year 2022 .Despite alleging commission of offence of rape by the petitioner in the year 2018 ,forcing her to consume liquor and to take advantage of her inebriated condition again on the promise made to her to marry she continued with the relationship . No complaint was ever lodged by her who later on went with the petitioner to Digha ,spent night with the petitioner on several dates and at different hotels including at the house of the petitioner

and lastly went to Goa in the year 2020. Therefore with full consent they intimated with each other and hence question of misconception since inception of the relationship of false promises to marry never arises.

5. It is further argued that the incident of abortion as alleged are completely false and vexatious which is evident from the inconsistencies found on the face of the complaint as well as in the statements recorded under section 164 of the code of criminal procedure. That apart the alleged incident was of the year 2021 and after the abortion took place which was done with the consent of the complainant as well as the petitioner they spent together as husband and wife. The Investigating Officer in course of evidence also collected the documents which supports the case of the complainant of their residing together at various hotels as well as at the house of the petitioner. It is further argued that the charge-sheet as impugned is submitted completely ignoring the materials found that it was a consensual act and it would be gross abuse of the process of law if the proceeding is allowed to end up trial as the prosecution has no case and suffers from lack of essential ingredients to constitute any of the charges levelled against the petitioner.
6. Learned Advocate relied upon the decision of ***State of Haryana versus Bhajanlal reported in***¹ where the Hon'ble Supreme Court has succinctly laid down that the power under Section 482 of the Code of Criminal Procedure or under Article 226 of the constitution of India when can be used. The learned Senior Advocate further relied upon the decision reported in ***Samadhan versus State of Maharastra and Anr***² where in a similar type of complaint

¹ A.I.R 1992 SCC 604

² 2025 SCC online SC 2528

was quashed by the Hon'ble Apex court on the ground that during the subsistence of the relationship no allegation was ever raised by the complainant regarding absence of consent in their physical relations. Further relied upon the decision of **Prashant versus State of NCT of Delhi reported in³** where also the complaint was of forceful sexual relationship with the threatening to the victim and it was held that the relationship between the parties was consensual in nature and they wanted to fructify the relationship into marriage and indulged in the sexual activity. Therefore the facts of the case indicated that ingredients of the offence under Section 376 (2) (n) 506 IPC were not established. The learned counsel also relied upon the decision of the Hon'ble Supreme Court in **Pramod Suryabhan Pawar vs State of Maharashtra and Anr.⁴** where it was observed that the "consent" of the woman under Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish where the 'consent' was vitiated by a misconception of facts arising out of a promise to marry, two propositions must be established. Accordingly prays for quashing of the proceeding.

7. Learned Advocate representing the Opposite Party No 2 on the other hand raises vehement objection and submits that the complainant recorded her statement under Section 164 of the code of criminal procedure and in the medical report both the parties signed. The complainant gave consent to such physical relationship only with the assurance of marriage by the petitioner which has subsequently refused. That apart she was subjected to threatening and forced for abortion and since allegations are levelled against the petitioner

³ 2024 INSC 879

⁴ (2019)9 SCC 608

which are serious nature and on completion of investigation the charge sheet has been submitted against the petitioner, prima facie establishes the charges against the petitioner which should be tested through the process of trial.

8. The learned Advocate of appearing on behalf of the Prosecution handed over the case diary and the memo of evidence. Attention is drawn to the different dates and times and the names of the hotels featured the places where they spent night together. The learned prosecution also drawn the attention of the physical examination report which do not suggest any recent sexual intercourse and also the consent given by the de facto complainant/ victim to the termination of pregnancy on 8.2.20 21. Accordingly submitted that there are certain materials which need to be established in course of trial and hence prayed for dismissal of this revisional application.

Analysis

9. Heard the submission of the learned Advocates and their rival contentions. On close scrutiny of the entire record and the factual matrix the admitted facts found are the romantic relationship of the complainant and the petitioner started in the year 2017 and continued till the relationship turned sour in the year 2022. During subsistence of their relationship they indulged into sexual activity, spent nights together at various hotels like Digha, Park Street, Kharagpur, Goa lived like husband and wife. It is also admitted she became pregnant and the pregnancy was terminated following the medical termination of pregnancy rule 2003 with the concept of the de facto complainant/victim as well as the petitioner mentioning himself as the guardian of her. Instead of lodging any complaint against the petitioner she various further indulged

herself to continue the relationship and again different places with the petitioner. So as of now nothing suggest that at any point of time she was under misconception for last 5/6 years.

- 10.** Since the charge has been made under Section 376 of the Indian penal code it is relevant to revisit the said provision.

'376; punishment for rape- (1) whoever, excepting cases provided for in sub section (2) commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than 10 years, but which may extend to imprisonment for life and shall also be liable to fine .'

