

Court No. - 89

Case :- APPLICATION U/S 482 No. - 38582 of 2023

Applicant :- Smt Pooja And Another

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

Counsel for Applicant :- Brajendra Kumar, Naresh Kumar Pal

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicants and learned AGA for the State.
2. The present 482 Cr.P.C. application has been filed to quash the entire proceedings of S.T. No.78P of 2018 arising out of Case Crime No.529 of 2017, under Sections 363, 366 I.P.C. & 7/8 POCSO Act, PS Ajeetmal, District Auraiya, pending in the Court of Additional District & Session Judge-1, Special POCSO Act, Auraiya (U.P.).
3. Learned counsel for the applicants has challenged the impugned proceeding which was initiated in the year 2017 against the applicants. Learned counsel for the applicants submits that applicant no.1 is major and proceeding under POCSO Act is illegal and liable to be quashed. He next submits that statement of the victim was recorded in pursuance of the order passed by this Court. As per as x-ray and medical report, applicant no.1 is major and she has solemnized marriage with applicant no.2. As per as statement of applicant no.1 recorded under sections 161 & 164 Cr.P.C., she is aged about 21 years and as per medical examination report, she is 20 years and as per x-ray report, she is aged about 18 years. Learned counsel for the applicants next submits that all proceeding against the applicants is abuse of the process of the court.
4. Learned A.G.A. has vehemently opposed the contention raised by learned counsel for the applicants and submitted that it is a disputed question of facts which cannot be examined at this stage.
5. Considered the arguments raised by learned counsel for the applicants and perused the entire records. Submission of the learned counsel for the applicants is that the applicant no.1 is major as per medical and x-ray report, therefore, proceeding under aforesaid sections must be quashed. In her statement she has stated that she is 21 years old and solemnized marriage. Submissions raised by learned by learned counsel for the applicants are disputed question of facts and 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**.

8. However, if the applicants moved discharge application before the court below, then the court below shall decide their application expeditiously, in accordance with law.

Order Date :- 17.10.2023

SKD