

Sonu Kashyap vs State Of U.P. And Another on 3 March, 2025

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29359

Court No. - 71

Case :- APPLICATION U/S 528 BNSS No. - 6743 of 2025

Applicant :- Sonu Kashyap

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

Counsel for Applicant :- Deepak Maurya,Ranu,Shashi Shekhar Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Shashi Shekhar Maurya, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and Mr. Nilesh Kumar Dubey, Advocate, who has put in appearance on behalf of first informant/opposite party-2 by filing a short counter affidavit alongwith his vakalatnama in Court today, which is taken on record.

2. Perused the record.

3. Applicant-Sonu Kashyap, 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 kindly be pleased to allow this application and quashing the cognizance order dated 01.01.2024 in Session Trial No.- 10/2024 in Case Crime No. 845/2023, U/S-376(2)(n) 406, 506 I.P.C. & 3(2)(V) Sc/ St Act & P.S. Baradari, District Bareilly as well as entire proceeding in Session Trial No.- 10/2024 arising out from the Case Crime No. 845/2023, U/S-376(2)(n), 406, 506 I.P.C. & 3(2)(V) Sc/ St Act & P.S. Baradari, District - Bareilly against the applicant which has been pending before the court of Pending in the court of Additional Session Judge / Special Judge (Pocso) Act, Bareilly, District- Bareilly on basis of a registered marriage performed by the applicant as well as victim an living together as a husband and wife happily.

It is also prayed that this Hon'ble Court may kindly be pleased to stay the further proceedings in entire proceeding in Session Trial No. 10/2024 arising out from the Case Crime No. 845/2023, U/S-376(2)(n), 406, 506 I.P.C & 3(2)(V) Sc/ St Act & P.S. Baradari, District - Bareilly against the applicant which has been pending before the court of Pending in the court of Additional Session Judge / Special Judge (Pocso) Act, Bareilly, District-Bareilly on basis of a registered marriage performed by the applicant as well as victim an living together as a husband and wife happily, otherwise applicant / petitioner will suffer irreparable loss and injury, and/or pass such other and further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

4. 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 Trial, however, in view of the peculiar facts and circumstances of the case as have emerged on record, the criminal prosecution of applicant cannot be sustained.

5. In furtherance of aforesaid submission, the learned counsel for applicant submits that criminal prosecution of applicant commenced when the F.I.R. dated 18.10.2023 was lodged by the prosecutrix/first informant/opposite party-2, Akansha Kumari, which was registered as Case Crime No. 0845 of 2023 under Sections 376(2)(n), 406, 506 I.P.C. and Sections 3(2)(V) SC/ St Act, P.S.-Baradari, District - Bareilly. However, subsequent to aforesaid F.I.R., applicant solemnized marriage with the prosecutrix on 23.10.2023. By reason of above, the prosecutrix became the legally wedded wife of applicant. On account 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 62 of the paper book. On the above premise, the learned counsel for applicant submits that once the marriage of the parties has been registered, therefore, there is 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. As such, no useful purpose shall be served in prolonging the criminal prosecution of applicant. On the above conspectus, he therefore contends that criminal prosecution of applicant is liable to be quashed. In case the criminal prosecution of applicant is allowed to continue, a happy family shall

stand broken. He therefore submits that present application is liable to be allowed by this Court.

6. Per Contra, the learned A.G.A. representing State-opposite party-1 does not oppose the present application. He submits that once the prosecutrix has herself solemnized marriage with applicant then in that eventuality no good ground now exists to prolong the criminal prosecution of applicant.

7. On the other hand, Mr. Nilesh Kumar Dubey, the learned counsel representing prosecutrix/first informant/opposite party-2, submits that he has received instructions not to oppose the present application. In the submission of the learned counsel representing prosecutrix/first informant/opposite party-2, it is an admitted fact that the prosecutrix has solemnized marriage with applicant and since thereafter, the prosecutrix started residing with applicant as his legally wedded wife. He, therefore, submits that he cannot have any objection in case the present application is decided by this Court taking into consideration the aforesaid fact.

8. Be that as it may, having heard the learned counsel for applicant, the learned A.G.A. for State-opposite party-1, Mr. Nilesh Kumar Dubey, the learned counsel representing prosecutrix/first informant/opposite party-2 and upon perusal of record this court finds that subsequent to the F.I.R. dated 18.10.2023 lodged by the prosecutrix/first informant/opposite party-2 and giving rise to present criminal proceedings, the applicant has solemnized marriage with the prosecutrix. 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. Once the marriage of the parties has been registered under the U.P. Marriage Registration Rules 2017, there is statutory presumption regarding legal and valid marriage of the parties. In view of aforesaid subsequent developments, the criminality, if any, committed by accused/applicant now stands washed of. 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 in view of the compromise entered into by the parties. As such, in case the criminal prosecution of applicants is allowed to continue, a happy family comprising of accused/applicant and the prosecutrix shall stand broken.

9. At this juncture, reference 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 another Vs. The State of Rajasthan, 2022 SCC OnLine SC 433. In the aforesaid judgements, the Apex Court quashed the criminal prosecution of accused therein on the ground that accused had solemnized marriage with the prosecutrix.

10. 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."

11. The ratio laid down by the Apex Court in aforementioned judgement is squarely applicable to the present case as applicant has solemnized marriage with the prosecutrix.
12. In view of the discussion made above, the present application succeeds and is liable to be allowed.
13. It is accordingly allowed.
14. The entire proceedings is Sessions Trail No. 10 of 2024 (State Vs. Sonu Kasyap) arising out from the Case Crime No. 845/2023, under Sections 376(2)(n), 406, 506 I.P.C and Sections 3(2)(V) SC/ St Act, P.S. -Baradari, District-Bareilly now pending in the court of Additional Session Judge/Special Judge, SC/ST Act, Bareilly, District-Bareilly, are hereby quashed.
15. However, in the facts and circumstances of the case, parties shall bear their own costs.

Order Date :- 3.3.2025 YK