

**Court No. - 89**

**Case :- APPLICATION U/S 482 No. - 38087 of 2023**

**Applicant :- Happy Url Alok**

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

**Counsel for Applicant :- Rohit Nandan Pandey**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Deepak Verma,J.**

1. Heard learned counsel for the applicant, Sri Narayan Swaroop, learned counsel for the opposite party no. 2 and learned A.G.A. for the State.

2. This application under Section 482 Cr.P.C. has been filed by the applicant to quash the charge-sheet dated 11.09.2022 as well as the order dated 29.09.2022 passed by the Special Judge (POCSO Act), Ghaziabad, under Sections 363, 376(3) IPC & 3/4 of POCSO Act, arising out of Case Crime No. 488 of 2022, Police Station- Modi Nagar, District- Ghaziabad. A further prayer has been made to stay the further proceedings of Case No. 349 of 2021, under Sections 363, 376(3) & 3/4 of POCSO Act (State vs. Happy urf Alok and others), pending before the Special Judge POCSO Act, Ghaziabad.

3. Counsel for the applicant submits that instant proceeding is a malicious prosecution as the statements recorded under Sections 161 & 164 Cr.P.C. of the victim, are not supporting the prosecution case. He next submits that as per the medical report of the victim, no offence under alleged sections is made out against the applicant. He next submits that all the allegations made in the first information report and statements recorded under Sections 161 and 164 Cr.P.C., are without support of any evidence. He next submits that as per the statement of the victim recorded under Section 161 Cr.P.C., she alone went to Haridwar and stayed there in a Dharamsala and applicant was not with her. He next submits that on perusal of statements recorded under Sections 161 & 164 Cr.P.C. of the victim, no offence under alleged sections is made out against the applicant.

4. Per contra, learned A.G.A. as well as counsel for the opposite party no. 2 oppose the submissions raised by counsel for the applicant and submit that all the submissions raised by counsel for the applicant are disputed questions of fact, which cannot be

examined at this stage.

5. Considered the arguments raised by learned counsel for the parties and perused the entire records. Submissions raised by learned counsel for the applicant are disputed questions of fact, which cannot be examined at this stage by this Court. Prima facie, at this stage it cannot be said that applicant is innocent and no offence under alleged sections is made out against him. From perusal of record, it appears that victim is minor aged about 13 years. Statements of victim recorded under Sections 161 & 164 Cr.P.C. cannot be examined at this stage as sitting under 482 Cr.P.C. jurisdiction, this Court has no power to examine the facts.

6. In view of the above, in the light of judgment of the Apex Court in the matters of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283**, no ground for quashing the proceedings of the aforesaid case, is made out which may call for any interference by this Court in exercise of its inherent power under Section 482 Cr.P.C. as the same do not suffer from any illegality or infirmity.

7. The present application under Section 482 Cr.P.C. lacks merit and is, accordingly, **dismissed**.

**Order Date :- 21.11.2023**

Aditya