

Neutral Citation No. - 2023:AHC-LKO:85424

Reserved On 24.11.2023

Delivered On 22.12.2023

Court No. - 11

Case :- APPLICATION U/S 482 No. - 10321 of 2023

Applicant :- Eersad Ali And Another

**Opposite Party :- State Of U.P Thru. Prin. Secy. Home Civil
Secrt. Lko. And Another**

Counsel for Applicant :- Nisha Srivastava

Counsel for Opposite Party :- G.A., Ram Kishor

Hon'ble Saurabh Lavania, J.

Vakalatnama filed by Sri Ram Kishore, Advocate on behalf of opposite party No.2, is taken on record.

Heard learned counsel for the applicants, learned AGA for the State of U.P. and gone through the record.

The present application under Section 482 Cr.P.C. has been filed by the accused (applicant No.1) and the victim (applicant No.2), jointly, seeking following main reliefs:-

"The petitioner named above most respectfully begs to submit that for the facts, reasons and circumstances stated in the accompanying affidavit, this Hon'ble Court may kindly be pleased to quash the entire proceedings of C.T. No. 71/2019 'State Vs Eersad Ali', pending before the Learned Additional Sessions Judge / Special Judge, POCSO Act, Court No.46, Barabanki, as well as Chargesheet No. 01/2019, dated 25.04.2019, under section 363, 366, 376 I.P.C., & Section 3/4 Protection of Children From Sexual Offences Act, 2012, Police Station - Kotwali, District Barabanki, and Non-Bailable Warrant order dated 15.09.2023, arising out of Case Crime No. 100/2019, under sections 363, 366 I.P.C., relating to Police Station - Kotwali, District Barabanki, in the light of compromise dated 13 10.2023.

It is further prayed that this Hon'ble High Court may kindly be pleased to stay the entire proceedings of C.T. No. 71/2019 'State Vs Eersad Ali', pending before the Learned Additional Sessions Judge / Special Judge, POCSO Act, Court No.46, Barabanki, in the above mentioned case, in the interest of justice."

It is stated that the story of prosecution as per FIR dated 25.07.2021, which is the basis of entire criminal proceedings pending before the trial court, lodged by the informant/complainant on 25.01.2019 under Sections 363 & 366 IPC at Police Station-Kotwali, District-Barabanki, is to the effect that on 24.01.2019 the applicant No.1 enticed away the applicant No.2 (victim) (daughter of the informant) while she was on the way to Sewing & Embroidery Learning Center.

It is stated that during investigation the statements of applicant No.2 (victim) were recorded as required under Sections 161 and 164 Cr.P.C. on 05.04.2019 and 10.04.2019, respectively, and on 05.04.2019 she was medically examined at District Hospital, Barabanki.

It is stated that as per Medical Report, no spermatozoa was found and hymen was found to be old, torn and healed and the applicant No.2 (victim), as per opinion of the Doctor concerned, at relevant time was aged about 17 years and further, no injury was found on the body of the victim either external or internal. In this regard, reliance has been placed on Annexure Nos. 8 and 9 to this application, which are the copies of Medical Examination Report as also the Medico legal Report.

It is stated that a perusal of statement of applicant No.2 (victim) under Section 161 Cr.P.C. indicates that she on her own volition went with the applicant No.1 and solemnized the marriage with applicant No.1 and a perusal of her statement under Section 164 Cr.P.C. indicates that under the pressure of her family members she changed her version by levelling allegations against applicant No.1.

It is stated that the applicant No. 1 and applicant No. 2 are major and had solemnized the marriage out of their own free and sweet will, is evident from the copy of Nikahnama dated 01.02.2019, which is on record as Annexure No. 10 and at present applicant No. 2 namely Aafreen Bano is pregnant, as stated in para 14 of the affidavit filed in support of present application and at present, the applicant Nos.1 and 2 are living together happily as husband and wife, which is also evident from the compromise deed dated 13.10.2023 and these facts have not been disputed by Sri Ram Kishor, Advocate, who appeared on behalf of Babu, brother of applicant No.2 and son of informant namely Shamsher Ali, who undisputedly is no more.

It is stated that is to be noted that father of applicant No. 2 namely Shamsher Ali S/o Mohd. Shafi and mother of applicant No. 2 namely Haseena have expired during pendency of proceedings in issue. In this regard, reliance has been placed on the copy of death certificates, annexed as Annexure No.4 to this application and legal heir of complainant/informant namely Babu does not want to proceed with the proceedings in issue and has entered into a compromise/settlement.

It is stated that in the aforesaid facts and circumstances of the case, the present application seeking indulgence of this Court has been filed by the accused and victim (wife of accused) jointly. In case pending proceedings are not quashed then in that eventuality the marital life of applicants would be shattered.

In nutshell, for seeking the relief(s) sought jointly, it is stated that applicants are living happily as husband and wife and applicant No.2 (victim), who, at the time of filing of present application is pregnant, had solemnized the marriage on her own sweet will and this marriage is permissible under Muslim Law and as such to secure ends of justice and to protect the marital life of the applicants, the prayer sought is liable to be granted.

