

Court No. - 28

Case :- APPLICATION U/S 482 No. - 9508 of 2023

Applicant :- Pushpendra Kumar @ Pushpendra Kumar Nisad
And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt.
Govtt. Lko.And 2 Others

Counsel for Applicant :- Rajesh Kumar Sharma,Prabhu Sharan

Counsel for Opposite Party :- G.A.,Shivani Soni

Hon'ble Shree Prakash Singh,J.

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

The instant application under section 482 Cr.P.C. has been filed with the prayer to set aside the impugned order dated 09-05-2023 to the extent it does not discharge the applicants, under sections 368,376,120-B of I.P.C. passed by the Additional Sessions Judge/Special Judge, POCSO Act, Court No. 13, Sultanpur in Special S.T. No. 190 of 2018(State Vs. Pushpendra Nishad and Another).

In compliance of the order dated 4.10.2023, applicant no. 1 Pushpendra Kumar @ Pushpendra Kumar Nisad and opposite party no. 3/victim-Smt. Poonam are present before this Court along with their five years baby girl.

On query being asked they replied that they have performed marriage being major. They are living as husband and wife. The victim further added that she on her own sweet will went away with the applicant No. 1 and the applicant no. 1 never enticed her away.

Counsel appearing for the applicants submits that in fact the first information report was lodged against the applicant no. 1. Thereafter, the Investigating Officer without collecting the substantial evidence submitted charge sheet/report. He further added that the statement of the victim under Section 164 Cr.P.C. demolishes the story of the prosecution. He next submits that the applicant no. 1 and opposite party no. 3 performs marriage and they are major and they are living as husband and wife. Further submission is that allowing the criminal proceedings against the applicant no. 1 amounts to harassment and there is no fate of trial and thus, the criminal proceedings against the applicant 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 squarely covered with the ratio of the above said judgement.

On the other hand, counsel appearing for the State has opposed the submissions made by the learned counsel for the applicants.

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 against the applicant no. 1 with the allegation that the victim was enticed away by the applicant no. 1 and rape has also been committed upon her but fact remains from the perusal of the statement of victim recorded under Section 164 Cr.P.C. that no rape has been committed as has been alleged and she went away with the applicant no. 1 with her own sweet will.

This Court further noticed the fact that the applicant nos. 1 and opposite party no. 3 are major and further alleged victim, who is present before this Court, has given statement that no rape has been committed upon her and she went away with her own sweet will with the applicant no. 1.

When this Court examines the facts and circumstances of the case in the light of the ratio **of Vishwas Bhandari v. State of Punjab and another (Supra)**, it emerges that the case is covered with the ratio of above said judgment.

Consequently, aforesaid criminal proceedings of S.T. No. 190 of 2018 (State Vs. Pushpendra Nishad and Another) pending against the applicants 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 Pushpendra Kumar @ Pushpendra Kumar Nisad and opposite party no. 3/victim-Smt. Poonam are hereby exempted.

Order Date :- 19.10.2023
Anuj Singh