

# Fardeen vs State Of U.P. And Another on 10 April, 2025

**Author: Rajeev Misra**

**Bench: Rajeev Misra**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:52871

Court No. - 70

Case :- APPLICATION U/S 482 No. - 36064 of 2024

Applicant :- Fardeen

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

Counsel for Applicant :- Imtiaz Husain,Jitendra Singh

Counsel for Opposite Party :- G.A.,Mukesh Joshi

Hon'ble Rajeev Misra,J.

1. Heard Mr. Imtiaz Husain, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1, Mr. Mukesh Joshi, the learned counsel representing the informant/opposite party-2 and Mr. Pawan Kumar Shukla, the learned counsel representing victim/opposite party-5.

2. Perused the record.

3. At the very outset, the learned counsel for applicant fairly submits that in compliance of order dated 03.04.2025, the necessary amendment has been incorporated in the cause title occurring in the stay application. However, inadvertently, the said amendment could not be incorporated in the cause title occurring in the affidavit filed in support of this application. He therefore seeks permission of court to carry out the amendment in the cause title occurring in the affidavit filed in

support of present application.

4. Prayer made by the learned counsel for applicant is bonafide. Same is not opposed by the learned A.G.A. Accordingly, it is allowed.

5. Let necessary amendment be incorporated in the cause tile occurring in the affidavit filed in support of present application during course of the day.

6. Applicant-Fardeen, who is a named and charge sheeted accused and also facing trial before court below, 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 kindly be pleased to allow the present application, quash the entire proceeding, Charge Sheet dated 07.01.2024 as well as cognizance order dated 08.04.2024, S.C. No.379 of 2024, Case Crime No.264 of 2023, (State Vs. Fardeen), Under Sections 363, 366, 376 IPC & The Protection of Children From Sexual Offences Act- 2012, Police Station -Bhagatpur, District Moradabad, Pending in the court of Special Judge POCSO ACT-I, District Moradabad.

It is further prayed that this Hon'ble Court may graciously be pleased to stay the further proceeding of S.C. No.379 of 2024, Case Crime No.264 of 2023, (State Vs. Fardeen), Under Sections 363, 366, 376 IPC & The Protection of Children From Sexual Offences Act-2012, Police Station -Bhagatpur, District Moradabad, Pending in the court of Special Judge POCSO ACT-1, District Moradabad. Otherwise the applicant shall suffer irreparable loss and injury."

7. Learned counsel for applicant submits that though applicant is a named and charge-sheeted accused and also facing trial before court below in aforementioned Sessions Case, however, in view of the peculiar facts and circumstances of the case that have now emerged on record, the criminal prosecution of applicant cannot be sustained any further. As such, the present application is liable to be allowed by this Court.

8. In furtherance of aforesaid submission, the learned counsel for applicant submits that criminal prosecution of applicant was set in motion when an F.I.R. dated 20.11.2023 was lodged by the first informant/opposite party-2, Nasir which was registered as Case Crime No. 0264 of 2023 under sections 452, 363, 504, 506 I.P.C., Police Station-Bhagatpur, District-Moradabad. In the aforesaid F.I.R. four persons namely Fardeen (applicant herein), Jabul, Rukshad, Dr. Jakir have been nominated as named accused. However, subsequent to aforesaid F.I.R., applicant solemnized marriage with the prosecutrix on 11.11.2025 in accordance with Muslim Rites and Custom. Copy Nikahnama has been brought on record as Annexure SA-2 to the supplementary affidavit dated 13.02.2025. Consequently, the prosecutrix became the legally wedded wife of applicant. By reason of above, the prosecutrix started residing with applicant as his legally wedded wife. Bonafide of the parties is also explicit from the fact that the marriage of parties has also been registered under the

U.P. Marriage Registration Rules 2017. Photocopy of the marriage registration certificate has been brought on record and is at page 11 of the supplementary affidavit dated 13.02.2025. On the above premise, the learned counsel for applicant submits that once the marriage of the parties has been registered under the relevant rules, therefore, there is a statutory presumption regarding legal and valid marriage of the parties. It is thus urged by the learned counsel for applicant that in view of the aforementioned subsequent developments, the criminality, if any, committed by applicant shall now stand washed off. Bonafide of the parties is further evident from the fact that the affidavit filed in support of present application has been sworn by the prosecutrix herself. As such, the prosecutrix has joined the applicant in present criminal proceedings. On the edifice of aforesaid submissions, the learned counsel for applicant submits that no useful purpose shall now be served in prolonging the criminal prosecution of applicant. The chances of conviction of accused/applicant is not only remote but also bleak. In case the criminal prosecution of applicant is allowed to continue, a happy family shall stand broken. It is thus urged by the learned counsel for applicant that present application is liable to be allowed by this Court.

9. Reference was then be made to the judgements of Supreme Court in K. Dhandapani Vs. The State By the Inspector of Police, 2022 SCC OnLine SC 1056 and Mafat Lal and other Vs. The State of Rajasthan, 2022 SCC OnLine SC 433 wherein the Apex Court quashed the criminal prosecution of accused therein on the ground that accused had solemnized marriage with the prosecutrix and court cannot turn a blind eye to the said fact. In the submission of learned counsel for applicant, the ratio laid down by Apex Court in aforementioned judgements is squarely applicable to the facts of the present case. As such, no exception can be carve out in the case of present applicant with reference to the aforementioned judgements of Supreme Court inasmuch as applicant has also solemnized marriage with the prosecutrix and the parties are happily living together. On the above conspectus, the learned counsel for applicant submits that the criminal prosecution of applicant cannot be sustained in law as well as fact and therefore, the same liable to be quashed by this Court.

