

Court No. - 28

Case :- APPLICATION U/S 482 No. - 9918 of 2023

Applicant :- Shivam Shukla @ Monu

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

Counsel for Applicant :- Anand Mani Tripathi, Hom Narayan Awasthi

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh, J.

Heard Sri Anand Mani Tripathi assisted by Sri Hom Narayan Awasthi, learned counsel for the applicant, Sri Girijesh Dwivedi, learned AGA for the State and perused the record.

Instant application has been filed with a prayer to quash the entire proceedings of Criminal Case No.21379 of 2023; State Versus Shivam Shukla alias Monu, arising out of Case Crime No.69 of 2023, under sections-376, 384, 386, 509, 506, 201 I.P.C., relating to Police Station-Kotwali Nagar, District-Bahraich, pending in the Court of learned Chief Judicial Magistrate, Bahraich, as well as impugned chargesheet dated 8.4.2023, submitted by the Investigating Officer against the petitioner in aforesaid Case Crime No. 69 of 2023, and impugned cognizance/summoning order dated 28.6.2023, passed by the learned Chief Judicial Magistrate, Bahraich.

Learned counsel appearing for the applicant submits that after inordinate delay an FIR was lodged by the opposite party no. 2 under section 376, 384, 386, 509, 506 of IPC at Police Station-Kotwali Nagar, District-Baharaich, which was registered as Case Crime No. 63 of 2023 and false and baseless allegations were levelled against the applicant.

The contention of learned counsel for the applicant is that it is

evident from the statement of the alleged victim that there was relation of the alleged victim with the applicant and once she know that the applicant is suffering with the malignancy, then, she found no hope of performing marriage and thus, lodged the first information report, only with view to extort money. He next added that the statement of the prosecutrix is itself enough to show that the story is false and concocted as there is no truthfulness in the same, further the statement of the brother and the father of the prosecutrix is also to the effect that first time she has made this complaint that the rape has been committed upon her by the applicant and the statement of the Doctor also does not supports the version of the prosecutrix.

In support of his contention, he has placed reliance on the judgment reported in **(2007) 2 SCC page 170 Ramdas and others versus State of Maharashtra** and has referred paragraphs 23 and 24 of the above-said judgment.

Paragraph 23 and 24 of the abovesaid judgments are quoted hereinunder:-

"23. It is no doubt true that the conviction in a case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity. If the evidence of the prosecutrix is of such quality that may be sufficient to sustain an order of conviction solely on the basis of her testimony. In the instant case we do not find her evidence to be of such quality.

24. Counsel for the State submitted that the delay in lodging the first information report in such cases is immaterial. The proposition is too broadly stated to merit acceptance. It is no doubt true that mere delay in lodging the first information report is not necessarily fatal to the case of the prosecution. However, the fact that the report was lodged belatedly is a relevant fact of which the court must take notice. This fact has to be considered in the light of other facts and circumstances of the case, and in a given case the court may be satisfied that the delay in lodging the report has been sufficiently explained. In the light of the totality of the evidence, the court of fact has to consider whether the delay in lodging the report

adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation there may be circumstances appearing on record which provide a reasonable explanation for the delay. There are cases where much time is consumed in taking the injured to the hospital for medical aid and, therefore, the witnesses find no time to lodge the report promptly. There may also be cases where on account of fear and threats, witnesses may avoid going to the police station immediately. The time of occurrence, the distance to the police station, mode of conveyance available, are all factors which have a bearing on the question of delay in lodging of the report. It is also possible to conceive of cases where the victim and the members of his or her family belong to such a strata of society that they may not even be aware of their right to report the matter to the police and seek legal action, nor was any such advice available to them. In the case of sexual offences there is another consideration which may weigh in the mind of the court i.e. the initial hesitation of the victim to report the matter to the police which may affect her family life and family's reputation. Very often in such cases only after considerable persuasion the prosecutrix may be persuaded to disclose the true facts. There are also cases where the victim may choose to suffer the ignominy rather than to disclose the true facts which may cast a stigma on her for the rest of her life. These are cases where the initial hesitation of the prosecutrix to disclose the true facts may provide a good explanation for the delay in lodging the report. In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the court must consider the delay in the background of the facts and circumstances of each case. Different cases have different facts and it is the totality of evidence and the impact that it has on the mind of the court that is important. No straitjacket formula can be evolved in such matters, and each case must rest on its own facts. It is settled law that however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. (See *Pandurang v. State of Hyderabad*.) Thus mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but the delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact."

Referring the aforesaid, he submits that the Hon'ble Apex Court in so many words has held that mere delay in lodging of the report 'may itself not be fatal to the case of the prosecution but the delay has to be considered in the background of the facts and circumstances of each case.' He submits that in fact the delay so far as the lodging of instant FIR is concerned, there is inordinate delay and that is not explained in the FIR or in the

statement of the prosecutrix or any witness.

