

Court No. - 13

Case :- APPLICATION U/S 482 No. - 9807 of 2023

Applicant :- Sanjay Bhargav @ Sanjay Kumar

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

Counsel for Applicant :- Dinesh Kumar

Counsel for Opposite Party :- G.A.,Govind Yadav

Hon'ble Karunesh Singh Pawar,J.

1. Heard learned counsel for the petitioner, learned A.G.A. for the State-respondents as well as learned counsel appearing for the respondent No.2.
2. In compliance of the earlier order passed by this Court, both petitioner-Sanjay Bhargav @ Sanjay Kumar as well as the victim-Manisha are present before this Court who have been identified by their counsel. The complainant of the case is also present who is the father of the victim.
3. Upon a query put up by the court, the complainant has stated that under some misconception, he has earlier lodged the F.I.R. but he does not want to prosecute the petitioner any further. Manisha has stated that she has married with the petitioner out of her own will and accord therefore, her father was not happy with the marriage and lodged the F.I.R. however, he also does not wish to prosecute the petitioner further. She has further stated that out of their wedlock, she has a child aged about one year. She further stated that she is presently 17-18 years old.
4. Perused the record.
5. Record reflects that Manisha was subjected to ossification test and her age has been found to be above 18 years although as per her High School mark-sheet, she is 16 years and 8 months old. This Court has taken notice of the fact that in the ossification test she has been found to be 18 years old and as per her own version she is 17-

18 years old which clearly shows that she has attained the age of discretion and out of their wedlock she has given birth to a child who is one year old and the parties have no grievance between them. They have settled the dispute by way of a compromise. Original copy of the compromise is on record. Both the petitioner and the victim have affirmed the fact that they have entered into this compromise. The compromise has also been verified by the parties themselves in this Court today.

6. Learned counsel for the petitioner submits that since the parties have amicably resolved the dispute outside the court by way of compromise and parties are living together as husband and wife; out of their wedlock they have one year old minor son and therefore, the impugned proceedings may be quashed. He further submits that petitioner is the sole accused in this case there is no other accused except him.

7. In this context, learned counsel for the petitioner has relied on the judgment of Supreme Court in the case of ***Narinder Singh and others vs. State of Punjab and another, 2014(6) SCC 466*** (relevant paragraphs 29.2 and 29.5). The said paragraphs are extracted hereinbelow:-

"29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure :

(i) ends of justice, or

(ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case."

8. Learned counsel appearing for respondent No.2 does not dispute the fact and supports the version of the petitioner.

9. Learned A.G.A. has some apprehension regarding the majority of

the victim however, on merits he has no objection.

10. Perused the record so also considering the statement of the parties, who are present before the Court, the parties have been duly identified by their respective counsel. The compromise has also been verified by the parties themselves in this Court today. So far as the age of the victim is concerned, in the ossification test she is 18 years old and she has been found to be 16 years and 8 months old according to High School mark-sheet and as per her own statement, she is said to be 17-18 years old hence this Court takes judicial notice of this fact that victim has attained the age of discretion, she is a mother of the child and is of capable of entering into compromise.

11. The Supreme Court in the case of ***Vishwas Bhandari Vs. State of Punjab and another*** reported in ***(2021) 2 SCC 605*** has held as under:-

"9. We find that the evidence of the prosecutrix and the complainant before the Court shows that there is no allegation whatsoever against the appellant. The main allegation was against Vikram Roop Rai but the prosecutrix married him on 4.8.2013 and had given birth to two children out of that wedlock. In the absence of any allegation against the appellant, we find that the continuation of proceedings against him is nothing but an abuse of process of law."

12. The facts of the present case are quite similar to the aforesaid case. In the statement under section 161 Cr.P.C., recorded on 18.10.2022 (after one and half year from the FIR) when the victim was admittedly major, she has not made any allegation against the petitioner. While giving statement under Section 164 Cr.P.C. on 19.10.2022, again after one and half year from the F.I.R., she has not made any allegation against the petitioner. In the ossification test, she has been found to be 18 years old. She has refused to undergo medical examination. The victim is married to the petitioner and both are living together as husband and wife and from their wedlock, a child has been born on 03.11.2022 and now good sense prevailed and the petitioner and opposite party no. 2 as well as victim have entered into compromise outside the Court on 04.09.2023

which is on record as Annexure No. 9 and have amicably resolved the dispute between them. No allegation at any stage against the petitioner has been levelled by the victim either under section 161 Cr.P.C. and 164 Cr.P.C. or before this Court, therefore considering the law laid down by the Supreme Court in the case ***Narinder Singh (surpa)*** also in view of the compromise entered between the parties, which is on record and has been verified before this Court, this Court is of the view that no useful purpose will be served by allowing the impugned proceedings initiated against the petitioner on the basis of the F.I.R. as there is no evidence at all against the petitioner. Hence, in view of the above, the petition succeeds and is accordingly ***allowed*** in view of the law laid down by the Supreme Court in the case of ***Narinder Singh(supra)***.

13. The impugned criminal proceedings of S.T No. 2980/2022 arising out of case crime No. 0143/2021 Under Section 363,366,376 I.P.C & 3/4 POCSO Act, P.S- Kotwali, District-Sitapur as well as impugned charge-sheet No. 442/2022, dated 02/11/2022 filed in case crime No. 0143/2021 Under Section 363,366,376 I.P.C & 3/4 POCSO Act, P.S- Kotwali, District-Sitapur pending in the court of Special Judge (POCSO Act)/Additional Session Judge, Court No.14, Sitapur, styled as State Vs Sanjay Bhargav, are hereby quashed.

Order Date :- 6.11.2023

Saurabh Yadav/-