

(2023) 06 CAL CK 0051
In the Calcutta High Court
Case No : Criminal Revision No. 976 Of 2019

Prasanta Manik & Ors.

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 90, 120B, 375, 376, 417, 506
Code Of Criminal Procedure, 1973 — Section 164, 482

Citation : (2023) 06 CAL CK 0051

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Prasenjit Debnath, Sayan Kanjilal, S.G. Mukherjee, Imran Ali, Debjani Sahu

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing of the proceeding being G.R. Case No. 243 of 2018 under Sections 417/376/506/120B of the Indian Penal Code arising out of Daspur Police Station Case No. 105 of 2018 dated 11.04.2018 and Charge Sheet No. 285 of 2018 dated 31.07.2018 pending before the Learned Additional Chief Judicial Magistrate, Ghatal, Medinipur (W) and all orders passed therein against the petitioners.

2. The petitioners' case is that the defacto complainant/opposite party No. 2 herein lodged a written complaint with Daspur Police Station being P.S. Case No. 105 of 2018 dated 11.04.2018 under Sections 417/376/506/120B of the Indian Penal Code.

3. The gist of the complaint is as follows:-

".....It is alleged that the defacto complainant was in a relationship with the petitioner no. 1 herein. That the petitioner no. 1 herein also proposed to marry

the defacto complainant, to which she readily agreed. It is further alleged that with a promise to marry, the petitioner no. 1 had sexual intercourse with the defacto complainant repeatedly. Thereafter the petitioner no. 1 herein in coalition with the other petitioners refused to marry her and further abused and threatened the defacto complainant.....”

4. After completion of investigation, the Investigating Agency submitted charge sheet being C.S. No. 285 of 2018 dated 31.07.2018 under Sections 417/376/506/120B of the Indian Penal Code against the petitioner no. 1 herein and under Sections 506/120B of the Indian Penal Code, 1860 against the petitioner nos. 2, 3 and 4 herein. On 17.08.2018 the Learned Additional Chief Judicial Magistrate, Ghatal, Medinipur (W) was pleased to take cognizance after perusing the case diary and charge sheet.

5. Mr. Prasenjit Debnath, learned counsel for the petitioners has submitted that it clearly transpires from the First Information Report that there is absolutely no allegation to the effect that the petitioner no. 1 at any time forcibly had intercourse with the complainant. Further the complainant has not stated anywhere that at any stage she resisted the sexual advances of the petitioner no. 1, as such the essential ingredients of the alleged offence of Section 376 of the Indian Penal Code, 1860 does not at all arise against the petitioner no. 1.

6. That the complainant being a major lady aged about 26 years as claimed by her in First Information Report, was voluntarily engaged in the act of sexual intercourse with the petitioner no. 1 and continued to indulge in such activity for years on her own volition. As such the complaint as made by the complainant does not disclose any offence as alleged against the petitioner no. 1.

7. It further transpires from the complaint that the complainant was in a relationship with the petitioner for a long span of about five (5) years and had also accompanied the petitioner to several places for spending time. As such the contents of the complaint clearly imply that the complainant freely, voluntarily and consciously consented to having sexual intercourse with the present petitioner no. 1 herein and her consent could not be in consequence of any misconception of fact.

8. That the complainant being a full grown adult having crossed the age of 26 years and being a divorcee was well aware of the consequences of her act and actions and her consent to the act of sexual intercourse cannot be said to have been obtained under any misconception of fact.

9. That the criminal proceeding has been maliciously instituted by the complainant with mala fide intention and an ulterior motive for wreaking vengeance on the petitioner nos. 2, 3 and 4 herein with a view to spite them due to personal grudge.

10. That the petitioner no. 4 herein is married to one Mihir Maity and has been residing separately since her marriage at her matrimonial house at Sahachak,

Paschim Medinipur. It is further stated that she has a male child of 6 years. Hence, it is quite apparent that the petitioner no. 4 along with petitioner nos. 2 and 3 have been intentionally implicated in the instant case falsely.

