

Anand Verma 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:174

Court No. - 71

Case :- APPLICATION U/S 482 No. - 29432 of 2024

Applicant :- Anand Verma

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

Counsel for Applicant :- Dewendra Singh

Counsel for Opposite Party :- Akhilesh K. Dwivedi,G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Dewendra Singh, the learned counsel for applicant and the learned A.G.A. for State-opposite party-1.
2. Though Mr. Akhilesh K. Dwivedi, Advocate has put in appearance on behalf of first informant/opposite party-2 but neither he nor anyone on his behalf is present to oppose this application even in revised call.
3. Perused the record.
4. This application under Section 482 Cr.P.C. has been filed by applicant-Anand Verma challenging the police report (charge sheet) no. A246A/2024 dated 06.02.2024 submitted by the Investigating

Officer in terms of Section 173 (2) Cr.P.C. in Case Crime No. 242 of 2023 under Section 376D I.P.C. and Sections 3/4 POCSO Act, Police Station-Tarkulwa, District-Deoria, Cognizance Taking Order/Summoning Order dated 28.03.2024 passed by Additional District and Sessions Judge/Special Judge, POCSO Act, Court No. 01, Deoria in consequential Sessions Case No. 666 of 2023 (State Vs. Ram Brijmohan Maddheshiya) under Section 376D I.P.C. and Sections 3/4 POCSO Act, Police Station-Tarkulwa, District-Deoria as well as the entire proceedings of aforementioned sessions case, now pending in the Court of Additional District and Sessions Judge/Special Judge, POCSO Act, Court No. 01, Deoria.

5. Present application came up for admission on 28.11.2024 and this Court passed the following order:-

"1. Heard learned counsel for applicant, learned Additional Government Advocate appearing for opposite party no.1-State and Mr. Akhilesh K. Dwivedi, learned counsel for opposite party no.2.

2. Issue notice to opposite parties no.3 & 4, returnable at an early date.

3. Application under Section 482 Cr.P.C. has been filed challenging charge-sheet dated 06.02.2024, cognizance/summoning order dated 28.03.2024 as well as proceedings of Sessions Case No.666 of 2023 (State versus Ram Brijmohan Maddheshiya) arising out of Case Crime No.242 of 2023, under Section 376D IPC and Section 3/4 POCSO Act, Police Station Tarkulwa District Deoria.

4. Learned counsel for applicant submits that a perusal of the first information report as well as statement of victim recorded under Section 161 Cr.P.C. clearly indicate that allegation of rape has been alleged against one Brijmohan Maddheshiya without any allegation being levelled against the applicant and it is only in the subsequent statement recorded under Section 164 Cr.P.C. that the name of applicant has been introduced. Learned counsel has submitted that there is serious contradiction not only in the version indicated in the FIR but also in statements recorded under Sections 161 and 164 Cr.P.C. The date and time of the incident is also differently recorded in the FIR, under section 164 Cr.P.C. and in the medical examination report which also indicates that the alleged victim has refused internal medical examination.

5. It is therefore submitted that there was no occasion for trial court to have taken cognizance against the applicant since even prima facie case is not made out against the applicant.

6. Learned counsel appearing on behalf of opposite party no.2 on the basis of instructions submits that during the course of investigation, victim as well as her mother gave affidavits to the effect that the name of applicant was wrongly introduced in the sequence of events at the instance of other persons.

7. Prima facie submissions advanced by learned counsel for applicant have force and require consideration for which time is granted to opposite parties no.1, 3 and 4 to file their counter affidavits with counter of opposite party no.2 already on record.

8. List this case on 16.12.2024, as fresh along with service report.

9. Until further order of this Court, proceedings in Sessions Case No.666 of 2023 (State versus Ram Brijmohan Maddheshiya) arising out of Case Crime No.242 of 2023, under Section 376D IPC and Section 3/4 POCSO Act, Police Station Tarkulwa District Deoria shall remain stayed so far as it relates to the applicant.

Order Date :- 28.11.2024"

6. On the matter being taken up, the learned counsel for applicant has reiterated the same submissions as were urged by him before this Court on 28.11.2024. On the basis of above, it is contended by the learned counsel for applicant that present application is liable to be allowed.

7. Per contra, the learned A.G.A. for State-opposite party-1 has vehemently opposed this application. Learned A.G.A. submits that applicant has also been implicated in the crime in question in the statement of the prosecutrix recorded under Section 164 Cr.P.C. Applicant alongwith other co-accused has been implicated under Section 376D I.P.C. As such, prima-facie the presence of applicant at the time and place of occurrence cannot be doubted. It is then contended that the prosecutrix in her statementS under Section 161 as well as 164 Cr.P.C. has fully supported the F.I.R. Upto this stage, no such material has emerged on record, on the basis of which, the veracity of F.I.R. itself could be doubted. On the above premise, the learned A.G.A. submits that remedy lies to the applicant to appear before court below and take all possible defence in support of his innocence. As such, present application is liable to be dismissed.

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

9. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record and coupled with the fact that objections raised by the learned A.G.A. in opposition to this application under Section 482 Cr.P.C. could not be dislodged by the learned counsel for applicant, therefore, irrespective of the varied submissions urged by the learned counsel for applicant, this court does not find any good or sufficient ground to entertain this application.

10. As a result, this application fails and is therefore liable to be dismissed.

11. It is accordingly dismissed.

Order Date :- 2.1.2025 YK