

Court No. - 28

Case :- APPLICATION U/S 482 No. - 9160 of 2023

Applicant :- Anju Alias Savita And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
And Another

Counsel for Applicant :- Manish Vaish, Rushida Farheen

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh, J.

Heard learned counsel for the applicants and Sri Anirudh Kumar Singh, learned A.G.A. for the State and perused the record.

The instant application has been filed with a prayer to quash the charge-sheet dated 09.04.2022 filed in First Information Report No. 0526 dated 11.11.2021, under Sections 363, 366, 376 of IPC and 5(j) (ii), 6 of POCSO Act, 2012, P.S. Baghwali District Hardoi.

In compliance of the order dated 21.9.2023 the applicant no. 2, namely, Rinku and the applicant no. 1 Anju @ Savita are present before this Court.

On enquiry being asked the alleged victim/ applicant no. 1 Anju @ Savita replied that she went away with the applicant no. 2, namely, Rinku and performed marriage and they are living as husband and wife and there is one child from their wedlock. She also added that on the date of the alleged incident she was major.

The applicant no. 2-Rinku also reiterated the above said version.

The counsel appearing for the applicants submits that the father being annoyed lodged the first information report against the applicant no. 2, though the statement of the alleged victim under Section 164 Cr.P.C. as well as the statement before the trial court demolishes the story of the prosecution, as she submitted that the applicant no. 2 never enticed her away and committed rape upon her and she denied the story of the prosecution.

He further argued that as per the story of the prosecution the age of the victim is 17 years though as per the ossification report the age of the victim is 18 years at the time of the incident. He next added that in fact the charge sheet was filed

by the Investigating Officer without waiting for the ossification report and he further submits that the statement of the victim has demolished the story of the prosecution and there is no fate of the trial.

He further contended that the applicant nos. 1 and 2 have performed their marriage and there is one child from their wedlock. They are living as husband and wife and therefore, allowing the criminal proceedings against them amounts to harassment and, therefore, criminal proceedings against the applicants may be quashed.

In support of his contention, he has placed reliance on a judgement rendered in 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 added that the case of the present applicants is a squarely covered with the ratio of the above said judgement.

On the other hand counsel appearing for the State though has opposed the matter on merits but he has no objection if the applicant nos. 1 and 2 have performed marriage and are living as husband and wife.

Considering the submissions of the learned counsel for the parties and after perusal the material placed on record it transpires that initially an F.I.R. was lodged by the father of the victim against the applicant no. 2 for enticing away his daughter and for committing rape upon her. From perusal of the record it emerges that as per ossification report the age of the victim was 18 years and further the statement of the victim under Section 164 Cr.P.C. and the statement before trial during trial demolishes the story of the prosecution, as the alleged victim has denied any kind of offence committed by the applicant no. 2.

This Court further noticed the fact that the applicant nos. 1 and 2 have performed marriage and there is one child from their wedlock and the case is covered with the ratio of ***Vishwas Bhandari v. State of Punjab and another (Supra)***

Consequently, criminal proceedings arising out of charge-sheet dated 09.04.2022 filed in First Information Report No. 0526 dated 11.11.2021, under Sections 363, 366, 376 of IPC and 5(j) (ii), 6 of POCSO Act, 2012, P.S. Baghwali District Hardoi are hereby quashed. The consequences shall be followed. Consign to record.

The instant application under Section 482 Cr.P.C. is hereby

allowed.

The appearances of the applicant no. 1 Anju @ Savita and applicant no. 2, namely, Rinku are hereby exempted.

Order Date :- 19.10.2023

Anuj Singh