

Ajay Kumar Yadav And Another vs State Of U.P. Thru. Prin. Secy. Home ... on 4 February, 2025

Author: Saurabh Lavania

Bench: Saurabh Lavania

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:7538

Court No. - 12

Case :- APPLICATION U/S 482 No. - 8332 of 2023

Applicant :- Ajay Kumar Yadav And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Sectt. Lko. And Others

Counsel for Applicant :- Kaushlendra Tewari, Satish Chandra

Counsel for Opposite Party :- G.A., Santosh Kumar Yadav, Suresh Kumar Pandey

along with

Case :- APPLICATION U/S 482 No. - 2689 of 2008

Applicant :- Ajay Kumar Yadav And Another

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Dinesh Kumar Arya

Counsel for Opposite Party :- Govt. Advocate, Dheerendra Kumar Singh

Hon'ble Saurabh Lavania,J.

1. Rejoinder affidavit filed in Application U/S 482 No.8332 of 2023 is taken on record.
2. Vakalatnama(s) filed by Shri Kaushlendra Tewari, Advocate on behalf of the petitioners and by Shri Suresh Kr. Pandey, Advocate on behalf of opposite party No. 2 in Application U/S 482 No.2689 of 2008 are taken on record.
3. Upon due consideration of the reasons for non appearance on 13.11.2017, when the application U/S 482 No.2689 of 2009 was dismissed for want of prosecution, which to the view of this Court are proper, this Court is of the view that applications under consideration i.e. application for condonation of delay and application for recall of order dated 13.11.2017 are liable to be allowed. Allowed accordingly and Application U/S 482 No.2689 of 2008 is restored to its original number.
4. Heard learned counsel for the applicants, learned Counsel for private opposite parties as well as learned AGA for the State of U.P. and gone through the record.
5. The Application U/S 482 No.8332 of 2023 was filed seeking the following main relief:-

"To quash the entire proceedings of Case No. 45/2019, Crime No-381/2007, under section 376/511, 323, 504 I.P.C. & 3(1) (xii) SC/ST Act of P.S.- Sirsiya, District Shravasti pending in the Court of Special Judge, SC/ST ACT, Shravasti."
6. The Application U/S 482 No.2689 of 2008 was filed seeking the following main relief:-

"To set aside the impugned Order dated 15-4-2008, passed by the Judicial Magistrate, District Shravasti in Criminal Case No. 191 of 2008 and to stay the further proceeding thereof."
7. For the relief(s) sought, it is stated that according to the case of the prosecution, as indicated in the F.I.R. No.85/ 2007, lodged on 07.10.2007, registered as Case Crime No.381 of 2007, under Sections 376, 511, 323 and 504 I.P.C. and 3(1) XII SC/ ST Act at Police Station- Sirsiya, District- Shravasti, on 01.10.2007 at about 08.00 PM, the applicants tried to commit rape with the victim, daughter of the informant, and on raising alarm by the victim, the informant and other persons of the vicinity i.e. village Fulauhia, Bhagwanpur, Police Station- Sirsiya, District- Shravasti rushed to the spot and on being opposed by the informant and other villagers, the applicants hurled abuses and also made castiest remarks and also assaulted with lathi and danda and thereafter fled away.
8. It is further stated that after completion of the investigation, the Investigating Officer (in short "I.O.") submitted the Charge Sheet No.05/ 2008 dated 17.02.2008 under Sections 376, 511, 323, 504 IPC and 3 (1) XII of SC/ ST Act.
9. It is also stated that after filing of the charge sheet vide order dated 15.04.2008, the Judicial Magistrate, Shravasti took cognizance and summoned the accused to face the criminal proceedings

under Sections 376, 511, 323, 504 IPC and 3 (1) XII of SC/ ST Act fixing 10.04.2008.

10. Further submission is that challenging the order dated 15.04.2001, the application U/S 482 No. 2689 of 2008 was filed and this Court after taking note of the facts of the case particularly, that the complainant himself gave several applications along with affidavits to the I.O. stating therein that whole prosecution story is false as he never lodged such type of FIR against the applicants as also the age of the prosecutrix at the time of the incident i.e. about 25 years and also the fact that she was not medically examined, this Court on 25.07.2008 protected the interest of the applicants. The order referred reads as under:-

"Heard learned counsel for the applicants and learned Additional Government Advocate.

Learned Additional Government Advocate may file counter affidavit within two weeks. Rejoinder affidavit, if any, may be filed within one week thereafter. List thereafter.

In the meantime, summoning order dated 08.07.2008 shall remain stayed till the next date of listing."

