

Tarun Kumar vs State Of U.P. And Another on 28 February, 2025

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:30844

Court No. - 71

Case :- APPLICATION U/S 482 No. - 44322 of 2024

Applicant :- Tarun Kumar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Utkarsha Shukla

Counsel for Opposite Party :- G.A.,Kinshuk Shukla

Hon'ble Rajeev Misra,J.

1. Heard Mr. Utkarsha Shukla, the learned counsel for applicant, the learned A.G.A. for State and Mr. Pawan Kumar, Advocate, holding brief of Mr. Kinshuk Shukla, the learned counsel representing first informant opposite party-2.

2. Perused the record.

3. Applicant-Tarun Kumar, who is a charge sheeted accused, has approached this Court by means of present application under Section 482 Cr.P.C. with the following prayer:-

"It is, therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the application and quash the impugned chargesheet No. 01 dated

26.09.2020 as well as cognizance order dated 05.02.2020 as well as the entire proceedings of Case No3 2020 (State Vs. Tarun Kumar Kumar Valmiki), arising out of Case Crime No.454 2020 under section 376 (2)(n), 323,504 and 506 I.P.C., P.S.- Kotwali, District- Bareilly, pending before the Court of Additional Seesion Judge, Fast Track Court Bareilly pending before the Court of Additional Seesion Judge, Fast Track Court Bareilly.

The Hon'ble Court further be pleased to stay the further proceeding of Case No. 5853 of 2020 (State Vs. Tarun Kumar Kumar Valmiki), arising out of Case Crime No.454 202 under section 376 (2)(n), 323, 504 and 506 I.P.C., P.S. Kotwali, District- Bareilly, as well as cognizance order dated 05.02.2020, during the pendency of the present criminal application before this Hon'ble Court, and/or pass such other suitable order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case, otherwise the applicant will suffer great irreparable loss and injury."

4. Learned counsel for applicant submits that though applicant is a named and charge sheeted accused and facing trial before Court below, however, in view of the peculiar facts and circumstance of the case as have emerged on record, the criminal prosecution of applicant cannot be sustained any further. As such, present application is liable to be allowed.

5. In furtherance of aforesaid submission, the learned counsel for applicant submits that present criminal prosecution of applicant commenced, when the FIR dated 01.09.2020 was lodged by prosecutrix/first informant opposite party-2 Resham Maurya and was registered as Case Crime No.454 202 under section 376 (2)(n), 323, 504 and 506 I.P.C., P.S. Kotwali, District- Bareilly. In the aforesaid FIR, five persons namely (1) Tarun Kumar Valmiki (2) Ashok Kumar Valmiki (3) Smt. Manju (4) Ashish Rajoriya and (5) Ankur have been nominated as named accused.

6. However, subsequent to the aforementioned FIR, the applicant solemnized marriage with the prosecutrix on 14.02.2023. As such, the prosecutrix is now the legally wedded wife of applicant. By reason of above, she is residing with the applicant as his legally wedded wife. Marriage so solemnized by the parties has also been registered under the provisions of Uttar Pradesh Marriage Registration Rules, 2017. Since marriage of the parties is registered therefore, there is a legal presumption with regard to the validity and legality of marriage of the parties. On the above premise, the learned counsel for applicant submits that in view of abovenoted subsequent developments that have taken place, the criminality if any, committed by applicant now stands washed off. It is further contended by the learned counsel for applicant that the bona fide of the parties is further explicit from the fact that prosecutrix has joined the applicant in present proceedings inasmuch as the affidavit filed in support of present application has been sworn by the prosecutrix herself. As such, no useful purpose shall be served in prolonging the criminal prosecution of applicant. In case the criminal prosecution of applicant is allowed to continue, then a happy family shall stand broken. To buttress his submission he has referred to the judgments of Supreme Court in K. Dhandapani Vs. State by the Inspector of Police 2022 SCC Online SC 1056 and Mafat Lal and Another Vs. State of Rajasthan 2022 SCC Online SC 433, wherein, the Apex Court

quashed the criminal prosecution of applicant on the ground that the accused has solemnized marriage with the prosecutrix. As such, present application is liable to be allowed.

7. Per contra, the learned A.G.A. for State-opposite party-1 and the learned counsel representing first informant opposite party-2 have no objection to the submissions urged by the learned counsel for applicant.

