

Pankaj vs State Of U.P. And 3 Others on 4 February, 2025

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15257

Court No. - 71

Case :- APPLICATION U/S 482 No. - 3173 of 2025

Applicant :- Pankaj

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Rajesh Kumar Mishra

Counsel for Opposite Party :- G.A.,Purushottam Pandey

Hon'ble Rajeev Misra,J.

1. Heard Mr. Rajesh Kumar Mishra, the learned counsel for applicant, the learned A.G.A. for State and Mr. Purushottam Pandey, the learned counsel representing first informant opposite party-2.

2. Perused the record.

3. Applicant- Pankaj, 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 this application and quash the entire proceeding as well an charge sheet dated 23.09.2021 and cognizance order dated 20.10.2021 passed by Additional

Session Judge 8h/POCSO Rampur in Special Case No.87 of 2021 (State Vs. Pankaj) arising out of case crime no.429 of 2021 Under Section 452, 376 I.P.C. and Section 3/4 of POCSO Act, Police Station-Swar, District-Rampur Pending in the court of Additional Session Judge/Fast Tract Court, Court No.2, Rampur on the basis of compromise.

It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to stay the further proceeding of Special Case No.87 of 2021 (State Vs. Pankaj) arising out of case crime no.429 of 2021 Under Section 452, 376 I.P.C. and Section 3/4 of POCSO Act, Police Station-Swar, court Court, District-Rampur Pending in the of Additional Session Judge/Fast Tract Court No.2, Rampur, applicants injury. otherwise the shall suffer irreparable loss and And/or to pass such other and further order as 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 facing trial before Court below, however, in view of the peculiar facts and circumstances as have emerged on record, the present application is liable to be allowed.

5. In furtherance of aforesaid submission, the learned counsel for applicant submits that first informant/opposite party-2 lodged an FIR dated 04.09.2021 which was registered as Case Crime No.429 of 2021, under Sections 452, 376 I.P.C. and Section 3/4 of POCSO Act, Police Station-Swar, District-Rampur. However, subsequent to the FIR dated 04.09.2021 lodged by the first informant opposite party-2, the prosecutrix solemnized marriage with applicant. Consequently, the prosecutrix opposite party-2 is now the legally wedded wife of applicant. By reason of above. prosecutrix started residing with the applicant as his legally wedded wife. On account of cohabitation of the prosecutrix and applicant as husband and wife, a son was born. The birth certificate of the child namely chahar has also been brought on record and is at page 47 of the paper book, wherein, applicant is shown as father, whereas, the prosecutrix is shown as the mother. On the above premise, the learned counsel for applicant submits that in view of above noted 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 prosecutrix is evident from the fact that she has joined the applicant in present proceedings inasmuch as the affidavit filed in support of present application has been sworn by the prosecutrix herself. On the above premise, he therefore, contends that 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. As such, present application is liable to be allowed.

6. Per contra, the learned A.G.A. for State-opposite party-1 has vehemently opposed the present application. Learned A.G.A. submits that since prosecutrix was a child within the meaning of the term child as defined in the POCSO Act, on the date of occurrence, therefore, the criminality if any, committed by applicant against minor shall not get wiped out on account of the subsequent developments as submitted by the learned counsel for applicant. As such, no interference is warranted by this Court in present application. Learned A.G.A. then referred to page 6 of the

affidavit filed in support of present application. According to the learned A.G.A. though affidavit in support of present application has been sworn by the prosecutrix, however, on date, the prosecutrix is still below 18 years of age. He therefore, contends that since prosecutrix is minor, therefore, no good ground exists to entertain the present application.

7. Mr. Purushottam Pandey, 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 from the aforesaid wedlock a son was also born. He therefore, contends that he cannot have any objection in case, the present application is decided by this Court taking into consideration the aforementioned facts.

8. Be that as it may, having heard, the learned counsel for applicants, the learned A.G.A. for State-opposite party-1, the learned counsel representing first informant opposite party-2 and upon perusal of record, this Court finds that it is an admitted fact that subsequent to the FIR dated 04.09.2021 lodged by the first informant opposite party-2, the prosecutrix solemnized marriage with applicant. As such, on date, the prosecutrix opposite party-2 is the legally wedded wife of applicant. By reason of above. prosecutrix started residing with the applicant as his legally wedded wife. On account of cohabitation of the prosecutrix and applicant as husband and wife, a son was born. The birth certificate of the child namely chahar has also been brought on record and is at page 47 of the paper book, wherein, applicant is shown as father, whereas, the prosecutrix is shown as the mother. In view of above subsequent developments that have taken place, the criminality if any, committed by applicant now stands washed off. The bona fide of the parties is further evident from the fact that the prosecutrix has joined the applicant in the present proceedings, inasmuch as the affidavit filed in support of present application has been sworn by the prosecutrix herself. In view of above, this Court finds, that no useful purpose shall be served in prolonging the criminal prosecution of applicant. In case, the criminal prosecution of applicant is allowed to continue, a happy family shall stand broken.

9. At this juncture, reference be made to the judgment of Supreme Court in K. Dhandapani Vs. State by the Inspector of Police 2022 SCC Online SC 1056, wherein the Apex Court quashed the proceedings against accused that the prosecutrix had solemnized marriage with the accused therein. 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."

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

11. It is, accordingly, allowed.

12. The entire proceedings of Special Case No. 87 of 2021 (State Vs. Pankaj) arising out of Case Crime No.429 of 2021 Under Sections 452, 376 I.P.C. and Section 3/4 of POCSO Act, Police Station-Swar, District-Rampur, now pending in the Court of Additional Session Judge/Fast Tract Court, Court No.2, Rampur are, hereby, quashed.

13. In the facts and circumstances of the case, there shall be no order as to costs.

Order Date :- 4.2.2025 Imtiyaz