For the purposes of quashing the pending proceedings on the basis of compromise/settlement, learned counsel for the parties placed reliance on the judgments of the Apex Court in the case(s) of *Romgopal and others Vs. State of Madhya Pradesh, 2022 (1) SCJ 536*, *Gian Singh Vs. State of Punjab [2012 10 SCC 303]*, *Mohd. Ibrahim Vs. State of U.P., 2022 SCC Online ALL 106*, *Gold Quest International Ltd. Vs. State of Tamilnadu, 2014 (15) SCC 235*, *B.S. Joshi Vs. State of Haryana, 2003 (4) SCC 675*, *Jitendra Raghuvanshi Vs. Babita Raghuvanshi, 2013(4) SCC 58*, *Madhavarao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre, 1988 1 SCC 692*, *Nikhil Merchant Vs. C.B.I. and another, 2008(9) SCC 677*, *Manoj Sharma Vs. State and others, 2008(16) SCC 1*, *State of M.P. Vs. Laxmi Narayan and others, 2019(5) SCC 688*, *Narindra Singh*

and others Vs. State of Punjab and another, (2014) 6 SCC 466, Manoj Kumar and others Vs. State of U.P and others (2008) 8 SCC 781, Union Carbide Corporation and others Vs. Union of India and others (1991) 4 SCC 584, Manohar Lal Sharma Vs. Principal Secretary and others (2014) 2 SCC 532 and Supreme Court Bar Association Vs. Union of India (1998) 4 SCC 409.

Reliance has been placed on the judgment passed by the Hon'ble Apex Court in the case of ***Vishwas Bhandari vs. State of Punjab And Another; (2021) 2 SCC 605;*** in which, the Hon'ble Apex Court observed 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 from 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.

10. Since there is no evidence against the appellant, the proceedings initiated against him on the basis of FIR would be untenable. The High Court was, thus, not justified in dismissing the petition against the appellant."

Reliance has been placed on the judgment passed by the Hon'ble Apex Court in the case of ***P. Yuvaprakash vs. State Rep. By Inspector of Police; AIR 2023 SC 3525;*** wherein, the Hon'ble Apex Court observed as under:-

"19. It is clear from the above narrative that none of the documents produced during the trial answered the description of "the date of birth certificate from the school" or "the matriculation or equivalent certificate" from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable

medical tests/examination that the victim's age was below 18 years as per Section 94(2)(iii) of the JJ Act. PW-9, Dr. Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the X-ray reports and deposed that in terms of the examination of M, a certificate was issued stating "that the age of the said girl would be more than 18 years and less than 20 years". In the cross-examination, she admitted that M's age could be taken as 19 years. However, the High Court rejected this evidence, saying that "when the precise date of birth is available from out of the school records, the approximate age estimated by the medical expert cannot be the determining factor". This finding is, in this court's considered view, incorrect and erroneous. As held earlier, the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94(2)(i) mandates; nor are they in accord with Section 94(2)(ii) because DW-1 clearly deposed that there were no records relating to the birth of the victim, M. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test, based on several X-Rays of the victim, and on the basis of which PW-9 made her statement. She explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this court is of the opinion that the result of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor, PW-9."

In addition to above, reliance has been placed on the judgments passed by this Court on the ***Application U/S 482 No. 9813 of 2023 (Ram Kishor @ Kishor vs. State of U.P. And Another), Criminal Appeal U/S 372 Cr.P.C. No. 6 of 2023 (Ram Chandra vs. State of U.P. And Another), Monish vs. State of U.P. & Others; 2023 (2) ACR 1546; Application U/S 482 No. 3040 of 2023 (Bhim Sen vs. State of U.P. and Ors.); MANU/UP/0496/2023; Application U/S 482 No. 16207 of 2022 (Guddu and Ors. vs. State of U.P. and Ors.); MANU/UP/1962/2022.***

Prayer is to allow the present application.

Learned Additional Government Advocate could not dispute the aforesaid facts including the fact that applicant Nos.1 and 2 have solemnized the marriage and applicant No.2 is pregnant and that the parents of applicant No. 2 have expired during pendency of the proceedings in issue.

Considering the submissions advanced by learned counsel for the parties, perusing the compromise deed dated 13.10.2023, medical report of applicant No.2 and taking note of the observations made by Hon'ble Apex Court as also by this Court in the judgments, referred above and the nature of dispute/crime and the fact that parents of applicant No. 2 have expired during pendency of the proceedings in issue and legal heir of complainant/informant does not want to proceed with the proceedings and has entered into a compromise as also the age of the applicant No.2 (victim) in the light of observations made by the Hon'ble Apex Court in the judgments passed in the case of *P. Yuvaprakash (supra) and Vishwas Bhandari (supra)* and also the fact that prior to lodging of FIR on 25.07.2021 the marriage was solemnized on 01.02.2019, as appears from Nikahnama and if the proceedings before the trial court continues then the applicants' marital life would be shattered and also the chances of conviction in facts of the case are extremely bleak, this Court is of the view that no purpose would be served in keeping the proceedings pending before the trial court and hence, the proceedings in issue are hereby quashed in terms of the compromise.

Accordingly, the present application U/S 482 Cr.P.C. is ***allowed.***

Office is directed to send a copy of this order to the court concerned through email/fax immediately for necessary compliance.

Order Date :- 22.12.2023

Vinay/-