8. Mr. Kinshuk Shukla, the learned counsel representing first informant-opposite party-2 on the other hand upon instructions received by him submits that he has been instructed not to oppose this application. He further contends that it is an admitted fact that the prosecutrix has solemnized marriage with applicant and she is now residing with the applicant as his legally wedded wife. He therefore, contends that he cannot have any objection in case, the present application is decided by the Court by taking into consideration the subsequent developments that have taken place.

9. Be that as it may, this Court is not unmindful of the following judgements of Apex Court:

i. B.S. Joshi and others Vs. State of Haryana and another (2003) 4 SCC 675 ii. Madan Mohan Abbot Vs. State of Punjab, (2008) 4 SCC 582 iii. Nikhil Merchant Vs. Central Bureau of Investigation[2008]9 SCC 677 iv. Manoj Sharma Vs. State and others (2008) 16 SCC 1 v. Shiji @ Pappu and Others VS. Radhika and Another, (2011) 10 SCC 705 vi. Gian Singh Vs. State of Punjab (2012) 10 SCC 303 vii. K. Srinivas Rao Vs. D.A Deepa, (2013) 5 SCC 226 viii. Dimpey Gujral and others Vs. Union Territory through Administrator, U.T. Chandigarh and others, (2013) 11 SCC 497 ix. Narindra Singh and others Vs. State of Punjab (2014) 6 SCC 466 x. Yogendra Yadav and Ors. Vs. State of Jharkhand and another (2014) 9 SCC 653 xi. Shlok Bhardwaj Vs. Runika Bhardwaj, (2015) 2 SCC 721 xii. C.B.I. Vs. Maninder Singh (2016) 1 SCC 389 xiii. C.B.I. Vs. Sadhu Ram Singla and Others, (2017) 5 SCC 350 xiv. Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Others Vs. State of Gujarat and another, (2017) 9 SCC 641 xv. Anita Maria Dias and Ors. Vs. State of Maharashtra and Others, (2018) 3 SCC 290 xvi. Social Action Forum For Manav Adhikar and Another Vs. Union of India and others, (2018) 10 SCC, 443 (Constitution Bench) xvii. State of M.P. VS. Dhruv Gurjar and Another, (2019) 5 SCC 570 xviii. State of M.P. V/s Laxmi Narayan & Ors., (2019) 5 SCC 688 xix. Rampal Vs. State of Haryana, AIR online 2019 SC 1716 xx. Arun Singh and Others VS. State of U.P. and Another (2020) 3 SCC 736 xxi. (Ramgopal and Another Vs. The State of M.P.), 2021 SCC OnLine SC 834 xxii. Daxaben Vs. State of Gujarat, 2022 SCC Online 936.

xxiii. State of Kerala VS. Hafsal Rahman N.R., Special Leave Petition (Criminal) Diary Nos. 24362 of 2021.

xiv. Shatrughna Atmaram Patil and Another Vs. Vinod Dodhu Chaudhary and Another, (2024) 4 SCC 458.

xv. Suraj Singh Gujar and Another Vs. State of Madhya Pradesh and Others, 2024 SCC OnLine SC 2414.

xvi. K. Bharti Devi and Another Vs. State of Telangana and Another, (2024) 10 SCC 384.

xvii. Ramji Lal Bairwa and Another Vs. State of Rajasthan and Others, 2024 SCC OnLine SC 3193.

xviii. H.N. Pandakumar Vs. State of Karnataka, 2025 SCC OnLine SC 38.

wherein the Apex Court has categorically held that compromise can be made between the parties even in respect of certain cognizable and non compoundable offences. However, Apex Court in State of M.P. Vs. Laxmi Narayan (Supra) held that no compromise can be made in respect of offences against society as they are not private in nature. Similarly in Ram Pal Vs. State of Haryana (Supra) it has been held that no compromise can be made in cases relating to rape and sexual assault. Recently, Apex Court in Daxaben (supra) has held that no compromise can be made in matter under Section 306 IPC. In state of Kerala Vs. Hafsal Rahman (Supra), Court has held that no compromise can be entertained in matters under the POCSO Act. Reference may also be made to the decision given by this Court in Shaifullah and others Vs. State of U.P. And another [2013 (83) ACC 278] in which the law expounded by the Apex court in some of the aforesaid cases has been explained in detail.

