

Surendra Alias Kundan vs State Of U.P. And 3 Others on 15 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:56425

Court No. - 73

Case :- APPLICATION U/S 482 No. - 38280 of 2024

Applicant :- Surendra alias Kundan

Opposite Party :- State of U.P. and 3 others

Counsel for Applicant :- Abhinav Dwivedi, Sanjeev Kumar Trivedi

Counsel for Opposite Party :- Ashutosh Mishra, G.A., Shailendra Kumar Ojha

Hon'ble Vikas Budhwar,J.

1. Heard Sri Byas Kumar Prasad, learned Advocate holding brief of Sri Sanjeev Kumar Trivedi, learned counsel for the applicant as well as Sri S.P. Singh, learned State Law Officer for the State and Sri Shailendra Kumar Ojha for the opposite party no. 2.

2. A joint statement has been made by the learned counsel for the parties that they do not propose to file any affidavits and the application be decided on the basis of the documents available on record. With the consent of the parties, the application is being decided at the fresh stage.

3. The case of the applicant is that a first information report was lodged by the opposite party no. 2/complainant on 04.09.2022 before the Police Station Kotwali Tirwa, District Kannauj being F.I.R. No. 0307 at 23:55 hours against the applicant relatable to the commission of the offences on 07.07.2022 with an allegation that the first informant/complainant is the resident of P.S. Tirwa, District Kannauj and her minor daughter/victim aged about 15 years on 07.07.2022 had gone to the agricultural field then at that time, the applicant pounced upon the victim and committed bad act. The applicant, in order to cover up his misdeeds, had threatened the victim that, in case, she would disclose the said act and omission then he would make the video viral which he had prepared at the time of commission of the said bad act. On account of the said incident, the victim became

incoherent and a sense of confusion and fear penetrated into her mind. The first information report further alleges that on 10.07.2022 at 9:00 in the night, the applicant came to the house of the first informant/complainant and threatened that he would commit bad act with her and, in case, any hue and cry is made then would kill the first informant/complaint. When she resisted the said act then with the help of a wiper she was administered beating and was also threatened that the video of the bad act committed by him with the victim would be made viral. It is also alleged that in the meantime the husband of the first informant/complainant came and when the husband of the complainant started calling for the help then the applicant went away from the place while threatening that he would make the video viral. Allegation is also to the effect that the applicant used to threaten the first informant/complainant on phone that he would commit bad act with her and thereafter the said fact was apprised to the S.P. Kannauj and ultimately the proceedings for lodging of the first information stood initiated. Learned counsel for the applicant submits that basically the entire allegations contained in the first information report is in two parts firstly, on 07.07.2022 when the applicant is alleged to have committed bad act with the daughter of the complainant/first informant and secondly, on 10.07.2022 when the applicant administered beating and also threatened to commit bad act with the complainant/first informant. Learned counsel for the applicant has further submitted that the first informant/complainant was medically examined at C.D.H., Kannauj on 12.09.2022 at 2:13 P.M. and according to medical report no external injury was noticed by the doctor. A supplementary report was also prepared on 13.09.2022 but nothing abnormal was found. However, so far as the victim who happens to be a minor is concerned, no medical examination was conducted as the opposite party no. 2/first informant and the victim showed their reluctance for being medically examined. He further submits that post investigation, the Investigating Officer submitted a final report on 31.10.2022, however, a protest petition came to be filed by the opposite party no. 2 on 06.01.2023 pursuant where to statements under Section 200 of the opposite party no. 2 were recorded followed by the statement of the victim who is aged about 16 years under Section 202 and of the husband of the opposite party no. 2 and thereafter the Magistrate has proceeded to summon the applicant under Section 376, 506 IPC read with Section 3/4 POCSO Act on 14.08.2024.

