2025 INSC 458

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
Arising out of SLP (Crl.) No. 4261 of 2024

BISWAJYOTI CHATTERJEE …APPELLANT(S)

VERSUS

STATE OF WEST BENGAL & ANR. …RESPONDENT(S)

J U D G M E N T

SATISH CHANDRA SHARMA, J.

Leave granted.

2. The Appellant has approached this Court being aggrieved by the Order dated 23.02.2024 passed by the Hon'ble High Court of Calcutta in CRR No. 639/2024 filed under Section 402 r/w 482 of the Code of Criminal Procedure, 1973, ("**CrPC**"), whereby the Hon'ble High Court refused to discharge the Appellant in FIR No. 13/2015 dt. 14.12.2015 registered with

Mahila Police Station, Haldia, District Purba MDP, Sub Div. Haldia under Sections 376/417/506 IPC ("**FIR**") and dismissed the Revision Petition against Order dt. 04.01.2024 passed by the Ld. District & Sessions Judge, Purba Mednipur at Tamluk in Sessions Case No. 198/2023.

3. The Appellant is a former judicial officer who has superannuated from the post of Civil Judge (Senior Division), City Civil Court, Calcutta. The FIR was registered at the behest of the Respondent no.2/Complainant, who has alleged that it was in 2014, during the pendency of the litigation arising out of a marital discord with her ex-husband, that she came in contact with the Appellant, then posted as ACJM, Haldia, Dist. Purba, Medinipur. It is the case of the Complainant that the Appellant, who was also separated from his wife, had assured the Complainant/Respondent no.2 that he will marry her and will take complete responsibility of her and her son from the first marriage, as his own, once she gets divorced. The Appellant purportedly kept the Complainant in a rented house at Tamluk, and got her son admitted in Tamralipta Public School, at his expense. The Appellant also regularly transferred money into the bank account of the Complainant for her day-to-day expenses and that of her son. It was allegedly on this pretext that the Appellant had physical relations with the Complainant on multiple occasions. It is alleged that the Appellant also took the

Complainant/Respondent no. 2 to his residence in Kolkata, and had repeatedly assured her that he will marry her. However, when the divorce of the Respondent No.2/Complainant was finalized, the Appellant started avoiding her, stopped answering her phone calls and told her not to have any contact with him whatsoever.

4. The Complainant in her statement under section 164 CrPC, reiterated the said allegations and further deposed that it was upon the insistence of the Appellant that she had handed over the cases against her husband to one Advocate Mr. Gopal Chandra Dass, who would not charge any fees from her. It was stated that once her divorce was finalized, the Appellant had stopped receiving her phone calls and had instructed his security guard Anup, to not make calls, otherwise he would harm her son. It was stated that the Appellant had exploited the Complainant, mentally and physically.

5. During the course of investigation, the Appellant was granted Anticipatory Bail by the Hon'ble High Court, Calcutta vide Order dt. 13.01.2016 in CRM No. 11930/2015.

6. The investigation was transferred to Criminal Investigation Department [CID], West Bengal, which culminated into charge-sheet dt. 30.04.2020 against the Appellant, and Mr. Gopal Chandra Dass. The Ld. Magistrate took cognizance of the same, vide Order dt. 01.05.2020, which

was challenged by the Appellant in Revision by way of CRR No. 1550/2020. Vide Order dt. 20.11.2020, the High Court had directed the Appellant to seek appropriate remedies, once the case was committed to the Sessions Court. The Revision Petition CRR No. 1550/2020 was ultimately dismissed vide Order dt. 21.11.2022 passed by the High Court observing that there is substance in the allegations and there exists *prima facie* material to make out a cognizable offence, against the Appellant.

7. The Appellant sought discharge by way of an Application under section 227 CrPC, which was also dismissed vide Order dt. 04.01.2024 passed by the Ld. District & Sessions Judge, Purba. The said Order was ultimately challenged before the High Court in Revision, by filing CRR No. 639/2024, which has been dismissed by the High Court vide Impugned Order dt. 23.02.2024.