10. Per Contra, the learned A.G.A. representing State-opposite party-1 has vehemently opposed the present application. Learned A.G.A. submits that since the prosecutrix was a child within the definition of the term child as defined in the POCSO Act, therefore, the subsequent development, if any, will not wipe out the criminality committed by the applicant as suggested by the learned counsel for applicant. Referring to the judgement of Apex Court in State of Kerala Vs. Hafsai Rahman, Special Leave Petition (Crl.) No. 24362 of 2021, the learned A.G.A. submits that there can be no compromise in proceedings under the POCSO Act. Offence complained of against accused/applicant is not only illegal but also immoral. Offence alleged to have been committed by applicant is a heinous offence and amounts to an offence against society. As such, no interference is warranted by this Court in present application. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

11. Mr. Mukesh Joshi, the learned counsel representing the first informant/opposite party-2 has also opposed the present application. He has adopted the arguments raised by the learned A.G.A. in opposition to this application. However, he also could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

12. On the other hand, Mr. Pawan Kumar Shukla, the learned counsel representing victim/opposite party-5 has supported the present application. He submits that he has received instructions not to oppose the present application. It is further submitted by the learned counsel representing victim/opposite party-5 that it is now an admitted fact that the prosecutrix has solemnized marriage with applicant and since thereafter, the prosecutrix is residing with applicant as his legally wedded wife. He also admits that the marriage of the parties has also been registered under the relevant Rules. On the above conspectus, it is thus urged by the learned counsel representing the victim/opposite party-5 that he cannot have any objection in case the present application is decided by this Court taking into consideration the aforesaid facts.

13. Be that as it may, the crux of the matter is that the parties have solemnized marriage and they are living together as husband and wife.

14. Having heard the learned counsel for applicant, the learned A.G.A. for State-opposite party-1, Mr. Mukesh Joshi, the learned counsel representing the first informant/opposite party-2, Mr. Pawan Kumar Shukla, the learned counsel representing victim/opposite party-5 and upon perusal of record this court finds that subsequent to the F.I.R. dated 20.11.2023 lodged by the first informant/opposite party-2 and giving rise to present criminal proceedings, applicant solemnized marriage with the prosecutrix on 11.11.2023 in accordance with Muslim Rites and Custom. Consequently, the prosecutrix is now the legally wedded wife of applicant. As such, they are living together as husband and wife. Marriage of the parties has also been registered under the U.P. Marriage Registration Rules, 2017. Photocopy of the marriage registration certificate has been brought on record and is at page 11 of the supplementary affidavit dated 13.02.2025. Since the marriage of the parties has been registered under the U.P. Marriage Registration Rules 2017 therefore there is a statutory presumption regarding legal and valid marriage of the parties. Bonafide of the parties is further evident from the fact that affidavit filed in support of present application has been sworn by the prosecutrix herself. As such, the prosecutrix has joined the applicant in present criminal proceedings. No such material has been brought on record on the basis of which the marriage of parties could be doubted. In view of aforesaid subsequent developments, the criminality, if any, committed by accused/applicant now stands washed off. As such, no useful purpose shall be served in prolonging the criminal prosecution of accused/applicant. On account of the facts as noted above, the chances of conviction of accused/applicant are now not only remote but also bleak. As such, in case the criminal prosecution of applicant is allowed to continue, a happy family comprising of accused/applicant and the prosecutrix shall stand broken. The trial would only entail loss of judicial time in a futile pursuit particularly when torrents of litigation drown the courts with an unimaginable flood of dockets.

15. The Apex Court in the case of K. Dhandapani (supra) and Mafat Lal and others (Supra) also quashed the proceedings against the accused therein on the grounds that the accused had solemnized marriage with the prosecutrix and secondly, the court cannot turn a blind eye to the said fact. Since the judgement rendered by Apex Court in the case of K. Dhandapani (supra) is a short one therefore the same is reproduced in its entirety:

"Leave granted.

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 Reason: 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.

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.

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.

After hearing the matter for some time on 08 th 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.

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.

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 the maternal uncle.

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.

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."

16. The ratio laid down by the Apex Court in aforementioned judgements is squarely applicable to the facts of present case as applicant has also solemnized marriage with the prosecutrix and this Court cannot ignore the said fact.

17. In view of the discussion made above, the present application succeeds and is liable to be allowed.

18. It is accordingly allowed.

19. The entire proceedings in Sessions Case No.379 of 2024 (State Vs. Fardeen) arising out of Case Crime No.264 of 2023, Under Sections 363, 366, 376 IPC and Sections 3/4 POCSO Act. Police Station -Bhagatpur, District Moradabad, now pending in the court of Special Judge, POCSO ACT-I, District Moradabad, are hereby quashed.

20. However, in the facts and circumstances of the case, the parties shall bear their own costs.

Order Date :- 10.4.2025 YK