

Uma Shankar vs State Of U.P. And Another on 31 January, 2025

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:14542

Court No. - 71

Case :- APPLICATION U/S 482 No. - 701 of 2025

Applicant :- Uma Shankar

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

Counsel for Applicant :- Dharmendra Kumar

Counsel for Opposite Party :- G.A.,Utsav

Hon'ble Rajeev Misra,J.

1. Heard Mr. Dharmendra Kumar, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and Mr. Utsav, the learned counsel representing first informant/opposite party-2 (father of the prosecutrix).

2. Perused the record.

3. Applicant-Uma Shankar, who is a charge sheeted accused, 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 charge sheet dated 29-08-2014 as

well as entire criminal proceeding of Session Trial No. 403/2014 (State Vs. Uma Shankar) arising out of Case Crime No. 534/2014 under section 376, 420, 506 I.P.C. and 7/8 POCSO Act Police Station-Sevrahi, District Kushinagar, pending in the court of Special Judge, POCSO Act Court No. 1, Kushinagar at Padrauna alongwith summoning order dated 24-09-2014 and N.B.W order dated 02-12-2024.

It is also further prayed that this Hon'ble court may be pleased to stay the charge sheet dated 29-08-2014 as well as entire criminal proceeding of Session Trial No. 403/2014 (State Vs. Uma Shankar) arising out of Case Crime No. 534/2014 under section 376, 420, 506 and 7/8 POCSO Act I.P.C. Police Station Sevrahi, District Kushinagar, pending in the court of Special Judge, POCSO Act Court No. 1, Kushinagar at Padrauna alongwith summoning order dated 24-09-2014 and N.B.W order dated 02-12-2024, during the pendency of the present application u/s 482 Cr.P.C. before this Hon'ble Court, otherwise the applicant shall suffer and irreparable loss and injury."

4. Record shows that an F.I.R. dated 28.03.2014 was registered at the behest of first informant/opposite party-2 in compliance of an order passed by the jurisdictional Magistrate under Section 156 (3) Cr.P.C., which was registered as Case Crime No. 538 of 2014 under Sections 376, 420, 506 I.P.C. and Sections 7/8 POCSO Act, Police Station- Sevrahi, District Kushinagar.

5. After aforementioned F.I.R. giving rise to present criminal proceedings was lodged, the daughter of the first informant/opposite party-2 i.e. the prosecutrix solemnized marriage with applicant. As such, the prosecutrix is now the legally wedded wife of applicant. On account of above, the prosecutrix started residing with applicant as his legally wedded wife. From the aforesaid wedlock, two children namely Shivans Kumar and Sristi were born. Their Adhar Cards are on record at pages 45 and 46 of the paper book. On the above premise, the learned counsel for applicant submits that, the criminality, if any, committed by applicant now stands washed of. Bonafide of the prosecutrix is further evident from the fact that she has joined the accused/applicant in present criminal proceedings inasmuch as she has also filed her affidavit in support of present application. On the above conspectus, the learned counsel for applicant submits that no useful purpose shall be served in prolonging the criminal prosecution of applicant. Furthermore, in view of changed circumstances, the chances of conviction of accused/applicant are not only remote but also bleak. In case the criminal prosecution of applicant is allowed to continue, a happy family shall stand broken. He therefore submits that present application is liable to be allowed by this Court.

6. Per Contra, the learned A.G.A. representing State-opposite party-1 has vehemently opposed the present application. He submits that since on the date of occurrence the prosecutrix was a child within the definition of the term child as defined in the POCSO Act, therefore, the subsequent development, if any, will not wipe out the criminality committed by applicant. As such, 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.

7. Mr. Utsav, the learned counsel representing first informant/opposite party-2 (father of the prosecutrix) submits that in view of the subsequent developments that have taken place, the first informant/opposite party-2 does not wish to press the criminal prosecution of applicant. He therefore contends that he cannot have any objection in case the present application is decided by this Court taking into consideration the subsequent developments that have emerged on record.

8. Having heard the learned counsel for applicant, the learned A.G.A. for State-opposite party-1, Mr. Utsav, the learned counsel representing first informant/opposite party-2 and upon perusal of record this court finds that it is an admitted fact that an F.I.R. dated 28.03.2014 giving rise to present criminal proceedings was lodged by the first informant/opposite party-2, subsequent to the aforesaid F.I.R., the prosecutrix i.e. the daughter of first informant/opposite party-2 solemnized marriage with applicant on 08.03.2017. Consequently, the prosecutrix became the legally wedded wife of applicant. In view of above, the prosecutrix started residing with applicant as his legally wedded wife. On account of cohabitation of applicant and the prosecutrix, two children namely Sivansh Kumar and Sristi were born. Their Adhar Cards are on record at pages 45 and 46 of the paper book. In view of aforesaid subsequent developments, the criminality, if any, committed by applicant now stands washed of. As such, no useful purpose shall be served in prolonging the criminal prosecution of accused/applicant. In case the criminal prosecution of applicant is allowed to continue, a happy family comprising of accused/applicant and the prosecutrix shall stand broken.

9. At this juncture, reference be made to the judgement of Supreme Court in K. Dhandapani Vs. The State By the Inspector of Police, 2022 SCC OnLine SC 1056. Since the judgement is a short one therefore the same is reproduced in its entirety:

"Leave granted.

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 Reason: 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.

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.

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.

After hearing the matter for some time on 08 th 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.

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.

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.

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.

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."

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 of Sessions Trial No. 403/2014 (State Vs. Uma Shankar) arising out of Case Crime No. 534 of 2014 under section 376, 420, 506 I.P.C. and 7/8 POCSO Act, Police Station-Sevrahi, District Kushinagar, now pending in the court of Special Judge, POCSO Act, Court No. 1, Kushinagar at Padrauna, are hereby quashed.

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

Order Date :- 31.1.2025 YK