

Deepak Gond vs State Of U.P. And Another on 3 March, 2025

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:30267

Court No. - 71

Case :- APPLICATION U/S 528 BNSS No. - 5203 of 2025

Applicant :- Deepak Gond

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Sanjeev Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Sanjeev Kumar Singh, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and Mr. Saurabh Shukla, Advocate, who has put in appearance on behalf of prosecutrix/first informant/opposite party-2 by filing his Vakalatnama in Court today, which is taken on record.

2. Perused the record.

3. Applicant- Deepak Gond, who is a charge sheeted accused and facing trial before Court below, has approached this Court by means of present application under Section 482 Cr.P.C. with the following prayer:-

"It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and quash the entire proceedings as well as charge sheet dated 07.07.2024 in ST No.1308 of 2024 arising out of Case Crime No.223 of 2024 under Section 376, 323, 506 IPC, (State vs. Deepak Gond) including the cognizance order dated 29.07.2024 as well as summoning order dated 29.07.2024, Police Station Pipiganj, District Gorakhpur.

It is further prayed that this Hon'ble Court may be pleased to stay the further proceedings in ST No.1308 of 2024 arising out of Case Crime No.223 of 2024 under Section 376, 323, 506 IPC, (State vs. Deepak Gond) including the cognizance order dated 29.07.2024 as well as summoning order dated 29.07.2024, Police Station Pipiganj, district Gorakhpur, pending in the court of F.T.C. Court No.1 Gorakhpur, during pendency of the present application before this Hon'ble Court, otherwise the applicant shall suffer irreparable loss and injury."

4. Learned counsel for applicant submits that though applicant is a named and charge sheeted accused and facing trial before the court below in aforementioned Sessions Trial, however, in view of the peculiar facts and circumstances as have emerged on record, the criminal prosecution of applicant cannot be sustained now. As such, the present application is liable to be allowed by this Court.

5. In furtherance of aforesaid submission, the learned counsel for applicant submits that criminal prosecution of applicant commenced with the lodging of FIR dated 17.06.2024 by the prosecutrix/first informant/opposite party no.2 which was registered as Case Crime No.0223 of 2024 under Sections 147, 323, 406, 506, 313, 376 IPC, Police Station Pipiganj, District Gorakhpur. However, subsequent to the aforesaid FIR, giving rise to present criminal proceedings, the applicant solemnized marriage with the prosecutrix on 23.08.2024. Consequently, the prosecutrix became the legally wedded wife of applicant. On account of above, the parties are, therefore, now residing together as husband and wife. It is thus contended by the learned counsel for applicant that in view of aforesaid subsequent development, the criminality, if any, committed by applicant now stands washed off. It is further submitted by the learned counsel for applicant that marriage of the parties has also been registered under the provisions of U.P. Marriage Registration Rules, 2017. Photocopy of the Marriage Registration Certificate has been brought on record and is at page 45 of the paper book. It is then contended by the learned counsel for applicant that as the marriage of the parties has been registered under the relevant Rules, then there is a statutory presumption regarding valid and legal marriage of the parties. On the above conspectus, it is thus urged by the learned counsel for applicant that once the applicant and prosecutrix have solemnized marriage and are now living together as husband and wife, as such, no useful purpose shall be served in continuing the criminal prosecution of applicant. In case, the impugned criminal proceedings are allowed to continue, then a happy family shall stand broken. On the edifice of aforesaid submission, the learned counsel for applicant submits that present application is liable to be allowed.

6. Per contra, the learned A.G.A. for State-opposite party-1 has vehemently opposed the present application. Learned A.G.A. submits that offence complained of against applicant is now private in

nature but a crime against society. As such, no compromise could be entered into by the parties. Even otherwise, the compromise entered into by the parties is of no relevance. To buttress his submission, he has referred to the judgment of Supreme Court in Rampal Vs. State of Haryana, AIR online 2019 SC 1716, wherein the Apex Court has observed that there can be no compromise in matters of rape and sexual assault. As such, the proceedings impugned in present application cannot be terminated in view of the compromise entered into by the parties. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

7. On the other hand, Mr. Saurabh Shukla, the learned counsel representing first informant-prosecutrix-opposite party-2 submits that he has received instructions not to oppose the present application. It is further submitted by Mr. Saurabh Shukla, the learned counsel representing the prosecutrix/first informant/opposite party-2 that it is an admitted fact that the prosecutrix has solemnized marriage with the applicant and by reason of above, she is residing with applicant as his legally wedded wife. He, therefore, submits that he cannot have any objection, in case, the present application is decided by this Court taking into consideration the aforesaid facts.

