

(2023) 01 CAL CK 0040
In the Calcutta High Court

Case No : Criminal Revision No. 99 Of 2021, CRAN 1 Of 2022

Kaustav Singha Roy

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 19-01-2023

Acts Referred:

Indian Penal Code, 1860 — Section 90, 120B, 166, 375, 376, 376(2)(f), 406, 417, 506
Code Of Criminal Procedure, 1973 — Section 164, 482

Citation : (2023) 01 CAL CK 0040

Hon'ble Judges : Tirthankar Ghosh, J

Bench : Single Bench

Advocate : Milon Mukherjee, Dattatreya Dutta, Sreeparna Das, Somenath Bhattacharjee, Kaustav Chatterjee

Final Decision : Allowed

Judgement

Tirthankar Ghosh, J

The present revisional application has been preferred challenging the proceedings of Ballygunge Police Station case no. 94/2018 dated 24.06.2018 corresponding to C.G.R. Case No. 2707 of 2018 under Section 417/376/506 of the Indian Penal Code.

On perusal of the records of the case it reflects that the case was initially registered with Jadavpur police station being Jadavpur Police Station case no.170 dated 16.05.2018 under Section 417/376/506 of the Indian Penal Code, as the complainant/opposite party no.2 addressed her letter to the Officer-in-charge, Jadavpur Police Station. Later on the point of jurisdiction the case was transferred to Ballygunge police station and Ballygunge police station registered the instant case as Ballygunge police station case no. 94 dated 24.06.2018 and on conclusion of investigation submitted charge-sheet under the same sections.

The allegations made in the letter of complaint were to the effect that the opposite party no.2 in the year 2016 registered herself with a matrimonial site

being [www.shadi .com](http://www.shadi.com) as a paid member in order to search for a prospective groom and towards the end of April, 2016 found the petitioner namely, Kaustav Singha Roy. It was reflected in the profile that he was working at London, UK as a Senior Consultant in Cognizant Business Consulting and was in the process of shifting to India in the year 2017 by joining Citibank at EON Free Zone, Kharadi, Pune as Vice-president-Technology. It is stated that the petitioner showed interest towards the complainant after seeing her profile and starting interacting with her on and from June, 2016. With passage of time both of them communicated and became friends and intended to marry each other. The petitioner and the opposite party no.2 exchanged their contact details and started chatting in whatsapp, skype, phone call etc. It is alleged that after sometime the petitioner started asking for a close relationship and the opposite party no.2/complainant thereafter stopped interacting with other prospective grooms as she thought that the relationship was serious. The complainant stated that she informed the petitioner that she was in a matrimonial site for a groom and if he intends to progress with the relationship aiming at marriage both of them should be serious on the issues. On or about December, 2016 till 11th January, 2017, petitioner repeatedly asked her to join him on a trip and spend some more time with him for knowing each other and for developing the future relationship. It has been further stated that petitioner on or about January, 2017 shared with her from London that he will stay at Kolkata for some weeks before shifting to Pune and asked her to meet at Monkey Bar, Kolkata and on 5th June at the said venue both of them for the first time met each other. During conversation the complainant stated that she informed the petitioner regarding the seriousness of the relationship and to proceed with the same for the purpose of marriage. She also reminded that because of her ailing father she doesn't have sufficient time, to which the petitioner assured that he would marry her within few months. The complainant being impressed by the decent appearance, good background and the communication which carried on since June, 2016 blindly trusted the petitioner and agreed to his request. It has been alleged that the petitioner however, did not divulge regarding his past life or about his family details. On or about 9th and 10th January, 2017 the complainant was invited by the petitioner at Hotel Lovelock, Kolkata for sharing intimate moments and discussing future plans to be outside from far away crowded places.

