

Court No. - 92

Case :- APPLICATION U/S 482 No. - 13759 of 2019

Applicant :- Omkar Singh

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Margret Garima Roberts, Abhishek Tiwari

Counsel for Opposite Party :- G.A., Beena Mishra, Bhuvnesh Kumar Singh

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Abhishek Tiwari, learned counsel for the applicant, Sri Bhavna Mishra, Advocate holding brief of Sri Bhuvnesh Kumar Singh, learned counsel for opposite party no.2 and Sri Pankaj Srivastava, learned A.G.A. for the State.

2. The instant application under Section 482 has been filed seeking quashing of charge sheet dated 20.11.2016 as well as entire proceedings of Case Crime No.0526 of 2018, under Sections 376 and 313 I.P.C., Police Station Noorpur, District Bijnor, pending in the Court of A.C.J.M., Court No.3, Bijnor.

3. Learned counsel for the applicant submits that the applicant and opposite party no.2 both were admittedly having consensual physical relationship for a long period of 7-8 years and during such period opposite party no.2 became pregnant twice. However, the said pregnancy was aborted and both of them continued in physical relationship. Subsequently, after some intervention of family members the parties, the instant F.I.R. was lodged by opposite party no.2 under pressure of her family members, in which the charge sheet has been filed and the applicant herein was summoned subsequent thereto. Thereafter, the instant application was filed by the applicant herein for quashing the entire proceedings. Initially the proceedings were contested by the opposite party no.2 and various counter affidavits were filed alleging that such physical relationship between the parties was in the garb of promise to marriage by the applicant herein, however subsequently, the opposite party no.2 has filed a short counter affidavit on 06.12.2023 stating therein that during the pendency of the instant proceeding before this Court, both the applicant and opposite party no.2 have married and the marriage certificate issued by the Office of the Registrar Compulsory Registration of

Marriage Dehradun-II, Dehradun, Uttarakhand dated 27.10.2023 has been annexed to establish that both the parties have married and learned counsel for the opposite party no.2 in his counter affidavit itself further stated that out of such wedlock between applicant and opposite party no.2, one male child, namely, Aditya Singh has borne on 15.09.2021 and now both the parties are residing as husband and wife along with child as a happy family. Therefore, learned counsel for opposite party no.2 prays for quashing of entire proceedings against the applicant by filing the short counter affidavit dated 06.12.2023.

4. Learned counsel for the applicant has also relied upon the judgment of this Court in ***Application U/S 482 No.5419 of 2021 (Jiyaullah Vs. State of U.P. and another)***, wherein this Court has held that when there was a continuous long standing consensual physical relationship between the parties no offence under Section 376 I.P.C. can be said to have been committed as such relationship was out of love and affection and consent of both the parties, therefore, no offence under Section 376 I.P.C. is said to have been made out.

5. In view of the aforesaid facts and circumstances of the case, since it was a long standing consensual physical relationship between the parties and there was some dispute due to the intervention of family members of opposite party no.2, therefore, the instant F.I.R. was lodged and since now both the parties have married and there is a child out of said wedlock between the parties. In view of above, the instant application deserves to be allowed in the interest of justice and in view of the law already settled that long standing continuous physical consensual relationship between the parties would not amount the offence of rape under Section 376 I.P.C., therefore, the instant application is **allowed** in terms of peculiar facts and circumstances of the case and the entire proceedings of Case Crime No.0526 of 2018, under Sections 376 and 313 I.P.C., Police Station Noorpur, District Bijnor, pending in the Court of A.C.J.M., Court No.3, Bijnor, are hereby **quashed**.

Order Date :- 14.12.2023

Atul