10. Recently Apex court in Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur (Supra) has laid down the guidelines with regard to quashing of criminal proceedings as well compromise in criminal proceedings. Paragraphs 16 to 16.10 of the report are relevant for the controversy in hand, which read as under:

"16. The broad principles which emerge from the precedents on the subject, may be summarized in the following propositions 16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16.2. The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

16.5. The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

11. In Ramgopal and another (supra), Court has again reiterated the guidelines regarding quashing of criminal proceedings in view of compromise. Following has been observed in paragraphs 18-19 of the report:-

"18. It is now a well crystalized axiom that plenary jurisdiction of this Court to impart complete justice under Article 142 cannot ipso facto be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to Section 482 Cr.P.C. conferring powers on the Supreme Court to abrogate and set aside criminal proceedings, the jurisdiction exercisable under Article 142 of the Constitution embraces this Court with scopious powers to quash criminal proceedings also, so as to secure complete justice. In doing so, due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the sub-lime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.

19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extra-ordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercise carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations."

10. In State of M.P. Vs. Laxmi Narayan (Supra), the Apex Court held that mere mention of Section 307 IPC cannot be sole basis for not quashing the proceedings. Court has to examine whether the prosecution has collected sufficient evidence for framing of charge under Section 307 IPC. The Court is further required to examine the weapons used and nature of injury and whether injury has been inflicted on vital/delicate parts of the body, the previous antecedents of accused and whether they are absconding and how the compromise was got entered into by the parties are relevant factors, which must be considered. The above observations can be clearly delineated from the recital occurring in paragraphs 11 to 18 of the aforementioned report.

11. At this juncture, reference be made to the judgment of the Supreme Court in K. Dhandapani Vs. State by the Inspector of Police 2022 SCC Online SC 1056, wherein the Court quashed the proceedings under the POCSO Act proceeding against accused on the ground that he has solemnized marriage with the prosecutrix. Since the judgment is a short one therefore, the same is reproduced in it's entirety.

""1. Leave granted.

2. The appellant who is the maternal uncle of the prosecutrix belongs to Valayar community, which is a most backward community in the State of Tamilnadu. He works as a woodcutter on daily wages in a private factory. FIR was registered against

him for committing rape under Sections 5(j)(ii) read with Section 6, 5(I) read with Section 6 and 5(n) read with Section 6 of Protection of Child from Sexual Offences (POCSO) Act, 2012. He was convicted after trial for committing the said offences and sentenced to undergo rigorous imprisonment for a period of 10 years by the Sessions Judge, Fast Track Mahila Court, Tiruppur on 31.10.2018. The High Court, by an order dated 13.02.2019, upheld the conviction and sentence. Aggrieved thereby, the appellant has filed this appeal.

3. Mr. M.P. Parthiban, learned counsel appearing for the appellant, submitted that allegation against him was that he had physical relations with the prosecutrix on the promise of marrying her. He stated that, in fact, he married the prosecutrix and they have two children. 4. The appellant submitted that this Court should exercise its power under Article 142 of the Constitution and ought to do complete justice and it could not be in the interest of justice to disturb the family life of the appellant and the prosecutrix.

5. After hearing the matter for some time on 08th March, 2022, we directed the District Judge to record the statement of the prosecutrix about her present status. The statement of the prosecutrix has been placed on record in which she has categorically stated that she has two children and they are being taken care of by the appellant and she is leading a happy married life.

6. Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

7. In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with maternal uncle.

8. For the aforesaid mentioned reasons, the conviction and sentence of the appellant is set aside in the peculiar facts of the case and shall not be treated as a precedent. The appeal is accordingly, disposed of. Pending application(s), if any, shall stand disposed of.

9. In case, the appellant does not take proper care of the prosecutrix, she or the State on behalf of the prosecutrix can move this Court for modification of this Order."

11. Similar view has been expressed by the Apex Court in the case of Mafat Lal and Another Vs. State of Rajasthan 2022 SCC Online SC 433.

12. In view of the discussion made above, this Court finds that the ratio laid down by the Apex Court in the cases of K. Dhandapani (Supra) and Mafat Lal (Supra) are squarely attracted in the present case as the accused herein has solemnized marriage with the prosecutrix.

13. As a result, the present application succeeds and is liable to be allowed.

14. It is, accordingly, allowed.

15. The entire proceedings in Case No. 5853 of 2020 (State Vs. Tarun Kumar Kumar Valmiki), arising out of Case Crime No.454 202 under section 376 (2)(n), 323, 504 and 506 I.P.C., P.S. Kotwali, District- Bareilly, now pending in the court of Additional Session Judge, Fast Track Court Bareilly are, hereby, quashed.

Order Date :- 28.2.2025 Imtiyaz