Complainant was impressed and agreed to such proposal, both of them met at a hotel room on 11th January, 2017 and when they were present there, petitioner pressurised her emotionally for physical relationship. It has been alleged that once the physical relationship was over the petitioner became cold towards her and did not have any further meaningful conversation or discussion about the future marriage plans and insisted on departing from the hotel as soon as possible citing work. Petitioner thereafter left Kolkata for two months without meeting her and once he reached Pune he stopped regular communication with her. With time the communication drastically reduced from December, 2017 to January, 2018 and purposefully gave delayed responses to her communications.

From February, 2017 to April, 2018 petitioner asked the complainant on several occasions to visit Pune so that they could stay at some Hotel and spend some private moments and whenever during this period he came to Kolkata he wanted her to spend few hours in a hotel with him which the complainant evaded insisting on meeting outside. It has been further alleged that from January, 2017 instead of his emotional sweet words, the request for spending private moments turned into insistence and whenever he was confronted on the issue of marriage he came up with evasive replies without refusing the same. Complainant/opposite party as such confronted the petitioner as to whether he was interested in her and regarding his future plans to carry forward the relationship but neither he denied the relationship nor he said that he was interested in her. Petitioner repeatedly represented to the complainant that he would marry her but refused to meet her parents or speak with them. Petitioner even asked the complainant not to see anyone else as they were in a relationship. On March, 2017 when the complainant told the petitioner that her parents were pressurising her to meet other groom for marriage and he should speak to them, the petitioner flatly refused to speak and avoided conversation with her family. Towards the end of March, 2018 petitioner came to Kolkata and asked her to meet at various hotels to have a physical relationship. However, both of them met outside, when the complainant represented that he was offended by the behaviour and flatly asked as to when he was going to marry her. Petitioner represented that he would speak with his family. Complainant and the petitioner again met on or about 30th April, 2018 at Monkey Bar, Kolkata when the complainant protested and confronted the petitioner regarding his changed behaviour and asked him whether he was seeing any other lady which he denied. However, the communication was stressful and the complainant alleged that she came down from the 9th floor in the elevator while she was feeling dizzy and almost fainted. During the said meeting the petitioner called her to a secluded place in the stairs and tried to kiss her using his force and without her permission, when the complainant resisted and asked him about the relationship where he threatened her, pushed her off and fled from there by representing that he would have to take his mother to doctor. Complainant alleges that the petitioner was in a relationship with another woman and spoke to her for many hours without regret or remorse. However, the complainant was under the impression that they had a relationship which would culminate in marriage. It is alleged that the petitioner while being in a serious relationship with the complainant assuring her of marriage, at the same time actively looked for other women in Shadi.com as well as other matrimonial site. The petitioner was chatting with others representing that he was single for finding out a perfect match or for the purpose of misleading, duping and taking physical advantage of some women on the pretext of marriage. The complainant's friend Angshuman Hazra heard of the events relating to the fact in February-March, 2018 and advised her to be safe/cautious regarding him and also to verify his loyalty. Thereafter on and from March, 2018 the complainant was very cautious regarding the communications as well as the seriousness with which the petitioner intended to marry her. Complainant,

however, alleges that the petitioner after satisfying his lust from January, 2017 to April, 2018 was seeking for safe relationship and was not interested in further relationship with her being disloyal and manipulative. The complainant found him to be habitual liar, a cheat, sociopath and a woman harasser who gave false assurance of marriage with his decent appearance and used his charming behaviour to induce women into physical relationship without any intent to honour the said relationship and take it forward. Due to such constant rude behaviour, cheating, lying, emotional abuse by the petitioner who had physical relationship with her and sexually abused her on 11th January, 2017 and 30th April, 2018, the complainant felt mentally tortured, depressed and harassed for more than one and a half year. The complainant alleges that by the act of the petitioner who was well educated, matured man of late 30's (years) belonging to a respectful family with international exposure, she could hardly believe that he was in the habit of abusing women in the name of marriage. Complainant alleges that she is from well respected family and currently their reputation is at stake because of the act of the petitioner and she has been duped for trusting him and abused with assurance of marriage. The complainant therefore alleged that the petitioner has committed offences under Section 376/406/417/509 and any other relevant Sections of the Indian Penal Code and requested the police authorities to initiate criminal proceedings against the petitioner.