8. Be that as it may, this Court finds that the crux of the matter is that the applicant has solemnized marriage with the prosecutrix.

9. Having heard, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and Mr. Saurabh Shukla, the learned counsel representing the prosecutrix/first informant/opposite party-2 and upon perusal of record, this Court finds that the criminal prosecution of applicant was set in motion when an FIR dated 17.06.2024 was lodged by prosecutrix/first informant/opposite party-2. In the aforesaid FIR, applicant Deepak Gaud and 5 others have been nominated as named accused. After aforementioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. On the basis of material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of only one of the named accused i.e. Deepak Gaud, the applicant herein is established in the crime in question. Accordingly, Investigating Officer submitted the charge sheeted/police report dated 07.07.2024 in terms of Section 173(2) Cr.P.C., whereby and whereunder, accused-applicant Deepak Gaud was charge sheeted under Sections 376, 323, 506 IPC, whereas, the other named accused were exculpated. After submission of aforementioned charge sheet/police report, cognizance was taken by the Jurisdiction Magistrate in exercise of jurisdiction under Section 190(1)(b) Cr.P.C. Simultaneously the accused-applicant was also summoned to face trial. Since offence complained of is triable by the Court of Sessions, therefore, the Jurisdictional Magistrate in line with Section 209 Cr.P.C. committed the case to the Court of Sessions. Resultantly, Sessions Trial No. 1308 of 2024 (State Vs. Deepak Gaud), under Sections 376, 323, 506 IPC, Police Station-Pipiganj, District-Gorakhpur came to be registered and is now pending in the Court of F.T.C.-Ist, Gorakhpur.

10. However, during the pendency of aforementioned Sessions Trial, applicant solemnized marriage with the prosecutrix on 23.08.2024. Consequently, the prosecutrix became the legally wedded wife of applicant. By reason of above, the prosecutrix is residing with the applicant as his legally wedded

wife. The bona-fide of the parties is further evident from the fact that the marriage of the parties has been registered under the provisions of U.P. Marriage Registration Rules, 2017. Since the marriage of parties is duly registered under the relevant Rules, therefore, there is a statutory presumption regarding valid and legal marriage of the parties. Nothing has been pointed out by Mr. Saurabh Shukla, the learned counsel representing the prosecutrix/first informant/opposite party-2 that the said certificate has been obtained by fraud etc. or proceedings for cancellation of said certificate are pending. In view of aforementioned subsequent developments, the criminality if any, committed by applicant now stands washed off. Consequently, no useful purpose shall be served in prolonging the criminal prosecution of applicant. In case, the criminal prosecution of applicant, is allowed to continue, a happy family shall stand broken. The trial shall only entail loss of judicial time in a futile pursuit particularly when torrents of litigation drown the Courts with an unimaginable flood of dockets

11. At this juncture, reference be made to the judgments of the Supreme Court in K. Dhandapani Vs. State by the Inspector of Police 2022 SCC Online SC 1056 and Mafat Lal and Another Vs. State of Rajasthan 2022 SCC Online SC 433, wherein the Apex Court quashed the proceedings against the accused therein on the ground that he has solemnized marriage with the prosecutrix.

12. The judgment rendered by the Apex Court in the case of K. Dhandapnai (supra) is a short one therefore, the same is reproduced in it's 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 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."

13. The ratio laid down by Apex Court in aforementioned case is squarely attracted to the facts of present case inasmuch as, in the present case also the accused-applicant has solemnized marriage with the prosecutrix. No exception can be carved out regarding above in the case of present applicant. The Court cannot turn a blind eye to the subsequent developments that have taken place between the parties.

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

15. It is, accordingly, allowed.

16. The entire proceedings of Sessions Trial No. 1308 of 2024 (State vs. Deepak Gond) arising out of Case Crime No. 223 of 2024, under Sections 376, 323, 506 IPC, Police Station-Pipiganj, District-Gorakhpur, now pending in the Court of F.T.C. Court No.- Gorakhpur, are, hereby, quashed.

17. In the facts and circumstances of the case, the parties shall bear their own costs.

Order Date :- 3.3.2025 S.A.