

Court No. - 12

Case :- APPLICATION U/S 482 No. - 9067 of 2023

Applicant :- Avinash

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

Counsel for Applicant :- Nijam Ahamad

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.

2. On 19th September, 2023, following order was passed.

"1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The present application under Section 482 Cr.P.C. is filed with the prayer to quash the Case No.89 of 2023, Case Crime No.317 of 2022 under Sections 363, 366, 376 I.P.C. and Section 3(2)(v) of SC/ST Act and Section 3/4 POCSO Act, Police Station Jalalpur, District Ambedkar Nagar.

3. Learned counsel for the applicant submits that family members of the victim was willing to solemnize her marriage with someone else, as she was willing to enter into marriage with the applicant, therefore, she left her house on her own and called the applicant and went to Chandigarh and on the basis of incorrect facts, F.I.R. in question was lodged by the informant (father of the victim). He further submits that when this fact came into notice then they came back, appear before the police and the applicant was taken into custody and was sent to jail. He further submits that statement of victim was recorded under Section 161 as well as 164 Cr.P.C., in which, she had categorically denied the prosecution story and stated that she went on her own with the applicant and is willing to live with the applicant but without considering the contents of the victim under Section 161 and 164 Cr.P.C., charge sheet was filed by the Investigating Officer. He further submits that after framing of charge, the statement of the victim was produced as P.W.2, her statement was recorded before the trial court, in which, she again reiterated that she went on her own. He further submits that victim was residing with her parents, as her parents insisting to marry with someone else, she left her house and came with the applicant and solemnize marriage on 17.8.2023, as the applicant and victim are enjoying their matrimonial life, therefore, impugned order is liable to be set aside. He further relied on the decision of this Court passed in Application U/S 482 No.41580/2022 dated 6.6.2023 and requested for indulgence of this Court.

4. Learned A.G.A. opposed the prayer of the applicant and submits that as charge sheet was already filed and now trial is going on and statement of victim has already been recorded but

he does not dispute this fact that victim has not supported the prosecution story either during the course of investigation or before the trial court in her deposition.

5. Considering the submissions of learned counsel for the parties, going through the contents of the application as well as other relevant documents, including the marriage certificate dated 17.8.2023 and victim is also present before this Court and she is residing with the applicant and enjoying her matrimonial life, therefore, matter requires consideration.

6. Issue notice to the private respondent.

7. List this case on 16.10.2023.

8. On the next date, applicant as well as private respondent shall appear before this Court.

9. The S.H.O., Police Station Jalalpur, District Ambedkar Nagar is directed to ensure the presence of the private respondent before this Court, on the date fixed.

10. Until further order, impugned proceeding shall remain stayed."

3. In pursuance of the aforesaid order, applicant as well as victim and the complainant of the present case are present before this Court along with Sub-Inspector, Mahendra Ram Sharma, P.S. Jalalpur, District Ambedkar Nagar.

4. Learned counsel for the applicant submits that since the parents of the victim were not agreed with the relation of the applicant and victim, the F.I.R. 317 of 2022 (supra) was lodged on the basis of incorrect facts. It is vehemently submitted that now the victim and applicant entered into marriage and the victim is enjoying her matrimonial life with the applicant. It is also submitted that the victim had never supported the prosecution version either in her statements recorded under Sections 161 and 164 Cr.P.C. or in her deposition before the trial court as P.W. 2. It is, thus, submitted that the impugned proceedings are liable to be quashed.

5. Mr. Videshi, father of the victim, who is present before this Court, states that now victim is major and she is enjoying her matrimonial life with applicant/accused of the present case and, therefore, he does not want to prosecute the applicant and, in case, the impugned proceedings are quashed, he has no objection.

6. The victim, who is also present before this Court,

categorically states that she was willing to enter into marriage with the applicant since long, but her parents were not agreed, therefore, she left her house on her own and nothing wrong was committed by the applicant with her. She also states that this fact was also stated by her to the Investigating Officer, Magistrate as also during the course of trial. She also categorically states before this Court that she is enjoying her matrimonial life.

7. Considering the arguments of learned counsel for the applicant, statement given by the complainant as well as the victim before this Court and going through the contents of the application, F.I.R., deposition of the victim recorded before the trial court and her statements recorded under Sections 161 and 164 Cr.P.C. along with other relevant documents including the marriage certificate, it is undisputed that at the time of alleged incident, the victim was aged about 17 years. It is further evident that after attaining the age of majority, she entered into marriage with the applicant and now she is enjoying her matrimonial life. It is also evident that in the deposition made before the trial court, the victim did not support the allegations of abduction and rape and stated that she was in love relation with the applicant since long and the F.I.R. was lodged by the informant of the present case due to annoyance. Apparently, the complainant-Videshi himself admits that now his daughter is enjoying her matrimonial life with the applicant.

8. In view of above facts and circumstances, the trial of the case in question will be a futile one. The impugned proceedings are liable to be quashed and are hereby quashed.

9. The application stands allowed.

10. Office is directed to communicate this order to the court concerned, forthwith.

Order Date :- 16.10.2023

VKS