4. Questioning the summoning order as well as the entire proceedings, the applicant has filed the present application.

5. Learned counsel for the applicant has submitted that taking into account the allegations contained in the first information report as well as the statement under Sections 200 and 202 of the Cr.P.C. read with the summoning order this much is clear that the allegations against the applicant are in two parts firstly with respect to commission of offence under Section 376 & 506 IPC read with Section 3/4 of the POCSO Act and secondly, the commission of offence on 10.07.2022 against the first informant/complainant. According to the learned counsel for the applicant though the allegation of commission of offences under Section 376 and 506 read with Section 3/4 of POCSO Act finds place in the first information report, the statement under Sections 200 and 202 Cr.P.C. and the summoning order but what is relevant is the fact that the victim was not put to medical examination. Argument is that the only material which could have thrown the light and brought the truth on the surface was the medical examination of the victim as there is nothing on record barring the allegations and the statements of the prosecution witnesses. He seeks to rely upon the decision of Hon'ble Apex Court in the case of Dola @ Dolagobinda Pradhan Vs. State of Odisha: Criminal

Appeal No. 1095 of 2018, decided on 29.08.2018 and State of Himachal Pradesh Vs. Rajesh Kumar @ Munnu 2025 INSC 331 so as to contend that non-medical examination of the victim in the matter of offences under Section 376 of the IPC makes the case of the prosecution weak as adverse inference is to be drawn. Reliance has also been placed upon the decision of the Calcutta High Court in Subrata Pradhan Vs. State of West Bengal 2022 (2) Crimes (HC) 50. Additionally, it has also been argued that there is no allegation in the first information report that the applicant had committed bad act with the first informant/complainant but for the very first time in the statement under Section 200 the first informant/complainant had alleged that she was subjected to bad act by the applicant. However, the said story was not supported by the husband of the first informant/complainant as he in his statement denied the said occurrence and the same was also not made the basis of summoning the applicant.

6. Submission is that the entire story of the prosecution is nothing but a planted one just in order to rope in and implicate the applicant. It has also been submitted that the motivating factor for lodging the criminal proceedings against the applicants stems from the fact that the Bhabhi of the applicant had preferred a complaint before the Chief Judicial Magistrate, Kannauj against the opposite party no. 2 and her husband on 03.08.2022 which became the motivating factor for lodging of the criminal proceedings. Even in fact, the statements under Section 200 Cr.P.C. were also recorded of the Bhabhi/sister-in-law of the applicant on 29.09.2023 and the opposite party no. 2 was summoned. Apart from this, another FIR has been lodged by the opposite party no. 2 against the applicant and his brothers on 13.06.2023 in Crime No. 231 of 2023 under Section 323, 504, 324 IPC and besides the same proceedings were also initiated under Section 182/211 IPC against the opposite party no. 2 on 31.10.2022.

7. In a nutshell, the submission is that a well planted story has been injected just in order to falsely implicate. Thus, it is submitted that the summoning order be quashed and the applicant be exonerated.

8. Countering the said submission, Sri Shailendra Kumar Ojha who appears for the opposite party no. 2 has submitted that this Court in the present proceedings under Section 482 of the Cr.P.C. may not come to the rescue of the applicant while interfering at this stage particularly when the serious allegations of committing of bad act is there attracting the provisions of Section 376 IPC read with Section 3/4 of the POCSO Act that too against a minor who is of tender age. He submits that whatever might be, merely, because the victim was not put to medical examination would not be a factor just to throttle the said proceedings as the same might be a ground to decide the fact as to whether it is a case of conviction or not but the stage of examining the said issue has not arisen particularly at the present stage when the trial has not yet commenced as once the trial stands commenced then the truth would come to surface. He further submits that what is relevant is the statements of the complainant/victim and their corroboration with the complaint. He submits that there is no inconsistency or variance in the statement vis-a-vis the complaint, thus, the present case would not require any interference at this stage.

9. Learned State Law Officer who appears for the State has supported the arguments of learned counsel for the opposite party no. 2, according to him, he has nothing to add but to submit that the

order summoning the applicant cannot be faulted in any manner whatsoever.

