

Rajendra Singh And 2 Others vs State Of U.P. And 3 Others on 1 April, 2025

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44839

Court No. - 70

Case :- APPLICATION U/S 482 No. - 43189 of 2024

Applicant :- Rajendra Singh And 2 Others

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

Counsel for Applicant :- Sarthak Singh

Counsel for Opposite Party :- G.A.,Kshitiz Srivastava,Vimlesh Kumar

Hon'ble Rajeev Misra,J.

1. Learned counsel for informant/victim/opposite party-4 has filed counter affidavit today in Court which is taken on record. Learned counsel for applicants submits that he does not wish to file rejoinder affidavit to the same.

2. Heard Mr. Harvansh Prasad Pandey, Advocate holding brief of Mr. Sarthak Singh, the learned counsel for applicants, the learned AGA for State/opposite party-1 and Mr. Vimlesh Kumar, the learned counsel representing first informant/victim/opposite party-4.

3. Perused the record.

4. Applicants- Rajendra Singh, Saroj and Kishan Gopal who are charge-sheeted accused and facing trial before court below have approached this Court by means of present application under Section 482 CrPC with the following prayer :-

"It is therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to allow the instant application and to quash the entire criminal proceeding of Session Trial No. 356 of 2023 (State vs Saroj Devi and others) pursuant to the charge sheet dated 12.03.2023 arising out of Case Crime no. 284 of 2022 under section 506, 376 I.P.C r/w sec 3/4 POCSO Act, P.S- Sasni Kotwali, District- Hathras, pending in the court of Special Judge (POCSO Act)/Additional Session Judge Court No. 1, District- Hathras.

It is further prayed that this Hon'ble Court may kindly be pleased to stay the entire criminal proceeding of Session Trial No. 356 of 2023 (State vs Saroj Devi and others) pursuant to the charge sheet dated 12.03.2023 arising out of Case Crime no. 284 of 2022 under section 506, 376 I.P.C r/w sec 3/4 POCSO Act, P.S- Sasni Kotwali, District- Hathras, pending in the court of Special Judge (POCSO Act)/Additional Session Judge Court No. 1, District- Hathras during pendency of instant criminal misc. application under section 482 Cr.P.C before this Hon'ble Court.

And/or pass such other and further order which this Hon'ble Court may deem fit and proper under facts and circumstances of the case so the justice may be done."

5. Learned counsel for applicants submits that though applicants are charge-sheeted accused and also facing trial before court below, however, in view of the facts and circumstances as have now emerged on record, the criminal prosecution of applicants cannot be sustained any further. As such, the present application is liable to be allowed by this Court.

6. In furtherance of aforesaid submission, the learned counsel for applicants submits that criminal prosecution of applicants was set in motion when an FIR dated 25.09.2022 was lodged by first informant/opposite party-4 and was registered as Case Crime No.0284 of 2022 under Section 6/17 of POCSO Act, P.S.- Sasni Kotwali, District- Hathras. In the aforesaid FIR, two persons namely, Kishan Gopal (applicant-3) and Saroj (applicant-2) were nominated as named accused.

7. Subsequent to the aforesaid FIR, Investigating Officer proceeded with the statutory investigation of concerned case crime in terms of Chapter XII of CrPC. On the basis of material collected by him during course of investigation, he came to the conclusion that complicity of not only the named accused but also not named accused Rajendra Singh is also established in the crime in question. Resultantly, Investigating Officer submitted the charge-sheet/police report on 03.12.2022 in terms of Section 173(2) CrPC whereby and whereunder present applicants were charge-sheeted under Sections 506, 376 IPC and Sections 3/4 of POCSO Act.

8. After submission of above-mentioned charge-sheet, cognizance was taken upon same by court concerned. By reason of above, Special Case No.356/2023 (State v. Saroj Devi and others) under

Sections 506, 376 IPC and Sections 3/4 of POCSO Act (came to be registered) and is now pending in the court of learned Additional District Judge (POCSO Act)-I, District- Hathras.

9. However, during pendency of aforementioned proceedings, applicant-3 Kishan Gopal solemnized marriage with the prosecutrix on 12.12.2022. By reason of above, the prosecutrix became the legally wedded wife of applicant-3. Consequently, the prosecutrix started residing with applicant-3 as his legally wedded wife. Bona fides of the parties is further evident from the fact that the parties have applied for registered of their marriage as contemplated under the U.P. Marriage Registration Rules, 2017. Photocopy of the application for grant of marriage registration certificate has been brought on record and is annexed as Annexure-C.A.-1 to the counter affidavit filed by first informant/victim/opposite party-4. It is then contended by the learned counsel for applicant that from the aforesaid wedlock, a son namely Kunal was born. His birth certificate has also brought on record and is at page-12 of the counter affidavit filed by the prosecutrix/opposite party-4. As per the said birth certificate, applicant-3 is shown as the father whereas the prosecutrix/victim/opposite party-4 is shown as the mother of the child. On the above premise, the learned counsel for applicant contends that in view of the above-mentioned subsequent development, the criminality, if any, committed by applicants shall stand washed off. Furthermore, no useful purpose shall now be served in prolonging the criminal prosecution of applicants. In case, the criminal prosecution of applicants is allowed to continue, then a happy family shall stand broken. He, therefore, submits that in view of aforesaid facts, the present application is liable to be allowed by this Court.