The investigating agency on conclusion of investigation submitted charge-sheet wherein 7 witnesses have been cited by the prosecution which included the complainant; Jnan Prakash Hazra; Parijat Chakraborty; Dr. Indranil Das; Dr. B.N. Kahali; SI. Vicky Sonkar, Investigating Officer of Jadavpur Police station and SI. Ratna Sarkar, Investigating Officer of Ballygunge Police station.

It would not be out of place to state that the complainant was also examined under Section 164 of the Code of Criminal Procedure and the contents of the same is concise form of her complaint addressed to the police station.

Mr. Milon Mukherjee, learned senior Advocate appearing for the petitioner drew the attention of the Court to the allegations made in the petition of complaint and submitted that the complainant and the petitioner were adult individuals and came to know each other through a matrimonial website. The complainant in her allegations stated regarding the period which ranged from the year 2016 to 2018. The physical relationship which according to the complainant was on two occasions i.e. 11.01.2017 and 30.04.2018 reflected that the complainant was aware regarding the consequences of such physical relationship and complained only when the relationship snapped. According to the learned Advocate if the allegations made in the complaint are accepted in its entirety then also no offence is made out in the instant case as the totality of the circumstances reflected in the complaint reflect consensual physical relationship. The learned senior Advocate emphasised that the complainant was of an age who could understand the consequences of a physical relationship and on both the occasions she herself had been to the places where she alleged regarding her

physical relationship or sexual abuse. The petitioner relied upon two judgments of the Hon'ble Supreme Court in Sonu alias Subhash Kumar –Vs. – State of Uttar Pradesh & Anr. reported in 2021 SCC OnLine SC 181 and Shambhu Kharwar –Vs. – State of Uttar Pradesh & Anr. reported in 2022 SCC OnLine SC 1032.

Mr. Kaustav Chatterjee, learned Advocate appearing for the private/opposite party no.2/complainant submitted that the facts of the case would reflect that there was an assurance of marriage as the parties were in a relationship through a matrimonial website, naturally the complainant was under the belief that for such a long period the petitioner was meeting her for the purpose of marriage. It has further been contended that during the long period the parties had a relationship as such it reflects that the accused/petitioner by his conduct developed a confidence on the complainant and utilising such confidence had a physical relationship. Such consent according to the petitioner was obtained by fraud, as from the very inception the petitioner had no intention of marrying the complainant as he was constantly in touch/seeing other women. Learned Advocate submitted that the issue raised by the accused/petitioner is a question of fact and is to be assessed in course of the trial. Reliance has been placed on an unreported judgment of this Hon'ble Court in Sri Biswajyoti Chatterjee –vs. – The State of West Bengal & Anr. (CRR 1550 of 2020 decided on 21.11.2022).

Ms. Sreeparna Das, learned Advocate appearing for the State handed over the Case Diary and drew the attention of the Court to the statement of the witnesses.

I have perused the Case Diary and I find that apart from the letter of complaint there is a statement of the complainant under Section 164 of the Code of Criminal Procedure which was recorded by the learned Judicial Magistrate, the statement of Jnan Prakash Hazra who happens to be the Manager of Hotel Lovelock, the further statement of the complainant and the other witness being Sri Parijat Chakraborty, 2nd Judicial Magistrate, Alipore who recorded the statement of the complainant. On consideration of the relevant materials so available in support of the prosecution case, I am of the considered view that the present case is based on the sole testimony of the complainant and her version and narration of facts. As such I have scrutinized the letter of complaint, the further statement of the complainant as recorded by the Investigating Officer of the case as also her statement under Section 164 of the Code of Criminal Procedure. In Pramod Suryabhan Pawar –Vs. – State of Maharashtra, (2019) 9 SCC 608 the Hon'ble Supreme Court was pleased to deal with the issue, relevant paragraphs from the said judgement are set out for the purpose of the present case, which are as follows:

"10. Where a woman does not "consent" to the sexual acts described in the main body of Section 375, the offence of rape has occurred. While Section 90 does not define the term "consent", a "consent" based on a "misconception of fact" is not consent in the eye of the law.

