

GAHC010205392012



2025:GAU-AS:636

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : CrI.Rev.P./265/2012**

GULUK KATHAR  
S/O SRI BHADRESWAR KATHAR R/O VILL- APAGAON, KARBI CHUBURI,  
P.S. DHARAMTUL, DIST. MORIGAON, ASSAM,

VERSUS

STATE OF ASSAM

2:MISS JYOTI DEKA  
D/O SRI DINA DEKA  
R/O VILL.- KHATABORI (BHURBANDHA)  
MOUZA- DANDUA  
P.S.-MORIGAON  
ASSAM  
PIN-782104

**Advocate for the Petitioner** : MR.B HALDAR, MR.S SARKAR,MR.M BASUMATARY,MR.M BISWAS

**Advocate for the Respondent** : MR. V A CHOWDHURY, AMICUS CURIAE (R-2), PP, ASSAM,,

**BEFORE**

**HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**

For the Petitioner : Mr. M Biswas, Advocate.

For the Respondent : Mr. VA Chowdhury, Amicus for respondent No. 2

Date of Hearing : 22.01.2025

Date of Judgment : 22.01.2025

### **JUDGMENT & ORDER (ORAL)**

1. Heard Mr. M Biswas, learned counsel for the petitioner and Mr. P. Borthakur, learned Additional Public Prosecutor, Assam and Mr. VA Chowdhury, learned Amicus for the respondent No. 2.
2. The present Criminal Revision Petition under Sections 397/401 of the Code of Criminal Procedure, 1973 is filed assailing the judgment and sentence dated 14.12.2010 passed by the learned Chief Judicial Magistrate, Morigaon in connection with CR Case No. 87/2008, whereby the present petitioner/accused was convicted under Section 417 IPC and was sentenced to undergo Simple Imprisonment (SI) for 1 (one) year and to pay a fine of Rs. 1,000/- (one thousand only) and in default of payment of fine, to undergo Simple Imprisonment (SI) for 2 (two) months.
3. The further challenge is made against the appellate judgment and order dated 09.04.2012 passed by the learned Sessions Judge, Morigaon, Assam in Criminal Appeal Case No. 4/2011, whereby the judgment and sentence dated 14.12.2010 passed by the learned Chief Judicial Magistrate, Morigaon was upheld.
4. The prosecution story in a nutshell is that:-
  - (i) The complainant/victim was in love relationship with the accused/petitioner since the year 2004-05. According to her, the

accused/petitioner promised to marry her and had sexual intercourse with her and in the year 2007 she became pregnant. According to her, the accused/ petitioner asked her to abort her child and gave assurance that he would marry her on 1<sup>st</sup> week of the month of Magh and she aborted her child. Thereafter, on 30.01.2008, the accused/ petitioner expressed his disinclination to marry her and asked her to get married to another person.

- (ii) Thereafter, she lodged a complaint before the learned Chief Judicial Magistrate, Morigaon. The learned Chief Judicial Magistrate, Morigaon after taking initial statement of the complainant, took cognizance of offence against the accused/ petitioner under Section 417 IPC and summon was issued against him.
- (iii) On receipt of the summons, the accused/ petitioner appeared before the court. Particulars of offence were explained to him, which he pleaded not guilty and claimed to be tried.
- (iv) During the trial, the prosecution examined as many as 4 (four) witnesses including the victim. The defence led 1 (one) defence witness.
- (v) After the trial, the learned Trial Court convicted the petitioner under Sections 417 IPC and sentenced him as aforesaid.
- (vi) Thereafter, the accused/petitioner preferred an appeal against the judgment and sentence dated 14.12.2010, which was also upheld by order dated 09.04.2012, as recorded herein above.

5. In the aforesaid backdrop, Mr. M Biswas, learned counsel for the petitioner argues that the prosecution had failed to bring home the charge under Section

417 IPC as initial deception is missing in the instant case and the complainant being a major, had herself consented to their intimate and physical relationship out of her own sweet will inasmuch as they were in a relationship of more than 4 years.

6. Mr. Biswas, learned counsel for the petitioner further urges that there is no material, even to remotely suggest that the petitioner had lured the victim on the pretext of marrying her. Therefore, according to him, the conviction under Section 417 IPC for 'cheating' is not sustainable in law and the impugned judgments and orders are liable to be interfered, having been vitiated by perversity.
7. Mr. Biswas, learned counsel for the petitioner contends that the prosecution has failed to prove miserably by way of cogent evidence that the consent by the complainant to the sexual intercourse was given under misconception of fact, i.e., promise to marry but for the fact that she also desired for it as they were in a love relationship for 4 years. Therefore, the petitioner ought not to have been convicted under Section 417 IPC for cheating based on the evidence adduced by the prosecution.
8. Mr. Biswas, learned counsel for the petitioner also contends that it is well settled 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 misconception of fact.
9. Par Contra, Mr. V A Chowdhury, learned Amicus representing the respondent No. 2 argues that the prosecution through the evidence of the victim and other witnesses have been able to prove that the promise to marry was false and that the accused made such promise with an intention not to abide by it but to deceive the victim and convinced her for engaging in the sexual relationship.