11. That the allegations as made in the First Information Report are so absurd and inherently improbable that there is no sufficient ground for proceeding against the petitioners herein.

12. That in view of the above, any further continuation of the impugned proceeding will amount to gross abuse of the process of the Court and as such for the ends of justice and to obviate the harassment of the petitioners herein the same should be quashed.

13. In spite of due service there is no representation on behalf of the opposite party no. 2.

14. Mr. S.G. Mukherjee, learned Public Prosecutor has placed the case diary and submitted that there is sufficient materials on record against all the petitioners to proceed towards trial and as such the present revision is liable to be dismissed.

15. From the materials on record the following facts are before this Court:-

(i) The defacto complainant was a divorcee (thus could remarry) when the admitted relationship in this case was initiated between the parties.

(ii) It is the case of the opposite party no. 2 that the petitioner no. 1 proposed to marry her as he was in love with her.

(iii) The opposite party agreed to the marriage proposal and the parties have been in a physical relationship since then.

(iv) The petitioner no. 1 has admitted to the said relationship. His defence is that the opposite party was aged about 26 years and being a divorcee was well aware of the consequences of her act and that she did not give her consent under any misconception of fact.

16. Mr. Debnath, learned counsel for the petitioners has relied upon paragraphs 8 to 11 of the judgment in Sonu alias Subhash Kumar vs. State of Uttar Pradesh & Anr. reported in 2021 SCC Online SC 181 which reads as follows:-

"8. The contents of the FIR as well as the statement under Section 164 of CrPC leave no manner of doubt that, on the basis of the allegations as they stand, three important features emerge:

(i) The relationship between the appellant and the second respondent was of a consensual nature;

(ii) The parties were in the relationship for about a period of one and a half years; and

(iii) Subsequently, the appellant had expressed a disinclination to marry the

second respondent which led to the registration of the FIR.

9. In *Pramod Suryabhan Pawar (supra)*, while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:

"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.."

10. Further, the Court has observed:

"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."

11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established."

17. Mr. Debnath, learned counsel for the petitioners has also relied upon paragraphs 28, 31 and 33 of the judgment in *Puran Giri vs. The State of West Bengal & Anr.* reported in (2017) 1 C Cr LR (Cal) 166 which reads as follows:-

"28. As such it transpires that there was absolutely no allegation to the effect that the petitioner at any time forcibly had intercourse with the complainant. It was alleged that the accused "by such hope (the promise of marriage) he used to enjoy me since September, 2012". However in her examination under Section 164 of the Cr.P.C., the victim gave a statement which was at a huge variance from her allegation in the FIR, and contained various new allegations, which had

not been mentioned earlier, even though the facts made out therein had admittedly occurred before lodging of the FIR.

31. In "State of Haryana v. Bhajan Lal", [1992 Supp (1) SCC 335, the Supreme Court, in enumerating the various situations in which criminal proceedings may be quashed under Section 482, had observed –

"102) In the backdrop of the interpretation of the various relevant provision of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of extraordinary power under Article 226 or the inherent power under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, thought it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

1) Where the allegations made in the first information report of 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) (Inapplicable)

3) (Inapplicable)

4)(Inapplicable)

5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6)(Inapplicable)

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In the given circumstances, the aforesaid three situations especially the first one would appear to be attracted in the present case.

33. In its revisional jurisdiction, this Court is not required to meticulously scan the evidence collected. But this much is clear from the complainant's own statement under Section 164 Cr.P.C. that she voluntarily had sex with him before satisfying herself about his sincere intention to marry her, as she admittedly did not wait to meet his children and already had sex with the petitioner either in September 2012 (according to the FIR) or otherwise in December 2012 (according to her statement under Section 164 C.P.C.), before the children arrived only in January 2013. In view of her own claim of having already been

deceived earlier in a similar fashion by another Police Constable Tapas Kuamr Singha, who had had sexual intercourse with her on the false promise of marriage, after which she implicated him in a criminal case to the knowledge of the petitioner, there would remain little doubt that she had submitted to the petitioner's sexual advances voluntarily."