SUBMISSIONS

8. Ld. Counsel for the Appellant submitted that the Impugned Order dt 23.02.2024 passed by the High Court is a non-speaking Order, which fails to take into consideration that the relationship between the Complainant and the Appellant was ‘consensual’ in nature and lasted for over a year. It was submitted that both the Appellant and the Complainant had purportedly taken advantage of their social relationship and were very well aware of the consequences of their actions, being

mature adults. At the time of the alleged incident, the Appellant was 56 years old, while the Complainant was 36 years old, having a child aged 11 years.

9. It was also argued by the Ld. Counsel for the Appellant, that the essential ingredient for an offence under Section 376(2)(f) IPC, being a false promise to marry, could not be fastened against the Appellant when such promise is unenforceable and illegal. The Complainant had voluntary entered into a relationship with the Appellant, knowing fully that he was still a married man and such an acknowledged consensual physical relationship would not constitute an offence under Section 376 IPC[1]. Further, the ingredients of dishonest and fraudulent inducement are clearly absent to further constitute an offence of cheating under section 417 IPC, insofar as the Complainant was well aware of the personal as well as professional background of the Appellant, before entering into a consensual relationship with him.

10. *Per contra*, Sri Gautam Saha, Inspector of Police, CID, West Bengal has filed an Affidavit dt. 21.09.2024 on behalf of the State of West Bengal, stating that there is material evidence on record to establish that the Appellant, while holding the post of ACJM, Haldia had used his post to obtain trust of the victim, and had promised to marry her. The Appellant took undue

1 Dr. Dhruvaram Muralidha Sonar vs State of Maharashtra [2019] 18 SCC 191

advantage of his position and the vulnerability of the Complainant/Respondent No. 2 and sexually exploited her under the false pretext of marriage.

11. It was submitted that there is material evidence on record and statements of witnesses, Mr. Anup Kumar Malik, (security guard) and Mr. Pranab Midda (driver) that the Appellant habitually got into illicit relationships with women, and they often acted as an intermediary to manage his personal affairs and helping facilitate his relationships. The CFSL Report further revealed that the CDR records of mobile number 8116704589 and 9851095961 in the name of Minu Khilari and Pranav Midda, were being used by the Appellant. The analysis of as many as 4 different mobile numbers shows that the mobile set bearing IMEI number-355555607033183, which belonged to the Appellant, was the common device. Ld. Counsel for the State has argued that there is clear consistency between the narration of Complainant/Respondent No.2 and the testimonies of the witnesses, as well as the material evidence collected during the investigation, that a *prima facie* case under section 376(2)(f)/417/506/120B IPC is made out against the Appellant.

12. It was argued that the High Court had rightly dismissed the Revision Petition at the stage of discharge, where the Court is not required to conduct a mini trial.[2] At the time of framing of

2 Central Bureau of Investigation Vs Aryan Singh [2023] SCC Online SC 379

charges, only a *prima facie* case is to be seen; whereas whether case is beyond reasonable doubt, is not to be seen at this stage. It is the assertion of the State, that the Appellant must stand the test of trial.

CONSIDERATION OF SUBMISSIONS

13. We have carefully considered the submissions made by the Learned Counsels for the parties and in the present case, the question for consideration before the High Court, and subsequently before this Hon'ble Court, is that whether the allegations against the Appellant, as they stand, constitute an offence, under Sections 376(2)(f), 417 and 506 IPC; and whether the case of the Appellant is fit for discharge under Section 227 CrPC, 1973.

14. A bare perusal of the FIR dt. 14.12.2015, and the statement of the Complainant under Section 164 CrPC, clearly establish that Appellant and the Complainant had come in contact in the year 2014, during the pendency of matrimonial disputes arising out of the Complainant's marriage. It is the own case of the Complainant/Respondent No.2 that during the relevant time, the Appellant had duly informed her that he was separated from his wife. The Complainant who was well aware of the personal as well as the professional background of the Appellant, who had been receiving financial help from the

Appellant for herself and her son, must have carefully weighed her decision before entering into a relationship with the Appellant.