11. It is further stated that considering the pendency of the criminal case, in issue, arising out of Case Crime No.381 of 2007, the applicants approached this Court by means of Application U/S 482 No.8332 of 2023 for the seeking relief related to quashing of the pending criminal proceedings arising out of Case Crime No-381/2007, under section 376/511, 323, 504 I.P.C. & 3(1) (xii) SC/ST Act of P.S.- Sirsiya, District Shravasti.

12. It is stated that the second petition i.e. Application U/S No.8332 of 2023 is based on the facts that parties have settled the dispute, which in fact was a petty dispute and the said dispute was informed to the concerned police station and taking benefit of criminal cases pending against the applicants, the police officer with ulterior motive lodged the FIR aforesaid in the said sections.

13. It is further stated that immediately after coming to know about the FIR registered as Case Crime No.0381 of 2007 dated 07.10.2007, the informant submitted an application dated 19.11.2007 before the Superintendent of Police, Shravasti and an affidavit dated 11.10.2007 before the D.I.G., Devi Patan, Gonda and and a conjoint perusal of the same would indicate that the entire story of the prosecution is completely false as according to these documents i.e. application and affidavit of the informant, no such incident took place on 01.10.2007. The affidavit of the informant indicates that on plane paper thumb impression of the informant was taken and with ulterior motive on the same a false story was narrated to attract the offence indicated in the FIR, which lodged on the basis of the same.

14. It is further stated that the statement of victim was not recorded in terms of Section 164 Cr.P.C. and the victim was also not medically examined and accordingly, these facts also indicate that story of the prosecution is completely bogus and false.

15. In relation to statement of the victim annexed as Annexure No.CA2 to the counter affidavit, it is stated that in fact this statement is liable to be ignored as the same has no evidentiary value and moreover, the same was written by the police officer concerned on its own. It is further stated that all the aforesaid facts can be verified from the informant and victim, who are personally present before this Court.

16. At this stage, on being asked, the informant and victim, who were identified by their counsel, stated that incident as indicated in the FIR was not occurred.

17. Considering the aforesaid as also the submissions made by learned Counsel for the parties as also the statements of informant and victim, according to which the incident as indicated in the FIR was not occurred, as also the observations made by Apex Court in the case of State of Karnataka Vs. L. Muniswamy and Others, 1977 (2) SCC 699; State of Haryana Vs. Bhajan Lal and Others, 1992 Supp (1) SCC 335; Prashant Bharti Vs. State (NCT of Delhi), (2013) 9 SCC 293; Rajiv Thapar and Ors. Vs. Madan Lal Kapoor, (2013) 3 SCC 330; Ahmad Ali Quraishi and Ors. Vs. State of Uttar Pradesh and Ors. (2020) 13 SCC 435, according to which inherent power under Section 482 Cr.P.C. (akin to Section 528 BNSS, 2023) could be exercised to prevent abuse of process of any Court or otherwise to secure ends of justice, as also the observations made by Apex Court in the case of Ramgopal and others Vs. State of Madhya Pradesh, (2022) 14 SCC 531, Gian Singh Vs. State of Punjab [2012 10 SCC 303], Mohd. Ibrahim Vs. State of U.P., 2022 SCC Online ALL 106, Gold Quest International Ltd. Vs. State of Tamilnadu, 2014 (15) SCC 235, B.S. Joshi Vs. State of Haryana, 2003 (4) SCC 675, Jitendra Raghuvanshi Vs. Babita Raghuvanshi, 2013(4) SCC 58, Madhavarao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre, 1988 1 SCC 692, Nikhil Merchant Vs. C.B.I. and another, 2008(9) SCC 677, Manoj Sharma Vs. State and others, 2008(16) SCC 1, State of M.P. Vs. Laxmi Narayan and others, 2019(5) SCC 688, Narindra Singh and others Vs. State of Punjab and another, (2014) 6 SCC 466, Manoj Kumar and others Vs. State of U.P and others (2008) 8 SCC 781, Union Carbide Corporation and others Vs. Union of India and others (1991) 4 SCC 584, Manohar Lal Sharma Vs. Principal Secretary and others (2014) 2 SCC 532 and Supreme Court Bar Association Vs. Union of India (1998) 4 SCC 409, according to which, in given facts, based upon the settlements between the parties the criminal proceedings can be quashed, as also the nature of dispute/crime, this Court is of the view that the present application(s) are liable to be allowed as chances of ultimate conviction are extremely bleak and hence no useful purpose would be served by allowing the criminal proceedings to continue. Accordingly, present application(s) are allowed. Consequently, the entire proceedings arising out of Case Crime No.381/2007, quoted above, are hereby quashed qua the applicants.

18. Office/Registry is directed to send the copy of this order to the court concerned through email/fax for necessary compliance.

Order Date :- 4.2.2025 G. Singh/-