He has further placed reliance on the judgment reported in **2020 SCC page 108 Maheshwar Tigga vs The State Of Jharkhand on 28 September, 2020** and added that the case of the present applicant is squarely covered with the ratio of the judgment above-said.

While again placing reliance on the judgment reported in the **2019 SCC page 628 Parkash Chand vs State Of Himachal Pradesh**, he has referred paragraphs 6 and 7 of the judgment.

Paragraphs 6 and 7 of the abovesaid judgment is reproduced hereinunder:-

"6. The first question we have to consider is the impact of delay of nearly 7 months in lodging the complaint with the police. The appellant seeks support mainly from the judgment of this Court in Vijayan v. State of Kerala². The High Court in the impugned judgment has on the other hand relied upon (at SCC OnLine HP para 19) the judgment of this Court in State of H.P. v. Shree Kant Shekari³. Therein, this Court (in Shree Kant Shekari case³, at SCC pp. 159-60, para 18) has essentially relied upon the principles about the impact of delay as noticed by it in the judgment of this Court in Tulshidas Kanolkar. v. State of Goa wherein rape was committed on a girl whose mental ability. was undeveloped. This is what the Court had to say about the fact of delay: (Tulshidas Kanolkar case", SCC p. 592, para 5)

"5.... In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first: information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle."

7. In Vijayan case² the prosecutrix who was aged about 17 years was the neighbour of the accused. In her testimony the prosecutrix set up the case that the accused has raped her when no one else was there in the house and she was raped in the house. The appellant-accused was alleged to have been told that she need not worry as he will marry her. She did not give any complaint either to her parents and police in view of the promise. She became pregnant and while she was carrying a child of 7 months, she requested the accused to marry her. The accused declined. Thereafter a complaint was filed after 7 months. On these facts this Court noted that no complaint or grievance was made either to the police or the parents thereto. The explanation for delay in lodging the FIR was noted, namely, that the accused promised to marry her and therefore the FIR was not filed. The Court held as follows: (SCC p. 764, para 5)

"5.... In cases where the sole testimony of the prosecutrix is available, it is very dangerous to convict the accused, specially when the prosecutrix could venture to wait for seven months for filing the FIR for rape. This leaves the accused totally defenceless. Had the prosecutrix lodged the complaint soon after the incident, there would have been some supporting evidence like the medical report or any other injury on the body of the prosecutrix so as to show the sign of rape. If the prosecutrix has willingly submitted herself to sexual intercourse and waited for seven months for filing the FIR it will be very hazardous to convict on such sole oral testimony. Moreover, no DNA test was conducted to find out whether the child was born out of the said incident of rape and that the appellant-accused was responsible for the said child. In the face of lack of any other evidence, it is unsafe to convict the accused."

Referring the aforesaid, he submits that the Hon'ble Apex Court has held that so far as the rape and intimidation alleged in the delayed FIR is concerned, the credibility of the prosecutrix is to be judged to the extent of the fact that the prosecution would be able to prove its case beyond the reasonable doubt.

Concluding his argument, he submits that from bare perusal of the FIR and statement of the prosecutrix under section 161 and 164 of Cr.P.C., it is evident that there is no cogent piece of evidence or any supportive evidence with respect to the inordinate delay and it also emerges that the FIR was lodged, once it came into the knowledge of the prosecutrix that the applicant is suffering with Cancer. He added that the physical condition of the applicant is pitiable and he may not be thrown to face the criminal proceedings, in such situation and therefore,

submission is that the criminal proceedings against the applicant may be quashed.

Learned counsel for the State has opposed the contentions aforesaid and submits that there is specific allegation against the applicant for committing rape upon the prosecutrix, which is supported by her statement under section 161 and 164 of Cr.P.C. He further submits that since the delay itself is explained so far as the criminal intimidation for not disclosing the offence is concerned and therefore, it is immaterial that there is delay of seventeen years. He next added that the applicant has all liberty to place all these evidences at the time of trial and at this stage the statement of the victim under section 164 of Cr.P.C. cannot be examined. Therefore, no interference is warranted.

After the aforesaid argument by the parties, learned counsel appearing for the applicant submits that interest of justice would be sub-served if this Hon'ble Court may be pleased to permit the applicant to move discharge application before the trial court concerned and the trial court may be directed to decide, within stipulated period of time as may be fixed by this Court.

Learned counsel for the State has no objection to the contention aforesaid.

In view of the aforesaid innocuous prayer, the applicant is permitted to move discharge application within a period of two weeks before the trial court concerned, and if such discharge application is filed, the trial court shall consider and decide the same within further period of thirty days, with the speaking and reasoned order, in accordance with law.

With the abovesaid observations, the instant application is **disposed of.**

Any deviation in filing the discharge application would stand revoked, the liberty granted as aforesaid.

Order Date :- 11.10.2023
Mayank