10. I have heard the learned counsel for the parties and perused the record carefully.

11. The sole question which arises for determination in the present proceedings at this stage is the extent of judicial intervention. Apparently, the allegation contained in the first information report under Sections 376, 452, 323, 506 IPC read with Section 3/4 of the POCSO Act, FIR No. 0307 dated 04.09.2022 is regarding commission of the said offence relating to committing of bad act on 07.07.2022 by the applicant upon the victim who is 15 years of age. Though the counsel for the applicant may be right that there was no allegation of commission of bad act by the applicant upon the first informant/complainant but an allegation was made in the statement under Section 200 but the court below while summoning the applicant has not proceeded on the said count. However, the summoning order has been passed based upon the allegation of commission of bad act with the victim who happens to be a minor.

12. The pivotal question which arises for consideration is whether on account of non-subjection of the victim to medical examination, this Court would interfere and come to the rescue of the applicant in the matter of offences under Section 376. As a matter of fact, no hard and fast rule can be flagged in that regard and each and every case depends upon its own facts.

13. Here in the present case, the first information report as well as the statement of the victim and the first informant/complainant and also of the father of the victim speaks about commission of the offences under Section 376 read with Section 3/4 of POCSO Act by the applicant against the victim. Though non-medical examination of the victim in the matter of offence under Section 376 assumes relevance and also impacts the prosecution but the same is a matter of trial and in the given facts and circumstances it cannot be the sole ground for quashing the criminal proceedings. Hon'ble Apex Court in the case of Dola @ Dolagobinda Pradhan (supra) and Rajesh @ Munnu (supra) clearly propounds the law that non-allowing of medical examination by the alleged victim raises negative inferences against prosecution.

14. Interestingly, in both the said cases, Hon'ble Apex Court was confronted with the order wherein subject matter of challenge were the orders either of conviction or acquittal. Similarly, the judgment in Subrata Pradhan (supra) also is a case wherein conviction order was subject matter of challenge.

15. Here in the present case, the prayer is for quashing of the proceedings while invoking jurisdiction under Section 482 of the Cr.P.C. There is another facet of the matter Section 29 of the Protection of Children from Sexual Offences Act, 2012 itself provides for presumption as to certain offences, according to which where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 & 9 of the Act the Special Courts shall presume that such person has committed or abetted or attempted to commit the offence as the case may be unless contrary is proved. The word 'unless contrary proved' is of significance which may denote that a trial is to be conducted in order to prove otherwise.

16. Nonetheless, the Hon^{ble} Apex Court in *Shafiya Khan @ Shakuntala Prajapati Vs. State of U.P.* (2022) LiveLaw (SC)153 had the occasion to consider the ambit and the extent of intervention under Article 482 Cr.P.C. wherein in para 15, 16, it was observed as under:-

"15. The exposition of law on the subject relating to the exercise of the extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.PC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in *State of Haryana and others vs. Bhajan Lal and others* (supra) as under :

¶102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.?

16. The principles laid down by this Court have consistently been followed, as well as in the recent judgment of three Judge judgment of this Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others AIR 2021 SC 1918."

17. As regards the contention raised by the applicant that it was on account of criminal proceedings sought to be lodged by the applicant faction which became a motivating factor for lodging of the false and frivolous complaint is concerned, the same may be one of the defences though tenable or not but consideration of the same is to be made at the stage when the trial commences and not at the present juncture in the present proceedings under Section 482 Cr.P.C.

18. Looking into the facts of the case from all the four corners of law as well as the allegations so sought to be levelled against the applicant for commission of offence under Section 376, 506 IPC read with Section 3/4 of the POCSO Act prima facie, it cannot be said that the said penal sections are not attracted.

19. Accordingly, we find no good ground to invoke inherent jurisdiction under Section 482 of the Cr.P.C. while quashing the criminal proceedings. Resultantly, the application is dismissed.

20. Needless to point out that passing of this order may not be construed to be any expressions on the merits of the matter as it is open for the trial court to proceed with the matter and to decide the same strictly in accordance with law with utmost expedition.

Order Date :- 15.4.2025 Rajesh