

Court No. - 92

Case :- APPLICATION U/S 482 No. - 29532 of 2023

Applicant :- Dharamveer And Another

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

Counsel for Applicant :- Satyendra Kumar Tripathi, Bhupendra Pal

Counsel for Opposite Party :- G.A., Prathamesh Upadhyay, Raju Singh

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Satyendra Kumar Tripathi, learned counsel for the applicants, Sri Prathamesh Upadhyaya, learned counsel for the opposite party no.2 and Sri Prashant Saxena, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge-sheet no. 233 of 2022 dated 11.10.2022 as well as impugned cognizance order dated 20.10.2022 and the entire proceedings of Special Sessions Trial No. 112 of 2022 (State vs. Dharamveer and Others), arising out of Case Crime No. 220 of 2022 u/S 376D, 506 I.P.C., and 5/6 of the Protection of Children from Sexual Offences Act, P.S.- Kaila Devi, District- Sambhal, pending in the court of Special Judge (POCSO Act) / Additional Session Judge, Sambhal at Chandausi and also set-aside the order dated 18.01.2023, whereby the charge application of the applicants have been rejected by the Special Judge, POCSO Act, Sambhal, in the said case.

3. Learned counsel for the applicants submits that the cousin brother, namely Gopali, of the present complainant/opposite party is facing trial u/S 302 I.P.C., with regard to the murder of one Satyapal, who is the father of the applicant no.1 and the uncle of the applicant no.2. In the said case, the father of the applicant no.2 is a witness against the brother of the complainant. Therefore, learned counsel for the applicants submits that the instant case has been lodged by the complainant on the basis of fabricated facts in retaliation thereof and no such incident has taken place as has been alleged in the instant case.

4. Learned counsel for the applicants further submits that from the ossification report, the age of the victim has been found to be about 18 years as on 10.10.2022. Therefore, learned counsel for

the applicants submits that the provisions of POCSO Act, are not attracted in the instant case and prosecution of the applicants under the POCSO Act, is prima facie uncalled for. The applicants herein had moved an application for discharge under the provisions of the POCSO Act, which has been dismissed vide order dated 18.01.2023, passed by the Special Judge, Chandausi.

5. Learned counsel for the applicants has further submitted that though in the instant case, the School Leaving Certificate has been made available by the Principal of the said school to the investigation official during the investigation, according to which the age of the victim was said to be 16 years, 7 months and 11 days, on the date of incident. However, relying upon the judgement of the Apex Court in ***Criminal Appeal No. 1898 of 2023 (P. Yuvaprakash vs. State rep. by Inspector)*** dated **18.07.2023**, learned counsel for the applicants submits that the Apex Court has categorically held that the School Leaving Certificate and the extracts of the admission register are not the documents, what are the mandated u/S 94 (2) (i) of the Juvenile Justice (Care and Protection) of Children Act, 2015 (hereinafter referred as '*the Juvenile Justice Act*'). Therefore, learned counsel for the applicants submits that the said School Leaving Certificate cannot be taken into consideration while invoking the POCSO Act, against the applicants herein.

6. Per contra, learned counsel for the opposite party no.2 submits that serious offences u/S 376D and the POCSO Act, has been levelled against the applicants herein. Under no circumstances, any girl will come forward to make such allegations to retaliate the grievance of a distant family member. Learned counsel for the opposite party no.2 further submits that the said incident of murder of Satyapal had taken place on 18.01.2015 and the instant case has been lodged against the applicants on 22.08.2022, after 7 years of the said alleged incident. It is highly improbable that the victim or the complainant shall wait for 7 years to retaliate the grievance against the father of the applicant no.2.

7. Learned counsel for the applicants further relying the provisions of Section 94(2) of the Juvenile Justice Act, submits that the provisions of the said Act are crystal clear and sub-clause (i) of Sub-section (2) of Section 94 categorically states that if the date of birth certificate from the school is available or the matriculation certificate or equivalent certificate from the concerned examination board is available, then ossification test has no meaning in the eyes of law for determining the age of the victim concerned.

8. Learned counsel for the applicants further submits that in the instant case, the Investigation Officer in due course has obtained the School Leaving Certificates and the copy of the school admission register from the concerned Principal of the school, wherein it has been stated that the victim had studied in the said school from 14.07.2012 to 30.05.2014 and as per the school records, her date of birth was 09.01.2006.

9. Therefore, in view of the specific provisions of the Section 94(2), Sub-clause (i), the ossification report, determining the approximate age of the victim, has no meaning. So far as the prima facie case against the applicants is concerned. For the determination of the age in definite terms, the same can be determined only during the trial not at this preliminary stage. Therefore, there is no illegality in the impugned order, passed by the learned Special Judge.

10. Learned counsel for the State also supports the submissions made by learned counsel for opposite party no.2 and submits that prima facie, there are proof of determination of age from the school records, which has been mandated u/S 94 of the Juvenile Justice Act. In view of the prima facie, the material is available, therefore, the ossification report would not have any meaning at this stage to quash the proceedings against the applicants herein.

11. Having heard the rival submissions made by learned counsels for the parties, this Court has carefully gone through the records of the case.

12. From the records of the case, it is apparent that in the instant case, the Investigation Officer has obtained a certificate from the concerned Principal of the school where the victim had studied. According to the certificate, the victim studied from 14.07.2012 to 30.05.2014 and her date of birth was 09.01.2006, according to which, on the date of incident, her age was 16 years, 7 months and 11 days. The copy of the transfer certificate has also been obtained by the Investigation Officer according to which the date of birth was 09.01.2006. These are the documents which were maintained by the school in due course of its business. It is not the case of the applicants that the said school records, were forged or fabricated. Therefore, in terms of Section 94 Sub-section (2)(i), once the prima facie document with regard to age of the victim is available, for determining the age of the victim, then as per Section 94(2)(i), there is no question of any ossification test to be conducted and the same has no relevance in the considered opinion of this Court.

13. The reliance placed by the learned counsel for the applicants

in the judgment of ***P. Yuvaprakash(Supra)*** is misconceived as that was the case of the criminal appeal after a conviction where on the basis of the evidence during trial the said observations were made by the Apex Court. In the instant case, trial has not yet started and at this primary stage, it can't be said that there is no primary proof, as warranted u/S 94 (2) (i), is available.

14. Therefore, the other ground with regard to the mala fide prosecution of the applicants herein, is also in the considered view of this Court, is not sustainable as the alleged incident of murder of Satyapal, had taken place in the year, 2015 and the instant prosecution has been lodged in the year, 2022. No sensible person will wait for a period of 7 years to prosecute or to retaliate the said grievance by filing such a case after awaiting for 7 years, waiting her daughter to grow up and then lodge a case. Had it been so, the complainant would have retaliated in various other manners. However, there is no such averments with regard to any retaliation done by the complainant within the period of 7 years.

15. In the considered opinion of this Court, this is an independent incident for which the applicants are being prosecuted and there is no illegality in the impugned order dated 18.01.2023, passed by the learned Special Judge. In view thereof, the instant application is devoid of merits and is hereby **dismissed**.

Order Date :- 18.10.2023
Shubham Arya