

Court No. - 8

Case :- APPLICATION U/S 482 No. - 9765 of 2023

Applicant :- Mohd. Shaharyar @ Shaharyar Ahmad

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. U.P. Lko. And 4 Others

Counsel for Applicant :- Satish Kumar

Counsel for Opposite Party :- G.A., Jagdish Pratap Pandey

Hon'ble Pankaj Bhatia, J.

1. Counter affidavit filed by Shri Jai Pratap Singh, learned counsel for opposite party no. 3 in Court today is taken on record.
2. In terms of order dated 21.11.2023, the parties concerned are present before this Court who have been identified by their respective counsels.
3. Heard.
4. Facts of the case in brief are to the effect that initially a missing person report was lodged as FIR No. 235/2022 alleging that the daughter of the informant went missing. It was alleged that she was aged about 17 years. Subsequently, on her being apprehended, the victim was medically examined and she stated on oath that she left home on 19.07.2022 out of her own freewill. Her medical age was recorded as 18 years. The victim also gave statement under Section 161 Cr.P.C. stating that her age was about 17-18 years and she knew the applicant for the last three years and was in love with him and had gone out of her on freewill with an intent to marry. She also got recorded her statement under Section 164 Cr.P.C. that she was pregnant and wanted to marry the person. Subsequently, *nikkahnama* between the applicant and the victim is on record as Annexure No. 6 to the application.
5. It has been informed that the applicant and the victim are staying together after performing *nikkah*.
6. Initially the FIR was lodged under Section 363, 366 of the IPC but only because of there being no clarity with regard to age of victim, the charge-sheet was supplemented by adding Section 376 of IPC read with Sections 3/4 POCSO

Act.

7. It is not in dispute that the parties have settled the issue. Only question that arises as to whether the proceedings can be quashed more so in view of the addition of Section 376 of IPC read with Sections 3/4 POCSO Act in the charge-sheet.

8. Hon'ble Apex Court had the occasion to consider the scope of quashing an FIR in exercise of inherent powers under Section 482 Cr.P.C. and the Hon'ble Apex Court laid down the broad principles and summarized the same in Para 16 in the case **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Vs.State of Gujarat** reported in (2017) 9 SCC 641 which on reproduction reads as under:

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions.

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non- compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be

quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

9. Although in para 16.6, as extracted above, it was held that the cases involving mental depravity such as rape cannot be quashed on the ground of settlement,

however it should flow from the facts of case to case that the act alleged was on account of mental depravity.

10. In the present case, allegations of Section 376 of IPC was not made out in the initial FIR lodged which was only under Sections 363 and 366 of IPC, however subsequently Section 376 of IPC was added only because there was no conclusive evidence with regard to age of the victim, as in the FIR the age of victim was stated to be 17 years and in the medical examination the age of the victim is determined as 18 years. The addition of Section 376 of IPC read with Sections 3/4 of the POCSO Act was solely on account of the same treated to be a case of "*statutory rape*" and not because of allegations constituting rape. There being no allegation of mental depravity in the present case coupled with the fact that the parties are residing as husband and wife after performing the *nikkah* and the overwhelming evidence on record suggests that the victim, on being attracted towards the application had loved him willingly, I can reasonably form a view that continuation of proceedings would amount to abuse and would not secure ends of justice, as such, I deem appropriate to exercise my inherent powers and quash charge sheet no. 1 of 2022 dated 16.08.2022 arising out of Case Crime No. 235/2022 under Sections 363, 366, 376 I.P.C. and 3/4 POCSO Act, Police Station- Baldirai, District- Sultanpur and charge-sheet on which the learned Additional Session Judge(Special Judge POCSO), Court no. 12, Sultanpur has taken cognizance on 12.09.2022, a copy of which is Annexure No. 1 to the application. Accordingly, the application is **allowed**.

Order Date :- 4.12.2023

Mohit Singh