

Court No. - 86

Case :- APPLICATION U/S 482 No. - 37590 of 2023

Applicant :- Karanpal @ Guddu And 3 Others

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

Counsel for Applicant :- Kuldeep Singh Tomar

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicants, learned AGA for the State and perused the record.

2. The present application u/s 482 Cr.P.C. has been filed with the prayer to quash summoning order dated 15.03.2023 as well as entire proceedings of Complaint Case No. 153 of 2022 (Asha Chaudhary Vs. Karanpal @ Guddu and others), under Section 376 IPC and Section 3/4 of the Protection of Children from Sexual Offences Act, 2012 against applicant no.1 and Section 323, 504 and 506 IPC against applicant nos.2, 3 and 4, Police Station Khair, District Aligarh, pending in the court of Additional Sessions Judge/POCSO Act, Court No. 2, Aligarh.

3. As per the allegations made in the complaint as well as the statements of the witnesses recorded under Section 200 and 202 Cr.P.C., it is alleged that on 28.11.2014 at about 1:00 p.m. Devaki, sister of Karanpal, applicant no.1 informed the victim that Karanpal along with Amit has come at her house and is calling her and had taken the victim along with her maternal sister Seema to her house and thereafter locked her inside and left her with Karanpal and Amit, who were present in the house. After sometime, Amit on the pretext of making tea had taken Seema in the kitchen and locked Karanpal and victim in a room and the applicant no.1 forcibly committed rape upon her, however, the victim did not disclose this fact to anyone except her mother, who under the fear of earning bad reputation did not disclose this fact to anyone. It is further alleged that on the said date of incident, the victim was a minor girl aged about 15 years. It is further alleged that on 20.09.2021, applicant nos.2, 3 and 4 again called her at her house and illegally detained her and applicant no.1 further forcibly committed rape upon her. On disclosing this fact to the other family members of the applicant no.1,

they started hurling abuses and assaulted the victim.

4. On the basis of the said allegations, the instant complaint was filed and the learned Magistrate recorded the statement of the victim under Section 200 Cr.P.C. and that of her witnesses under Section 202 Cr.P.C. and after recording the statements summoned applicant no.1 under Section 376 IPC and Section 3/4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and applicant nos. 2, 3 and 4 under Section 323, 504 and 506 IPC vide order dated 15.03.2023.

5. Learned counsel for the applicants has submitted that from the perusal of the allegations made in the complaint and the material collected during the course of enquiry, no offence is disclosed against the applicants and the present case has been instituted with a malafide intention for the purpose of harassment.

6. Learned counsel for the applicants has next submitted that subsequently after the said offence on 28.11.2014, applicant no.1 had married the victim on 28.02.2016 and after the said marriage for some time, the victim has even stayed with applicant no.1 as his wife, however subsequently, she left applicant no.1. Applicant no.1 thereafter is said to have filed a suit for restitution of conjugal rights before the Principal Judge/ Family Court, Hathras on 09.07.2020, which is still pending disposal.

7. Learned counsel for the applicants has next submitted that though at the time of first incident, alleged to have taken place on 28.11.2014, the victim was a minor girl aged about 15 years, but applicant no.1 made consensual physical relations with her and subsequently states to have married her on 28.02.2016, therefore, offence under Section 376 IPC and Section 3/4 of the POCSO Act is not disclosed against applicant no.1 and the entire proceedings are liable to be quashed.

8. Per contra, learned AGA has vehemently opposed the said prayer and has submitted that from the perusal of the complaint and the material collected during the course of enquiry, prima facie offence is clearly made out against the applicants. He has further submitted that as per the prosecution case, applicant no.1 committed rape upon the victim on 28.11.2014, when she was a minor girl aged about 15 years. He has further drawn the attention of this Court to the high school mark-sheet of the victim, which has been annexed as Annexure-2 to this application. As

per the said high school mark-sheet her date of birth has been noted to be as 21.11.1999 and as such, on the date of offence i.e. 28.11.2014, the victim was aged about 15 years and thus offence under Section 376 IPC and Section 3/4 of the POCSO Act is clearly made out against applicant no.1.

9. Learned AGA has next submitted that even when the applicant no. 1 is alleged to have married the victim on 28.02.2016 and as per the high school mark-sheet, she was 15 years of age and still a minor. He has further submitted that merely by solemnizing marriage with a minor girl, the offence under Section 376 IPC and Section 3/4 of the POCSO Act would not stand nullified against applicant no.1 and in the backdrop of the said circumstances, the order taking cognizance by the Magistrate and summoning the applicants to face trial is just, proper and legal and do not call for any interference.

10. Having considered the rival submissions made by the parties and from the perusal of the material available on record and looking to the facts of the case, particularly the age of the victim as per her high school mark-sheet, which has been noted to be 21.11.1999, at the time of incident she was 15 years of age and a minor, when the offence of rape is said to have been committed upon her. Moreover, even at the time of alleged marriage of the applicant no.1 with opposite party no.2 on 28.02.2016, as admitted by applicant no.1 himself, the victim was still a minor and therefore, the offence under Section 376 IPC and Section 3/4 of the POCSO Act stands clearly disclosed against applicant no.1. The other applicant nos.2 to 4 who are relatives of applicant no.1, who had assaulted the victim and extended death threats to her and her family members, as such, they have rightly been summoned under Section 323, 504 and 506 IPC.

11. Moreover, at this stage of summoning, only a prima facie case is to be seen and the court u/s 482 Cr.P.C. is not supposed to hold a mini trial at this stage as held by the Hon'ble Apex Court in several of its decision.

12. Thus, from the perusal of the material on record and looking into the facts of the case, it cannot be said that no offence is made out against the applicants. All the submissions made at the bar relate to disputed question of fact which cannot be adjudicated upon by this Court under Section 482 Cr.P.C.

13. At this stage, only a prima facie case is to be considered, therefore, in view of the law laid down by the Hon'ble Apex Court in the cases of ***R.P. Kapur Vs. State of Punjab, AIR 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cri.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.) 192*** and lastly ***Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283***, the prayer for quashing the entire proceedings is refused.

14. It is well settled principle of law that power under Section 482 Cr.P.C. is to be exercised sparingly with circumspection and not in a routine and casual manner in the rarest of rare cases and that inherent power do not confer an arbitrary jurisdiction and the Court to act according to its whims and caprices.

15. In view of the foregoing discussion and further in view of the law laid down by the Hon'ble Apex Court in the case reported in ***(2017) 10 SCC 800, Independent Thought Vs. Union of India and another***, I am of the considered view that the entire proceedings based on the complaint cannot be quashed at this stage and nipped in the bud when the entire evidence is yet to come by exercising the inherent power under Section 482 Cr.P.C.

16. The present application is devoid of merits and is accordingly dismissed.

Order Date :- 30.10.2023

Subham