

Court No. - 28

Case :- APPLICATION U/S 482 No. - 4682 of 2016

Applicant :- Sunil Kumar @ Guddu

Opposite Party :- State Of U.P. Thru. Secy. Deptt. Of Home Civil Sectt. And Anr.

Counsel for Applicant :- Shanker Lal Verma

Counsel for Opposite Party :- Govt. Advocate, Abhishek Singh, Ajay Rajput, Vijay Rajput

Hon'ble Shree Prakash Singh, J.

Heard Sri Vishwas Shukla, Advocate holding brief of Sri Shanker Lal Verma, learned counsel for the applicant, Sri Shailesh, learned counsel for the opposite party no. 2, Sri Nirmal Kumar Pandey, learned A.G.A. for the State and perused the material placed on record.

The instant application has been filed with the prayer to quash the impugned charge sheet and summoning order passed by the ASJ, Xth, Unnao dated 4.5.2016 in S.T. No.129 of 2015, State Vs. Guddu @ Sunil Kumar Lodhi, arising out of Case Crime No.833 of 2013, under Sections 363, 366, 376 I.P.C. & 3/4 POCSO Act, Police Station Purva, District Unnao.

In compliance of the order dated 13-10-2023, the applicant, namely, Sunil Kumar @ Guddu and the prosecutrix, namely, Ragini as well as the complainant namely, Jagdish are present in person before this court.

On query being asked, the alleged victim replied that she went away with the applicant with her own sweet will and she is major and she has performed marriage with the applicant, which was registered before the Marriage Registration Officer on 05-08-2023 and there are three children from their wedlock and she is living as wife of the applicant.

The complainant has no objection and he has supported the version of the applicant and his daughter.

Learned counsel appearing for the applicant

submits that the applicant is innocent and has falsely been implicated in the instant matter. He next added that at the very inception, the first information report was lodged under sections 363,366,120-B of I.P.C. and thereafter, the chargesheet was filed under sections 363,366,376 of I.P.C. and Section 3/4 of the POCSO Act. He added that as per the ossification report, the age of the alleged victim was found to be 18 years, though it was mentioned in the first information report as 17 years. He submits that the prosecutrix herself went away with the applicant out of her own sweet will and the applicant has never enticed away the prosecutrix. He added that the alleged victim performed marriage with the applicant and they are living as husband and wife and there are three children from their wedlock. He further added that the complainant has no objection and he does not want to press the prosecution against the applicant.

In support of his contentions, he has placed reliance on a judgment rendered in **Vishwas Bhandari v. State of Punjab and another reported in (2021) 2 Supreme Court Cases 605**, Criminal Appeal No.105 of 2021, dated 03.02.2021 and has placed reliance on paragraphs 9 and 10 and the same are extracted hereunder:-

"9. We find that the evidence of the prosecutrix and the complainant before the Court shows that there is no allegation whatsoever against the appellant. The main allegation was against Vikram Roop Rai but the prosecutrix married him on 4.8.2013 and had given birth to two children from that wedlock. In the absence of any allegation against the appellant, we find that the continuation of proceedings against him is nothing but an abuse of process of law.

10. Since there is no evidence against the appellant, the proceedings initiated against him on the basis of FIR would be untenable. The High Court was, thus, not justified in dismissing the petition against the appellant."

Referring to the aforesaid, he submits that the case of the present applicant is squarely covered with the ratio of the Judgment aforesaid.

He further contended that since the alleged prosecutrix has performed her marriage with the

applicant and she was found to be 18 years of age as per the ossification report and the applicant and the alleged prosecutrix are living as husband and wife peacefully and there are three children from their wedlock, therefore, allowing the criminal proceedings against the applicant would amount to harassment and therefore, the criminal proceedings against the applicant may be quashed.

On the other hand, learned counsel appearing for the opposite party no. 2 has also supported the version of the applicant and submits the daughter of the complainant has performed marriage with the applicant and there are three children from their wedlock and they are living as husband and wife and therefore, he does not want to press the criminal proceedings against the applicant and, thus, the criminal proceedings against the applicant may be dropped.

Per contra, learned AGA appearing for the State though has opposed the contentions aforesaid on merits, but, he has no objection if the applicant and the alleged victim have performed their marriage and they are living as husband and wife.

Considering the submissions of learned counsels for the parties and after perusal of material placed on record, it transpires that initially the first information report was lodged by the father of the alleged prosecutrix against the applicant and the chargesheet was filed.

This court has examined the matter and it transpires that age of the alleged prosecutrix as per the ossification report is 18 years and as per statement, she herself went away with the applicant and the applicant never enticed away the alleged prosecutrix and the marriage of the applicant and the alleged prosecutrix has been registered and the registration certificate with respect to the same, has also been appended with the instant application.

This court has also noticed the fact that there are three children from the wedlock of the applicant and the alleged prosecutrix and further the alleged

prosecutrix, the applicant and the father of the alleged prosecutrix, are present before this court and they stated that they have no grudge against each other and they want to put all the controversy at rest.

The case of the present applicant is also covered with the ratio of Judgment of the **Vishwas Bhandari v. State of Punjab and another (Supra)** as the applicant and the alleged prosecutrix have performed their marriage and they are living as husband and wife.

Resultantly, the criminal proceedings of S.T. No. 129 of 2015, State Vs. Guddu @ Sunil Kumar Lodhi, arising out of Case Crime No. 833 of 2013, under Sections 363, 366, 376 I.P.C. & section 3/4 of the POCSO Act, Police Station -Purva, District Unnao are hereby quashed.

Consequences shall be followed.

Consigned to record.

The personal appearance of the applicant, namely, Sunil Kumar @ Guddu, the prosecutrix, namely, Ragini as well as the complainant namely, Jagdesh is hereby exempted.

The application under section 482 Cr.P.C. is **allowed** accordingly.

Order Date :- 2.11.2023
AKS