- 11.** In the case of **Samadhan (supra)** it was held that ,

the victim made the accused being a practising advocate then exchanged numbers and regularly kept in touch and over the passage of time they developed a close relationship and also established sexual relations multiple times and during the course of their relationship the victim never alleged it non-consensual sexual relations and it is inconceivable that the applicant would force himself upon her for so years without there being any protest or complaint from the side of the victim and on refusal on the part of the appellant to fulfil the demand of the victim to pay an huge amount the criminal case was instituted. The Hon'ble Apex court took note of the case of Prashant vs State of NCT of Delhi (supra) where also it was held that a mere breakup of a relationship between a consenting couple cannot result in the initiation of criminal proceedings. The relevant portion of the said decision was extracted and reproduced by the Hon'ble Apex court as follows;

20. In our view taking the allegations in the F IR and the chargesheet 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 to the 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 relationship between consent in 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 state relationship does not fructified into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, now, the continuation of the prosecution in the present case would amount to gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution.

- 12.** In this case also from the materials as well as the contents of the complaint it is glaringly visible that the relationship developed gradually as initially they were friends and they engaged into physical relationship without any assurance given by the petitioner at the point of time. It was in the year 2018 when they went to privy Ultra Lounge, Forum Mall, Kolkata and spent night together and allegedly compelled to consume liquor and subjected to sexual intercourse when she was not in conscious state of mind, the assurance was

given by the petitioner to marry very soon. The incident of abortion took place almost 2 years from such date when she agreed to the termination of pregnancy with the assurance by the petitioner to marry her. After that again she indulged herself to continue with such physical relationship with the person who ravished her, forced her to terminate the pregnancy and did not marry her for the last four years.

Section 90 of the IPC reads as follows; consent known to be given under fear or misconception.-A consent is not such consent as is intended by any section of this Court, if the consent is given by a person under fear of injury, or under the misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

In the present case, the misconception of fact alleged by the complainant was the promise to marry her by the petitioner. It is observed by the Hon'ble Supreme Court that in the context of a promise to marry, there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of promise which is made in good faith but subsequently not filled.

13. In the case of Anurag **Sony versus State of Chhattisgarh**⁵ in paragraph 12 it was held:

12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry

⁵ (2019)13 SCC 1

and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her. Such consent can be said to be a consent obtained on a misconception of fact as per section 90 IPC and, in such a case, such consent could not excuse the offender and such an offender can be said to have committed to rape as defined under sections 375 IPC and can be convicted 376 IPC.”

The surrounding circumstances ,prior conduct of the parties and the absence of any immediate protest or contemporaneous complaint raise serious doubts regarding the veracity of the allegations .The misconception as discussed by the Hon’ble Supreme Court is clearly missing in the present to be there from the very inception of their relationship.

14. In the case of ***State of Haryana versus Bhajanlal (supra)*** the Hon’ble Supreme Court formulated the parameters in terms of use of the power under section 482 of the criminal procedure court 1973 and this case squarely comes under clause (a) ,(b) and (c) of the judgement which are as follows;

a) where allegations made in the first information report over 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;

b) allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying and investigation by police officers under section 156(3) of the court except under an order for Mag within the purview of section 155 (2) of code.

c) Where the uncontroversial allegations made in the FIR or complaint and the evidence collected in support of the same not disclose the commission of offence and make out a case against the accused.

15. In the case of **Pramod Suryabhan Pawar (supra)** it was observed by the Hon'ble Supreme court that Section 482 is an overriding Section which saves the inherent powers of the court to advance the cause of justice .Under Section 482 Cr.P.C the Court can exercise the inherent jurisdiction in order to give effect to an order under code of criminal procedure, to prevent the abuse of the process of the court and to otherwise secure the ends of justice.

Conclusion

16. After going through the entire facts and circumstances of the case and even accepting the allegations set out by the complainant on its face nothing is found that the promise was there from the inception of the long standing relationship and the complainant engaged in sexual relations on the basis of such promise. On careful consideration of the record, this court is unable to discern any materials that would warrant the invocation of Section 376 Indian penal code, on the other hand on the contrary it would be an instance of consensual sexual relationship with subsequently turned acrimonious. It is therefore clear that the accused cannot be held liable for the offence of Rape.

17. The allegation also do not inspire confidence to construe an offence constituted under Section 313 Cr.P.C in view of the threadbare discussions made herein above which took place long back in the year 2020 and she further continued with the relationship till 2022 .So far the allegation under Section 417 is concerned prima facie the essential ingredients to attract the

provision are wholly absent in the present case. There must have a fraudulent or dishonest intention at the very inception and that she was induced to go for the sexual relationship but they travelled together voluntarily on multiple occasions, stayed together and conducted in the manner akin to husband and wife. Such conduct clearly indicates mutual consent and companionship rather than inducement by deception. In the absence of such foundational ingredient continuation of proceeding would amount to abuse of the process of law.

18. Therefore if the prosecution is allowed to proceed with the case it would be a sheer abuse of the process of the court and hence the proceeding is liable to be dismissed.

19. Hence this revisional application stands allowed. The proceeding pending before the learned court is hereby quashed.

20. CD be returned.

21. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS),