

Court No. - 12

Case :- APPLICATION U/S 482 No. - 10474 of 2023

Applicant :- Nikhil Srivastava

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home, Lko. And Others

Counsel for Applicant :- Kaushal Mani Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. In pursuance of earlier order dated 27.10.2023, victim along with her kid, mother of victim (informant of the present case) are present along with S.I. Jyoti and Lady Constable Himanshi Singh, P.S. Badhosarai, District- Barabanki.

2. Victim has stated before this Court that at the time of alleged incident, she was aged about 17 years 8 months and she was in affair with the applicant, therefore, she requested to her parents to settle her marriage with the applicant but her parents were not agreeing to her wish, as a result she went with the applicant on her own and in the meantime, she conceived. She further stated that during the course of investigation, her statement was recorded by the Investigating Officer as well as before the Magistrate concerned, in which, she categorically denied the allegations leveled against the applicant, thereafter, she delivered a girl child on 03.11.2022 and she is continuously residing at the house of applicant and also requested that the impugned proceedings going on against her husband/applicant may be quashed.

3. Informant of the present case/mother of the victim also stated that on the advise of others, F.I.R. of case in question was lodged by her but now, her daughter is enjoying her matrimonial life and having one kid aged about one year, therefore, she has no objection in case the impugned proceedings be quashed.

4. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

5. Present application has been moved by the applicants for quashing the charge sheet dated 27.11.2022 in Case Crime No.540 of 2022 under Sections 363, 366, 376 I.P.C. and Section 5/6 of POCSO Act, P.S.- Kotwali Nagar, District- Barabanki as well as summoning order dated 24.01.2023 in Sessions Case No.260/2023 passed by Additional Sessions Judge/Spl. Judge

(POCSO Act), Room No.44, District- Barabanki.

6. Learned counsel for the applicants submitted that the due to annoyance, F.I.R. of case in question was lodged by the informant. He further submitted that detailed investigation was conducted and the victim in her statement, has not supported the prosecution version. He further submitted that the victim is enjoying her matrimonial life with the applicant and having one kid and there is no possibility of conviction of the applicant. He further relied on the decision of Hon'ble Apex Court in the case of *Manak Chandra @ Mani Vs. State of Haryana* in *Criminal Appeal No.2276/2014* and *Kapil Gupta Vs. State of N.C.T. of Delhi and Anr.* in *Crimina Appeal No.1217 of 2022* and submitted that after going through the entire evidences, no offence of rape is made out, therefore, impugned proceedings may be quashed.

7. Learned A.G.A. opposed the prayer of applicants and submitted that after detailed investigation, charge sheet was filed but he does not disute this fact that in the statement of victim recorded under Sections 161 and 164 Cr.P.C., she has not supported the prosecution version. He also conceded the fact that the victim is living with the applicant and enjoying her matrimonial life with him as well as having one kid aged about one year.

8. Considering the submissions of learned counsel for the parties, going through the contents of application, statement of victim and informant who are present before this Court, as well as other relevant documents, as it is evident that victim has not supported the prosecution version since very beginning, as the victim is enjoying her matrimonial life and having one kid aged about one year, therefore, the trial would be futile one, in such circumstances, this Court is of the view that the impugned proceedings are liable to be quashed.

9. Accordingly, the application is **allowed** and entire proceedings including the charge sheet dated 27.11.2022 in Case Crime No.540 of 2022 under Sections 363, 366, 376 I.P.C. and Section 5/6 of POCSO Act, P.S.- Kotwali Nagar, District-Barabanki as well as summoning order dated 24.01.2023 in Sessions Case No.260/2023 passed by Additional Sessions Judge/Spl. Judge (POCSO Act), Room No.44, District-Barabanki are hereby **quashed**.

Order Date :- 7.11.2023
V. Sinha