

Court No. - 28

Case :- APPLICATION U/S 482 No. - 2516 of 2011

Applicant :- Vasudeo

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

Counsel for Applicant :- Virenrdra Kumar Shukla, Amrendra Nath Tripathi, Anand Kumar, Shailendra Kumar Tiwari

Counsel for Opposite Party :- Govt. Advocate, Alok Kumar Tripathi

Hon'ble Shree Prakash Singh, J.

Heard Sri Amarendra Nath Tripathi and Sri Rahul Rai, learned counsels for the applicant, Sri Alok Kumar Tripathi for the opposite party no.3 and Ms. Nusrat Jahan, learned A.G.A. for the State.

Instant application has been filed with the prayer to quash the impugned charge sheet dated 6.8.2010 in Criminal Misc. Case No.3407 of 2010 arising out of Crime No.536 of 2010 under Sections 363, 366, 376 I.P.C. Police Station Kotwali Ram Sanehighat, District Barabanki.

Learned counsel for the applicant submits that on 12.5.2010, an F.I.R. was lodged by the maternal uncle of the prosecutrix under Sections 363 and 366 I.P.C. and thereafter, the charge sheet was filed by the Investigating Officer under Sections 363, 366, 376 of I.P.C. He submits that in fact, due to annoyance, the F.I.R. was lodged but the fact remains that the alleged victim prosecutrix was major on the date of incident and she herself went away with the present applicant and performed marriage. He also added that the prosecutrix in her statement under Section 164 Cr.P.C., did not support the version of the prosecution and from the statements of the informant and the prosecutrix as P.W.1 and P.W. 2, respectively, it is evident that the prosecutrix was major at the time of incident and she performed marriage with the applicant and now there are two children from their wedlock and if further criminal proceedings would be allowed to go on, against the applicant, the marital life of the applicant would be ruined.

In support of his submissions, he has placed reliance on the Judgments of the Apex Court in the cases of **Vishwas Bhandari Vs. State of Punjab and another, (2021) 2 SCC 605** and **Jatin Agarwal Vs. State of Telangana & another, in SLP (Crl. No. 9568 of 2021 decided on 21.3.2022** and submits

that the case of the present applicant is squarely covered with the ratio of the Judgments aforesaid. Therefore, submission is that the criminal proceedings against the applicant may be quashed.

Learned counsel for the informant has also supported the version of the counsel for the applicant and submits that he is maternal uncle of the prosecutrix and he, at the instance of the village men and under misconception, had lodged the F.I.R. and there is no truthfulness in the allegations made therein and, later on, he has given before the trial court, other than the narration in the F.I.R. He submits that now there are two children from the wedlock of the applicant and prosecutrix and, therefore, the criminal proceedings against the applicant may be dropped.

Per contra, learned counsel for the State vehemently opposed the contentions aforesaid on merits but she has no objection if the parties have performed marriage and are living as husband and wife and there are two children from their wedlock.

Having heard learned counsel for the parties and after perusal of the record, it transpires that initially, an F.I.R. was lodged against the applicant and his father, under Sections 363, 366 I.P.C. and, later on, by way of charge sheet, Section 376 I.P.C. was also added. The fact remains that when the statement of the prosecutrix was recorded under Section 164 Cr.P.C., she demolished the story of the prosecution and stated that she, on her own sweet will, went away with the applicant and no such offence has been committed by applicant, as narrated in the F.I.R.

This Court has also noticed the fact that the maternal uncle, who is the informant, has given his statement before the trial court as P.W.1 that under misconception, he has lodged the F.I.R. and once the truthfulness came into knowledge, he is not pressing the criminal case against the applicant. Further the applicant and the prosecutrix have performed marriage and there are two children from their wedlock and this fact has also been verified by the counsel appearing for the informant.

The law is trite on the issue that once the prosecutrix and accused person being major, have performed marriage and there are children from their wedlock, then, no fruitful purpose would be sub-served in allowing further criminal proceedings against such accused persons. The case of the present applicant is also covered with the settled law.

In view of the aforesaid submissions and discussions, criminal proceedings in Criminal Misc. Case No.3407 of 2010 arising

out of Crime No.536 of 2010 under Sections 363, 366, 376 I.P.C. Police Station Kotwali Ram Sanehighat, District Barabanki, are hereby quashed.

Consequences shall be followed.

Consign to the records.

Instant application is allowed accordingly.

Order Date :- 12.10.2023

Ram Murti