10. It is next submitted by the learned counsel for applicants that bona fides of the parties is further evident from the fact that the prosecutrix has joined the present applicant and she has filed a counter affidavit wherein she has supported the present application. As such, there is no dispute between the parties regarding the fact that prosecutrix has solemnized marriage with the applicant-3 and from the said wedlock, a son- Kunal was born.

11. Learned counsel for applicants has then referred to the judgement of Supreme Court in the case of K. Dhandapani Vs. State by the Inspector of Police, 2022 SCC OnLine SC 1056 and Mafat Lal Vs. State of Rajasthan, (2022) 6 SCC 589, wherein, the Apex Court quashed the proceeding against the accused therein on the ground that they had solemnized marriage with the prosecutrix. On the above prospectus, it is thus contended by the learned counsel for applicant that present application is liable to be allowed.

12. Per contra, the learned AGA for State/opposite party-1 has vehemently opposed the present application. Learned AGA submits that since the 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 alleged to have been committed by applicants shall not stand washed off as per the subsequent developments as suggested by the learned counsel for applicants. Referring to the judgement of Supreme Court in State of Kerala VS. Hafsal Rahman N.R., Special Leave Petition (Criminal) Diary Nos. 24362 of 2021, it is urged by the learned AGA that the Apex Court has now held that there can be no compromise in proceedings under the POCSO Act.

13. On the above premise, the learned AGA thus submits that no interference is warranted by this Court in present application. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record.

14. On the other hand, Mr. Vimlesh Kumar, the learned counsel representing first informant/opposite party-4 does not oppose the present application. He submits that he has received instructions not to oppose the present application. According to the learned counsel for first informant/opposite party-4, it is an now admitted fact between the parties that applicant-3 and the prosecutrix have solemnized marriage and from the aforesaid wedlock, a son- Kunal was born and they are residing together as husband and wife. It is thus urged by the learned counsel representing first informant/opposite party-4 that he cannot have any objection in case the present application is allowed by this Court in the light of aforementioned facts.

15. Be that as it may, the crux of the matter is that applicant-3 has solemnized marriage with the prosecutrix and from the said wedlock, a male child namely Kunal was also born.

16. Having heard learned counsel for applicants, the learned AGA for State and learned counsel representing prosecutrix/opposite party-4 and upon perusal of record, this Court finds that criminal prosecution of applicants was set in motion when the FIR dated 25.09.2022 was lodged by first informant/opposite party-4. However, subsequent to the aforesaid FIR, applicant-3 has solemnized marriage with the prosecutrix i.e. opposite party-4/first informant on 12.12.2022. In view of above, the prosecutrix became the legally wedded wife of applicant-3. Consequently, she is residing with the applicant-3 as his legally wedded wife. Bona fides of the parties is further evident from the fact that the prosecutrix has put in appearance and she has filed a counter affidavit in the support of the present application wherein photocopy of the application for grant of marriage registration certificate of their marriage has also been brought on record. She has also brought on record the birth certificate of child namely, Kunal born out by the wedlock of applicant-3 and the prosecutrix, wherein, applicant-3 is shown as the father whereas the prosecutrix is shown as the mother. In view of the aforementioned subsequent developments that have taken place, the criminality, if any, committed by applicants shall now stand washed off. As such, no useful purpose shall now be served in prolonging the criminal prosecution of applicants. In case, the criminal prosecution of applicants is allowed to continue, then a happy family shall stand broken. The ratio laid down by Apex Court in K. Dhandapani (supra) and Mafat Lal) (supra) are squarely applicable to the facts and circumstances of the present case. As such, no exception can be carved out in the case of present applicant with reference to the aforesaid judgement. For ready reference, the judgement of the Supreme Court in K. Dhandapani (supra) which is a short one, therefore, the same is reproduced in its 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 the 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."

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

18. It is accordingly allowed.

19. The entire proceedings of Session Trial No. 356 of 2023 (State vs Saroj Devi and others) pursuant to the charge sheet dated 12.03.2023 arising out of Case Crime No. 284 of 2022, under section 506, 376 I.P.C r/w sec 3/4 POCSO Act, P.S- Sasni Kotwali, District- Hathras, pending in the court of Special Judge (POCSO Act)/Additional Session Judge Court No. 1, District- Hathras are hereby quashed.

20. However, in the facts and circumstances, the parties shall bear their own costs.

Order Date :- 1.4.2025 Rama Kant