

# Satendra Alias Shivendra Alias Ashu vs State Of U.P. And 3 Others on 3 March, 2025

**Author: Rajeev Misra**

**Bench: Rajeev Misra**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:30993

Court No. - 71

Case :- APPLICATION U/S 482 No. - 44519 of 2024

Applicant :- Satendra Alias Shivendra Alias Ashu

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

Counsel for Applicant :- Jeetendra Kumar Sharma, Laxmi Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Jeetendra Kumar, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and Mr. Shrawan Mishra, Advocate holding brief of Mr. Sunil Dubey, the learned counsel representing first informant/opposite party-2.

2. Perused the record.

3. Applicant- Satendra Alias Shivendra Alias Ashu, 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 of Special Session Trial No.69 of 2018 (State Vs. Satendra @ Shivendra @ Ashu) arising out of Case Crime No.63 of 2017, under Sections 363, 366, 376 IPC & 3/4 Protection of Children Act, Police Station Shivli, District Kanpur Dehat pending in the Court of Additional District Judge, Court No.13, Kanpur Dehat and Charge Sheet dated 02.05.2018 and cognizance order as well summoning order dated 24.05.2018 passed by Additional District & Sessions Judge, Court No.7, Kanpur Dehat.

It is further prayed that this Hon'ble Court may graciously be pleased to stay the further proceedings in Special Session Trial No.69 of 2018 (State Vs. Satendra @ Shivendra @ Ashu) arising out of Case Crime No.63 of 2017, under Sections 363, 366, 376 IPC & 3/4 Protection of Children Act, Police Station Shivli, District Kanpur Dehat pending in the Court of Additional District Judge, Court No.13, Kanpur Dehat during pendency of the present criminal application before this Hon'ble Court or to pass such any other and further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case, otherwise the applicants will suffer irreparable loss and injury."

4. At the very outset, the learned AGA submits that notice of this application under Section 482 Cr.P.C. has been served upon first informant-opposite party-2 on 01.01.2025. However, in spite of service of notice neither any counter affidavit has been filed by first informant-opposite party-2 in opposition to this application nor any one has put in appearance on his behalf to oppose this application even in revised call.

5. Learned counsel for applicant submits that though applicant is a named and charge sheeted accused and facing trial before court below in aforementioned case, however, in view of the peculiar facts and circumstances as have now emerged on record, the criminal prosecution of the applicant cannot be sustained. As such, the present application is liable to be allowed by this Court. In furtherance of aforesaid submission the learned counsel for applicant submits that criminal prosecution of applicant commenced with the lodging of FIR dated 22.01.2017 by the first informant-/opposite party-2, Shiv Nath Pal (father of prosecutrix) which was registered as Case Crime No.0063 of 2017 under Sections 363, 366 IPC, Police Station Shivli, District Kanpur Nagar. In the aforesaid FIR, applicant Ashu has been nominated as solitary named accused. According to the learned counsel for applicant prior to the aforesaid FIR dated 22.01.2017, the applicant had solemnized marriage with the prosecutrix on 16.01.2017. Consequently, the prosecutrix became legally wedded wife of applicant. In view of above, the parties are, therefore, now residing together as husband and wife. From the aforesaid wedlock/cohabitation of applicant and prosecutrix, two children namely Vaishnavi (daughter) and Ayush (Son) were born. Their Birth Certificates have been brought on record and photo copies of the same are annexed at pages 48 and 50 of the paper book. As per the aforesaid documents, the applicant is shown as the father, whereas, the prosecutrix is shown as the mother. It is, further, submitted by learned counsel for applicant that the bona fide of accused applicant is further explicit from the fact that the prosecutrix has also filed a short counter affidavit, wherein, she has not opposed the present application. As such, the prosecutrix has

joined the applicant in present application. It is thus contended by the learned counsel for applicant that in view of the development prior to the FIR as well as subsequent developments that have taken place the criminality if any, committed by applicant now stands washed off. He, therefore contends that in case, the impugned criminal proceedings are allowed to continue, then a happy family shall stand broken. As such, no useful purpose shall be served in prolonging the criminal prosecution of applicant. On the above conspectus, the learned counsel for applicant then submits that present application is liable to be allowed.

6. Per contra, the learned A.G.A. for State-opposite party-1 vehemently opposed the present application. Learned AGA submits that since the prosecutrix was a child within the meaning of term child as defined in the POCSO Act on the date of occurrence, therefore, the criminality, if nay, committed by applicant shall not stand washed off on account of previous and subsequent developments as suggested by learned counsel for applicant. However, the learned AGA could not dislodge the factual and legal submissions urged by learned counsel for applicant with reference to the record.

7. On the other hand, Mr. Shrawan Mishra, Advocate holding brief of Mr. Suneel Dubey, the learned counsel representing the prosecutrix-opposite party-5 submits that he has received instructions not to oppose the present application. He, further contends that it is now an admitted fact that applicant has solemnized marriage with prosecutrix and from the aforesaid wedlock two children have been born. He, therefore, contends 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, having heard the learned counsel for applicant and the learned AGA for State opposite party-1, the learned counsel representing the prosecutrix opposite party-5 and upon perusal of record, this Court finds that it is an admitted fact that prior to the FIR dated 22.01.2017 giving rise to the present criminal proceedings, the applicant had solemnized marriage with the prosecutrix on 16.01.2017. Consequently, the prosecutrix became legally wedded wife of applicant. On account of above, the parties are, therefore, now residing together as husband and wife. From the aforesaid wedlock/cohabitation of applicant and prosecutrix, two children namely Vaishnavi (daughter) and Ayush (Son) were born. Their Birth Certificates have been brought on record. As per the said documents, the applicant is shown as the father, whereas, the prosecutrix is shown as the mother. In view of the aforementioned previous and subsequent developments that have been taken place, the criminality if any, committed by applicant now stands washed off. As such, no useful purpose shall be served in prolonging the criminal prosecution of applicant. A happy family shall now stand broken, in case, the impugned proceedings are allowed to continue. 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 applicant on the ground that he has solemnized marriage with the prosecutrix. The judgment rendered by the Apex Court in the case of K. Dhandapani (supra) 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 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."

9. When the present case is examined in the light of ratio laid down by the Apex Court in aforementioned judgments, this Court finds that in the present case also the applicant has solemnized marriage with the prosecutrix and from the said wedlock two children have been born. As such, in case, the criminal prosecution of applicant is allowed to continue, a happy family shall now stand broken.

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

11. It is, accordingly, allowed.

12. The entire proceedings in Special Session Trial No.69 of 2018 (State Vs. Satendra @ Shivendra @ Ashu) arising out of Case Crime No.63 of 2017, under Sections 363, 366, 376 IPC & 3/4 Protection of Children Act, Police Station Shivli, District Kanpur Dehat pending in the Court of Additional District Judge, Court No.13, Kanpur Dehat, are, hereby, quashed.

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

Order Date :- 3.3.2025 S.A.