

Court No. - 92

Case :- APPLICATION U/S 482 No. - 21188 of 2012

Applicant :- Smt. Anam Sufiya And Others

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

Counsel for Applicant :- B.K. Pandey

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Brijesh Kumar Pandey, learned counsel for the applicants and Sri Pankaj Srivastava, learned A.G.A. for the State.

2. The present Application under Section 482 Cr.P.C. has been filed for quashing of cognizance order dated 20.09.2011, passed by the Additional Chief Judicial Magistrate, Court No. 5th, District Moradabad, in Case No.4286 of 2011 (State Vs. Mehdi Hasan and others) for the offence under Section 366, I.P.C., P.S. Thakur Dwara, District Moradabad and with a further prayer to quash the charge Sheet No.158 of 2010, dated 31.7.2010, arising out of Case Crime No. 371 of 2010, under Section 366 I.P.C., and also with a prayer to stay the entire proceedings of the Case No.4286 of 2011, pending before the Court of ACJM, 5th Moradabad.

3. On 29.06.2012, this Court passed the following orders:-

"Heard Sri B.K. Pandey, learned counsel for the applicants and learned A.G.A. for the State.

By means of this application, the applicants have invoked the inherent jurisdiction of this Court with a prayer for quashing of the cognizance order dated 20.09.2011, passed by the Additional Chief Judicial Magistrate, Court No. 5th, District Moradabad, in Case No. 4286 of 2011 for the offence under Sections 366, I.P.C., P.S. Thakur Dwara, District Moradabad and with a further prayer to quash the charge Sheet No. 158 of 2010, dated 31.7.2010 arising out with Case Crime No. 371 of 2010, under Section 366 I.P.C., and also with a prayer to stay the entire proceedings of the pending Case No. 4286 of 2011, State Vs. Mehdi Hasan and others, pending before the Court of ACJM, 5th Moradabad.

It is contended by the learned counsel for the applicants that Smt. Anam Sufia has married to Mehdi Hasan on her own free will. The applicant No. 1 is a major girl and her date of birth is 4.4.1992 as is evident from Page 37 of the paper-book. They are living together and there is a male child born out from

the wedlock of Applicant Nos. 1 and 2. It has also been contended that the applicant Nos. 1 and 2 had also filed a Criminal Misc. Writ Petition No. 12478 of 2010 before this Court wherein this Court has pleased to stay their arrest vide order dated 14.7.2010 which is evident from Annexure No. 6 of the affidavit of the present application.

Issue notice to opposite party no. 2 returnable within four weeks at the address given in the petition. If the requisite for issuing the notice under registered postal cover with acknowledgment due are not filed within 10 days this petition shall stand dismissed with further reference to any Bench of this Court.

O.P. No. 2 may file counter affidavit within four weeks. Learned A.G.A may also file counter affidavit within the same period. Rejoinder affidavit thereafter be filed within two weeks thereafter.

List immediately after the expiry of the aforesaid period.

Till the next date of listing, no coercive action shall be taken against the applicants in the aforesaid Case Crime No. 371 of 2010."

4. Despite the aforesaid order issuing notice to opposite party no.2, no one has put in appearance on behalf of opposite party no.2.

5. Learned counsel for applicants submits that applicant no.1 is the alleged victim of the incident, for which the F.I.R. has been lodged by uncle of applicant no.1. Learned counsel for applicants further submits that as per High School mark-sheet of victim i.e. applicant no.1, her age on the date of incident i.e. 04.06.2010, was 18 years 2 months, therefore, on the date of incident itself applicant no.1/victim was major, who is married the applicant no.2 out of her free will and out of the said wedlock, three children have born. Mohd. Ujair, male child was born on 08.04.2012, Mahak, girl child was borne on 22.04.2015 and Ishan Hasan, male child was borne on 06.09.2016, out of wedlock between applicant no.1 and opposite party no.2 and they are living happily as happy family and since more than 13 years have passed nobody is coming for to contest the instant case on behalf of opposite party no.2, therefore, looking at the facts and circumstances of the case that both the applicant no.1 and applicant no.2 are living happily married life, therefore, he has prayed for quashing of the entire proceedings against the applicant nos.1 to 6.

6. Learned A.G.A. for the State does not oppose for quashing of entire proceedings against the applicants in the instant case.

7. Having heard the submissions made by learned counsel for the parties, this case has been carefully considered. The opposite party

no.2 has lodged the F.I.R. being Case Crime No.371 of 2010 on 07.07.2010 making allegation of kidnapping of applicant no.1 herein by the applicant nos.2 to 6. However, from the records of the case, it is apparent that applicant no.1 was major girl and she has married out of her free will and out the said wedlock there are three children borne out, therefore, in the considered opinion of the Court, the entire proceedings initiated by uncle of the applicant no.1, who is opposite party no.2 herein, are liable to be quashed against the applicant nos.1 to 6. Therefore, the instant criminal proceeding initiated by the opposite party no.2 was nothing but misuse of process of law. Therefore, in terms of the judgment of Apex Court in the case of **State of Haryana and others Vs. Bhajan Lal and others**, [1992 Supp. (1) SCC 335] and **R.P. Kapur Vs. State of Punjab**, [1960 AIR 862], the instant prosecution initiated against the applicants herein and the entire proceedings of aforesaid Criminal Case No.4286 of 2011 (State Vs. Mehdi Hasan and others), are hereby **quashed**.

8. The instant application is **allowed** accordingly.

Order Date :- 3.11.2023

Atul