

Court No. - 12

Case :- APPLICATION U/S 482 No. - 9645 of 2023

Applicant :- Shyam Singh @ Sachin Singh

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

Counsel for Applicant :- Sanjay Kumar Pandey, Brijesh Kumar Singh

Counsel for Opposite Party :- G.A., Onkar Nath Tiwari

Hon'ble Rajeev Singh, J.

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 entire proceeding of Session Trial No.98/2023 'State Vs. Shyam Singh', as well as Charge sheet No.01/2023, dated 2.6.2023 under Sections 363, 366, 376 I.P.C. and Section 3/4 POCSO Act, Police Station Kotwali Ayodhya, District Ayodhya.

3. Learned counsel for the applicant submits that the applicant has falsely been implicated in the present case. It is further submitted that at the time of alleged incident, the applicant was studying in B.A. 1st year and the victim was studying in Class 12 and both were minor. It is also submitted that the applicant as well as victim were in love relation, but the same was not accepted to the family of the victim, due to which, she went to the applicant on her own. Thereafter, the F.I.R. was lodged. Later on, the victim appeared before the police and her statement under Section 161 Cr.P.C. was recorded, in which, she categorically stated that she was in love with the applicant since last 3 years and both were studying in the same school. She further states that she requested her family members to solemnize her marriage with the applicant, but they denied, due to which, after taking some money and jewellery, she left her house and went to Goa with the applicant and stayed there. Thereafter, they came back and the victim was handed over to her parents. Learned counsel for the applicant also submits that thereafter the statement of the victim was also recorded under Section 164 Cr.P.C. It is

vehemently submitted that the Investigating Officer filed the impugned charge sheet in mechanical manner, without taking into consideration the statement of the victim recorded under Section 161 Cr.P.C.

4. During the course of trial, statement of informant was also recorded and in his cross-examination, he stated that on the basis of advice of other persons, the F.I.R. was lodged and no ornaments or cash was taken away. Submission of the learned counsel for the applicant is that at the time of incident, applicant as well as victim were in their adolescent age and now they are major and both of them having outstanding academic record, want to pursue their education. Learned counsel for the applicant relied on the decision of *Jaya Mala Vs. Home Secretary Government of Jammu & Kashmir and Ors.* reported in 1982 2 SCC 538 and submitted that benefit of relaxation in the age of two years be given to the applicant, in such circumstances, when the victim and informant are not supporting the prosecution case, then it will be a futile exercise and impugned proceeding is liable to be set aside.

5. Learned A.G.A. opposes the prayer of the applicant and submitted that charge sheet was filed by the Investigating Officer on the basis of minority of the victim as at the time of incident, she was aged about 17 years and 8 months but does not dispute the fact that applicant and victim are studying in same school, they were adolescent in age and were in love and they decided to marry but their family members denied for their marriage, then they left their house on 4.4.2023 and went to Goa. He also admitted that informant of the case was examined before the trial court as P.W.1 and stated that as per the school leaving certificate, victim was aged about 17 years 8 months at the time of incident and after nine days from the date of incident, she came back to the house and information was given to the police and it was also found that no cash or ornament is taken away and at the time of incident, she was younger than P.W.1 about 6-7 years.

6. Considering the submissions of learned counsel

for the parties, going through the contents of the application as well as other relevant documents, as it is undisputed fact that applicant and victim were adolescent in age, studying in same school, were in love and decided to enter into marriage but their family members denied, then they left the house and went to Goa and when their cash was stolen, they came back, as the victim in her statement under Section 161 Cr.P.C. has not supported the prosecution version and admitted that she was in love with the applicant and they were willing to enter into marriage but their family members are against their wishes, then they took the step of leaving the house, as informant of the present case is elder brother of the victim and he also admitted that neither any cash nor ornament was taken away by the victim, in such circumstances, considering the adolescent age of the victim as well as applicant, the impugned proceeding is liable to be set aside.

7. In view of the above, the present application under Section 482 Cr.P.C. is **allowed** and the impugned proceeding is hereby set aside.

8. Office is directed to communicate this order to the court below.

Order Date :- 6.11.2023

Gaurav/-