

Court No. - 28

Case :- APPLICATION U/S 482 No. - 9130 of 2023

Applicant :- Ajay Kumar @ Ajay

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Civil Sectt. Lko And 3 Others

Counsel for Applicant :- Udit Narayan, Ashish Raman Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh, J.

Heard Sri Ashish Raman Mishra, learned counsel for the applicant, learned A.G.A. for the State and perused the record.

In compliance of the order dated 21.09.2023 passed by this Court, the applicant, namely, Ajay Kumar @ Ajay and the alleged victim, namely, Subi are present in person before this Court today along with their two year old child and they are identified by Sri Ashish Raman Mishra, learned counsel for the applicant.

Instant application has been filed for quashing the entire proceedings of Criminal Case No.922 of 2022 (State Versus Ajay) arising out of Case Crime No. 193 of 2020, Under Sections - 363, 366, 376 I.P.C. and Section 3/4 of Protection of Children From Sexual Offence Act, 2012, Police Station - Baundi, District - Bahraich, pending in the Court of Learned Additional Session Judge / Special Judge (P.O.C.S.O. Act), Bahraich, as well as impugned charge sheet dated 06-12-2020 and impugned summoning order dated 01-11-2022, passed by the learned Additional Session Judge / Special Judge (P.O.C.S.O. Act), Bahraich.

On query being asked, the alleged victim has submitted that she herself went away with the applicant and has performed marriage with the applicant and they are living as husband and wife and there is a child from their wedlock. She also added that she was major at the time of the alleged incident and she has no grievance against the applicant.

The same version has been reported by the applicant.

Learned counsel for the applicant submitted that the FIR was lodged against the applicant with the allegation that the applicant had enticed away the victim from their lawful guardianship/ parents and committed rape upon her but in fact no such incident has ever taken place, on the contrary, in the Court today, the alleged victim, namely, Subi has herself

admitted that she herself went away with the applicant by her own free will and performed marriage with him in Arya Samaj Mandir and they are living as husband and wife and there is one child from their wedlock. He further argued that the birth certificate of child issued by the Registrar Birth and Death, Nagar Palika, Bahraich in the name of Saransh Kumar who born out from the wedlock of the applicant and the alleged victim. He submits that further criminal proceedings against the applicant would be a futile exercise as there is no fate of trial and allowing further criminal proceedings against the applicant would amount to harassment to the applicant, therefore, the criminal proceedings against the applicant may be quashed.

In support of this contention, learned counsel for the applicant 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 submitted that the case of the applicant is squarely covered with the ratio of the judgment aforesaid.

On the other hand, learned AGA for the State has opposed the matter on merits but he has no objection if the applicant and the alleged victim are major and they have performed marriage and there is a child from their wedlock.

Considering the submissions of learned counsel for the parties and after perusal of material placed on record, it transpires from the radiological report that the alleged victim was of 18 years at the time of the incident though it has been mentioned in the FIR as 15 years. Further, the applicant and the victim are present before this Court and they have stated that they are major and they have performed marriage 19.10.2020 and there is a child from their wedlock. The copy of the birth certificate of the child, namely, Saransh Kumar is annexed as Annexure no.10 to the instant application.

Law has been settled by Hon'ble the Apex Court in the case of **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 as per the facts and circumstances of the case, this Court is of the opinion that the case of the applicant is covered with the ratio of the judgment above-said. Consequently, the criminal proceedings of Case No.922 of 2022, arising out of Case Crime No.193 of 2020 (State vs. Ajay) are hereby **quashed**.

Consequences shall be followed.

Consigned to record.

The personal appearance of the applicant, namely, Ajay Kumar @ Ajay and the alleged victim, namely, Subi is hereby exempted.

Order Date :- 16.10.2023

Manoj K.