15. Even if we take the case of the Complainant at the face value or consider that the relationship was based on an offer of marriage, the Complainant cannot plead ‘misconception of fact’ or ‘rape on the false pretext to marry’. It is from day one that she had knowledge and was conscious of the fact, that the Appellant was in a subsisting marriage, though separated. It is upon having an active understanding of the circumstances, actions and the consequences of the acts, that the Complainant made a reasoned choice to sustain a relationship with the Appellant. The conduct of the Complainant/Respondent No. 2 *ex-facie* represents a reasoned deliberation, as summarized by this Hon’ble Court in ***Pramod Suryabhan Pawar vs State of Maharashtra***[3] *as under:*

> *“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*

3 [2019] 9 SCC 608

immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

16. In our considered view, even if the allegations in the FIR and the charge-sheet are taken at their face value, it is improbable that the Complainant/Respondent No. 2 had engaged in a physical relationship with the Appellant, only on account of an assurance of marriage. As rightly observed by this Hon'ble Court in the case of ***Prashant Bharti Vs State of NCT of Delhi***[4]**,** that it is inconceivable, that the complainant or any woman would continue to meet the Appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part.

17. In the case of ***Uday Vs State of Karnataka***[5]**,** the Court had acquitted the accused on the basis that she was a mature college student who had consented to sexual intercourse with the accused of her own free will. It is unlikely that her consent was not based on any misconception of fact. In *Uday* (supra), the Court noted that:

> ***"21.*** *It therefore appears that the* ***consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact.*** *A false promise is*

4 2024 SCC Online SC 3375
5 2003 4 SCC 46

> *not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact.* ***In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact****. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them."*

18. A careful reading of the evidence on record also clearly shows that there is no evidence against the Appellant, to conclude that there was any *fraudulent or dishonest inducement* of the Complainant to constitute an offence under Section 415 IPC. One may argue that the Appellant was in a position of power to exert influence, however, there is nothing on record to establish 'inducement' or 'enticement'. There is also no material on record, that there was any threat of injury or reputation to the Complainant. A bare allegation that the Appellant had threatened the Complainant or her son cannot pass the muster of an offence of criminal intimidation under Section 506 IPC.

19. On the other hand, we also find inconsistencies in the statements of the prosecutrix insofar as it is deposed by her in the statement under section 164 CrPC, that it was only upon the insistence of the Appellant, that she had handed over the cases to Advocate, Mr. Gopal Chandra Dass; however, the challan/charge-sheet reveals that Mr. Gopal Chandra Dass was well known to the Complainant, as a senior in college and it was Mr. Gopal Chandra Dass who had introduced the Complainant to the Appellant, in respect of her pending cases. This, in no manner can be a minor contradiction, and casts a suspicion on the entire narrative of the Complainant. Notwithstanding, this fact does not in any manner buttress that the relationship *inter-se* between the Appellant and the Complainant, was not consensual in nature.

20. We find that there is a growing tendency of resorting to initiation of criminal proceedings when relationships turn sour. Every consensual relationship, where a possibility of marriage may exist, cannot be given a colour of a false pretext to marry, in the event of a fall out. It is such *lis* that amounts to an abuse of process of law, and it is under such circumstances, that we deem fit to terminate the proceedings at the stage of charge itself.

21. The incident is of the year 2014 and any further litigation, will only prolong the suffering of both the parties, who are living their own separate lives.

22. In our considered view, considering the factual matrix of the case, it is clear that the physical relationship between the Complainant and the Appellant was consensual, cannot be said to be without her consent or against her will. In light of the aforesaid, we are also of the considered opinion that it would be in the interest of justice if the proceedings are terminated at this stage itself. Consequently, impugned Order of the High Court dated 23.02.2024 passed by the Hon'ble High Court of Calcutta in CRR No. 639/2024 is set aside.

23. The Criminal Appeal is accordingly allowed.

No order as to costs.

……J.
[B. V. NAGARATHNA]

……J.
[SATISH CHANDRA SHARMA]

New Delhi
April 07, 2025