Thus, the misconception of fact, which vitiated the consent of the victim had duly been proved by the prosecution beyond any reasonable doubt.

10. Mr. Chowdhury, learned amicus further submits that the learned Appellate Court after re-appreciation of the facts established through the prosecution witnesses, had affirmed the judgment of the learned Trial Court. Therefore, this is not a fit case to exercise the revisional power of this Court to interfere with such well reasoned judgments, more particularly, when both the Courts below had concurrently found the petitioner guilty of offence under Section 417 IPC. Mr. Chowdhury, learned counsel has pressed reliance on the judgment of this High Court in ***Bipul Medhi vs State of Assam*** reported in ***2006 SCC OnLine Gau 67***.
11. I have given anxious consideration to the submissions made by the learned counsels for the parties and also perused the evidence, more particularly for the reasons that the point of perversity has been urged by the learned counsel for the petitioner.
12. From the evidence, it is seen that the victim and the accused were in a love relationship for more than 3/4 years. According to the victim, the first sexual relationship was occurred in the year 2004 and it continued and she got pregnant in the year 2007. In her deposition, she admitted that they had love affairs since 2004-05 and they first physically met after two years of their love affairs and she conceived in the year 2007. The other witnesses testified as regards their knowledge of the love affairs between the accused and the victim. In her testimony the PW1 even deposed that on the advice of the accused, she got her pregnancy aborted.
13. From the aforesaid, what is discernible is that the victim and accused were in a love relation for more than 3/4 years, they had first sexual encounter after two

years of their first love affairs and she became pregnant in the year 2007 and got aborted her pregnancy on the advice of the accused.

14. In the case of ***Promod Suryabhan Pawar Vs. State of Maharashtra*** reported in ***(2019) 9 SCC 608*** , the Hon'ble Apex Court held that when 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 but to deceive the woman and to convince her to engage in sexual relation, there is a misconception of fact, which vitiates the woman's consent. At the same time, a breach of a promise cannot be said to be a false promise and to establish false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. It was further held that consent of a woman in reference to Section 375 IPC must involve an active and reasoned deliberation towards the proposed act. It was also held that to establish whether the consent was vitiated by 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 and such false promise itself must be of immediate relevance, or it must bear a direct nexus to the woman's decision to engage in the sexual act.
15. In the case in hand, from the evidence of PW-1, it is clear that there had been a long love relationship of 4 years between the petitioner and the victim and they had physical relationship. Both of them were majors. There is no evidence to establish or suggest that the aforesaid long love relationship and the physical relationship were under misconception of fact or that the consent of the victim was based on fraudulent representation of marriage.
16. This Court has also not found anything to indicate from the available materials even suggesting that at the inception, the accused did not intend to marry the victim. What is discernible is that the relation between them broke down.

Therefore, in the considered opinion of this Court, in absence of any clinching evidence to prove that the victim, PW-1 had continued her relationship with the accused for 4 years on a misconception of fact, the accused could not have been convicted for commission of offence under Section 417 IPC, more particularly, in view of the settled propositions of law that mere refusal to marry would not constitute offence under Section 417 of the IPC until and unless the requirement under Section 90 IPC is established by the prosecution, which in the case, the prosecution has failed. Therefore, in the considered opinion of this Court, the impugned judgments and orders are vitiated by perversity and cannot withstand the scrutiny of this Court within the parameter of its revisional jurisdiction. The judgment relied on by Mr. VA Chowdhury, learned amicus cannot be made applicable in the given facts of the case.

17. Accordingly, for the reasons recorded herein above, the present criminal revision petition stands allowed by setting aside the judgment and sentence dated 14.12.2010 passed by the learned Chief Judicial Magistrate, Morigaon in connection with CR Case No. 87/2008, whereby the present petitioner/accused was convicted under Section 417 IPC and was sentenced to undergo Simple Imprisonment (SI) for 1 (one) year and to pay a fine of Rs. 1,000/- (one thousand only) and in default of payment of fine, to undergo Simple Imprisonment (SI) for 2 (two) months and the appellate judgment and order dated 09.04.2012 passed by the learned Sessions Judge, Morigaon, Assam in Criminal Appeal Case No. 4/2011, whereby the judgment and sentence dated 14.12.2010 passed by the learned Chief Judicial Magistrate, Morigaon was upheld.
18. The petitioner/accused is hereby acquitted. Bail bond stands discharged. LCR be returned back.
19. While parting with the record this court appreciate the assistance rendered by

Mr. V A Chowdhury, learned Amicus for the respondent No. 2. Accordingly, Registry shall ensure that Mr. Chowdhury be paid the legal fees as payable to a legal aid counsel as per the norms fixed by the legal service authority.

**JUDGE**

**Comparing Assistant**