

Jai Magal Patel @ Jai Mangal Singh @ ... vs State Of U.P. And 3 Others on 2 January, 2025

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:6058

Court No. - 71

Case :- APPLICATION U/S 482 No. - 32996 of 2024

Applicant :- Jai Magal Patel @ Jai Mangal Singh @ Nankau

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

Counsel for Applicant :- Praveen Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr.Praveen Kumar Srivastava, the learned counsel for applicant and the learned A.G.A. for State-opposite party-1.

2. Perused the record.

3. This application under Section 482 Cr.P.C. has been filed by applicant- Jai Magal Patel @ Jai Mangal Singh @ Nankau challenging the order dated 27.08.2024 passed by Additional Sessions Judge/Special Judge, POCSO Act, Court No.2, Prayagraj in Special Sessions Case No. 278 of 2019 (State Vs. Nankau @ Jai Mangal Patel) arising out of Case Crime No. 398 of 2019 under Sections

376, 342, 315, 504, 506 I.P.C., Sections 3/4 POCSO Act and Sections 3 (2) (v) SC/ST Act, Police Station-Handia, District-Prayagraj whereby the application under Section 311 Cr.P.C. filed by the prosecutrix has been allowed by court below.

4. At the very outset, the learned A.G.A. submits that notice of this application has been served upon first informant/opposite party-2. However, in spite of service of notice, neither any counter affidavit has been filed by opposite party-2 nor anyone has put in appearance on behalf of first informant/opposite party-2 to oppose this application.

5. Present application came up for admission on 30.09.2024 and this Court passed the following order:

"Sri Praveen Kumar Srivastava, learned counsel for the applicant and Sri Kamleshwar Singh, learned A.G.A. for the State are present.

The present application u/s 482 Cr.P.C. has been filed with prayer to quash the order dated 4.11.2023 passed by Additional Sessions Judge, Court No. 18, Meerut, in Special Case No. 278 of 2019 (State vs. Nankau @ Jai Mangal Patel), arising out of Case Crime No. 398 of 2019, under Sections 376, 342, 506 of I.P.C. and Section 3/4 of POCSO Act and Section 3(2)(v) of SC/ST Act, P.S Handia, District Prayagraj, whereby application of the victim under Section 311 of Cr.P.C. has been allowed.

Learned counsel for the applicant submits that impugned order has been passed without considering the facts and circumstances of the case and settled position of law. It is further submitted that application under Section 311 of Cr.P.C. has been filed by the victim after three years of recording of her statements as PW-1 and her mother as PW-2 for re-examination.

It is further submitted that PW-1, PW-2 and PW-3, who were the fact witnesses, have been turned hostile. Application under Section 311 of Cr.P.C. has been filed without any explanation of delay.

Prima facie, Matter requires consideration.

Notice on behalf of respondent no. 1 has been accepted by learned A.G.A.

Issue notice to respondent no. 2 through C.J.M. concerned, returnable at an early date.

Learned A.G.A. as well as respondent no. 2 may file their counter affidavits within three weeks.

Rejoinder affidavit may thereafter be filed within one week.

Put up this case on 12.11.2024, as fresh.

Till the next date of listing, effect and operation of the order dated 4.11.2023 shall remain stayed, however, it is made clear that no interim order has been passed to stay the proceedings of aforesaid case.

Order Date :- 30.9.2024 "

6. Office has submitted a report that subsequent to above order dated 30.09.2024, notice was issued to first informant/opposite party-2, which has been served upon first informant/opposite party-2 as is evident from the report dated 11.11.2024, submitted by the Chief Judicial Magistrate, Allahabad.

7. Learned A.G.A. representing opposite party-1 has filed his counter affidavit, which is on record. However, no rejoinder affidavit has been filed by applicant. In spite of service of notice, no counter affidavit has been filed by first informant/opposite party-2 either.

8. At the very outset, the learned A.G.A. has raised a preliminary objection by submitting that court below has allowed the application under Section 311 Cr.P.C. filed by the prosecutrix to unearth the truth. According to the learned A.G.A., Section 311 Cr.P.C. is an enabling provision to enable the court to find out the truth. It is on account of above that no period of limitation is prescribed for filing an application under Section 311 Cr.P.C.

9. Learned A.G.A. has then invited the attention of Court to the order impugned and with reference to above, he submits that court below has allowed the application under Section 311 Cr.P.C. on the ground that the prosecutrix has herself stated that she was prevented from disclosing the correct facts to the court. He therefore submits that in view of above, the prosecutrix was bound to be recalled by court below to flush out the correct facts so as to do complete justice between the parties. On the above premise, the learned A.G.A. contends that irrespective of the grounds raised and pressed in support of this application, no good ground is made out for interference by this Court. As such, present application is liable to be dismissed.

10. When confronted with above, the learned counsel for applicant could not overcome the same.

11. Having heard the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and upon perusal of record, this Court finds that the preliminary objection raised by the learned A.G.A. in opposition to this application under Section 482 Cr.P.C. is not only borne out from the record but furthermore the same could not be dislodged by the learned counsel for applicant.

12. In view of above, present application fails and is liable to be dismissed.

13. It is accordingly dismissed.

Order Date :- 2.1.2025 YK