12. This Court has repeatedly held that consent with respect to Section 375 IPC

involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. In *Dhruvaram Sonar* [*Dhruvaram Murlidhar Sonar v. State of Maharashtra*, (2019) 18 SCC 191 : 2018 SCC OnLine SC 3100] which was a case involving the invoking of the jurisdiction under Section 482, this Court observed : (SCC para 15)

"15. ... An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of."

This understanding was also emphasised in the decision of this Court in *Kaini Rajan v. State of Kerala* [*Kaini Rajan v. State of Kerala*, (2013) 9 SCC 113 : (2013) 3 SCC (Cri) 858] : (SCC p. 118, para 12)

"12. ... "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

14. In the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In *Anurag Soni v. State of Chhattisgarh* [*Anurag Soni v. State of Chhattisgarh*, (2019) 13 SCC 1 : 2019 SCC OnLine SC 509] , this Court held : (SCC para 12)

"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 and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a 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 a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC."

Similar observations were made by this Court in *Deepak Gulati v. State of Haryana* [*Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] (*Deepak Gulati*) : (SCC p. 682, para 21)

"21. ... 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;”

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman’s “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] this Court observed : (SCC pp. 682-84, paras 21 & 24)

“21. ... 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.

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, [Ed. : The matter between two asterisks has been emphasised in original.] unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her [Ed. : The matter between two asterisks has been emphasised in original.] .”

(emphasis supplied)

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."

In *Sonu -Vs. - State of U.P.*, 2021 SCC OnLine SC 181 and *Shambhu Kharwar - Vs. - State of U.P.*, 2022 SCC OnLine SC 1032 the Hon'ble Apex Court relying upon the aforesaid judgement arrived at its finding thereby quashing the proceedings. In the later judgement it was emphasised that 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.

In *Sri Biswajyoti Chatterjee -Vs. - The State of West Bengal & Anr.* (unreported judgment of CRR 1550 of 2020) relied upon by the learned Advocate appearing for the private/opposite party, a Coordinate Bench of this Court was pleased to hold that there are substance in the allegations and prima facie material exists reflecting complicity of the petitioner in a cognizable offence and as such refused to quash the proceedings in a case under Section 376(2)(f)/417/506/166/120B of the Indian Penal Code. It has been contended by the learned Advocate appearing for the private/opposite party that the facts of the said case do apply in the background of the instant case.

I have considered the judgment of the Coordinate Bench and I find that the finding is based on the facts restricted to the said case. Further I do not find that the judgments of the Hon'ble Supreme Court and the ratio laid down in *Pramod Suryabhan Pawar (supra)*, *Sonu -Vs. - State of U.P. (supra)* and *Shambhu Kharwar -Vs. - State of U.P. (supra)* has been dealt with in the said judgment. Thus, the finding in the said judgment do not apply to the facts of the present case. ,

Having considered the principles set out by the Hon'ble Supreme Court in case of relationship of such a nature which exists for a considerable period of time, the academic at background of the parties, the capacity to understand the consequences of a physical relationship prior to marriage being solemnized and the complaint being filed when the relationship snapped, I am of the opinion that the allegations made in the complaint as well as in the charge-sheet fails to make out any case for the purpose of continuance of the trial of the case.

Accordingly all further proceedings arising out of Ballygunge police station case no. 94/2018 dated 24.06.2018 including the charge-sheet filed therein, pending before the learned Additional Chief Judicial Magistrate, Alipore is hereby quashed.

Thus, the revisional application being CRR 99 of 2021 is hereby allowed.

Pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby made absolute.

Case Diary is returned to the learned Advocate appearing for the State.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.