18. Mr. Mukherjee, learned Public Prosecutor has relied upon the paragraph 9 of the judgment in Sonu alias Subhash Kumar (Supra).

9. In Pramod Suryabhan Pawar (supra), while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:

"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..."

19. This Court relies upon the judgment in Shambhu Kharwar vs State of Uttar Pradesh & Anr., Criminal Appeal No. 1231 of 2022, on August 12, 2022, wherein the Supreme Court held:-

"10. An offence is punishable under Section 376 of the IPC if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 along with Section 90 of the IPC is relevant which is set out below.

"375. Rape – A man is said to commit "rape" if he –

[...]

under the circumstances falling under any of the following seven descriptions

Firstly ...

Secondly. – Without her consent.

[...]

Explanation 2. – Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

xxx

90. Consent known to be given under fear or misconception - A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a 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..”

11. In *Pramod Suryabhan Pawar v. State of Maharashtra*, a two Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in *Sonu @ Subhash Kumar v. State of Uttar Pradesh*, observed that

:

“12. This Court has repeatedly held that consent with respect to Section 375 of the 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...

[...]

14. [...] 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...

[...]

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...

[...]

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.

(emphasis supplied)”

20. In *Naim Ahamed vs State* (NCT of Delhi), Criminal Appeal No. 257 of 2023, on 30.01.2023, the Supreme Court held:-

“20. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause – Secondly of Section 375 IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.”

21. Charge Sheet in this case has been filed against all the accused persons and the other FIR named persons including the petitioners.

22. Petitioner no. 1 Prasanta Manik is the person who was in relationship with the defacto complainant (principal accused).

23. Petitioner no. 2 is his father.

24. Petitioner no. 3 is his mother.

25. Petitioner no. 4 is his married sister.

26. Allegedly the petitioner no. 1 proposed marriage to the complainant, who was a divorcee at that time.

27. After that the complainant and the said Prasanta admittedly co-habited.

28. In the present case, accused Prasanta prima facie on false promise of marriage to the complainant cohabited with her, having no intention right from the beginning to marry the complainant/prosecutrix and thus cheated her only to satisfy his lust.

29. This is prima facie not a case of breach of promise where accused Prasanta gave his promise to marry in all seriousness as there has been no unforeseen circumstances beyond his control, which prevented him to fulfill his promise (*Naim Ahamed vs State* (NCT of Delhi) (Supra)).

30. The petitioners no. 2, 3 and 4 are his family members.

31. None of the ingredients required to constitute the offences alleged under Sections 506/120B of IPC are present/applicable in respect of the petitioners no. 2, 3 and 4.

32. Accordingly the proceedings and the Charge Sheet in respect of the petitioners no. 2, 3 and 4 herein is liable to be quashed only against the petitioners no. 2, 3 and 4.

33. The revisional application being CRR 976 of 2019 is accordingly dismissed in respect of petitioner no. 1 Prasanta Manik and allowed in respect of petitioners no. 2, 3 and 4 namely Sunil Manik, Rita Manik and Sudipa Manik.

34. The proceedings being G.R. Case No. 243 of 2018 under Sections 417/376/506/120B of the Indian Penal Code arising out of Daspur Police Station Case No. 105 of 2018 dated 11.04.2018 and Charge Sheet No. 285 of 2018 dated 31.07.2018 pending before the Learned Additional Chief Judicial Magistrate, Ghatal, Medinipur (W) and all orders passed therein against the petitioners no. 2, 3 and 4 namely Sunil Manik, Rita Manik and Sudipa Manik, is hereby quashed.

35. The trial in respect of accused Prasanta Manik will proceed in accordance with law.

36. No order as to costs.

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

38. Interim order, if any, stands vacated.

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

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