

Court No. - 27

Case :- APPLICATION U/S 482 No. - 473 of 2022

Applicant :- Rehan @ Rihan

Opposite Party :- State Of U.P. Through Principle Secretary Home, Civil Secretariat, Lucknow And Anr.

Counsel for Applicant :- Abhishek Srivastava, Mohd. Mubeen

Counsel for Opposite Party :- G.A., Anubhav Prakash

Hon'ble Shamim Ahmed, J.

Heard Sri Abhishek Srivastava, learned counsel for the applicant as well as Ms. Ankita Tripathi, learned A.G.A. for the State alongwith Sri Anubhav Prakash, learned counsel for the opposite party no.2 and perused the record.

This application under Section 482 Cr.P.C. has been filed by the applicant with a prayer to quash the entire proceedings of Sessions Trial No.661/2021, under Sections 363, 366, 376 I.P.C. and Section 3/4 of POCSO Act, Police Station Pihani, District Hardoi arising out of F.I.R. No.111/2021 dated 05.03.2021.

Learned counsel for the applicant submits that from bare perusal of the first information report, it is alleged that the daughter of the complainant has falsely taken the name of the applicant and F.I.R. was registered under Section 366 I.P.C., however, during the course of investigation, Section 363, 376 I.P.C. alongwith Section 3/4 of POCSO Act have been inserted.

He further submits that in the statement recorded under Sections 161 and 164 Cr.P.C., the prosecutrix had admitted this fact that she went with the applicant on her own sweet will and she was in love affairs with the applicant and made the physical relations with him. The medical examination of the victim was also conducted.

Learned counsel for the applicant further submits that the investigating officer, after completion of investigation, has submitted the charge sheet in a cursory manner before the learned Magistrate and the concerned Magistrate has mechanically and in an arbitrary manner has summoned the applicant without considering the material evidence on record and without application of judicial mind, which is totally illegal. He further submits that now the charges have also been framed against the applicants.

He further submits that now the parties have entered into compromise and on the basis of compromise, the present proceedings may be quashed.

In support of his arguments, learned counsel for the applicant relied upon the judgment rendered by a co-ordinate Bench of this Court in the cases of **Pushpendra Kushwaha Vs. State of U.P. and 2 Others; Application under**

Section 482 No.2095 of 2019 and Asha and another Vs. State of U.P. and Another; 2017 LawSuit(All) 2198. He has also relied upon the judgment rendered by Hon'ble the Apex Court in the case of **S Varadarajan Vs. State of Madras; 1964 LawSuit(SC) 209.**

On the other hand, learned A.G.A. for the State submits that prima facie offence is made out against the applicant and the learned Magistrate has rightly summoned the applicant after due analysis of evidence available on record. Thus, the impugned order is correct and does not require any interference by this Court. She further submits that since the offence under Section 376 I.P.C. and Section 3/4 of POCSO Act is heinous and also against the society, therefore, the proceedings of the instant case cannot be quashed in view of the latest judgment pronounced by Hon'ble Apex Court in the case of **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat & Anr;; reported in (2017) 9 SCC 641** wherein in paragraph no.16, the Hon'ble Apex Court has summarized the broad principles with regard to exercise of powers under Section 482 Cr.P.C. in the case of compromise/settlement between the parties which emerges from precedent of the subjects as follows:-

i. "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 recognizes and preserves powers which inhere in the High Court.

ii. 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.

iii. 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;

iv. 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;

v. 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;

vi. 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;

vii. 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 in so far as the exercise of the inherent power to quash is concerned;

viii. Criminal cases involving offences which arises 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;

ix. 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

x. There is yet an exception to the principle set out in propositions (viii) and (ix) 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."

She further submits that the Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:-(i) **R.P. Kapoor Vs. State of Punjab**, AIR 1960 S.C. 866, (ii) **State of Haryana Vs. Bhajanlal**, 1992 SCC (Cri.)426, (iii) **State of Bihar Vs. P.P. Sharma**, 1992 SCC (Cri.)192 and (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another**, (Para-10) 2005 SCC (Cri.) 283.

She further submits that from the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continued. She further submits that in **S.W. Palankattkar & others Vs. State of Bihar**, 2002 (44) ACC 168, it has been held by the Hon'ble Apex Court that

quashing of the criminal proceedings is an exception than a rule. She further submits that the inherent powers of the High Court under Section 482 Cr.P.C itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. She further submits that the power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

She further submits that the High Court would not embark upon an inquiry as it is the function of the Trial Judge/Court. She further submits that the interference at the threshold of quashing of criminal proceedings in case in hand cannot be said to be exceptional as it discloses prima facie commission of an offence. Thus, she submits that the proceedings of the present case cannot be quashed and the instant application under Section 482 Cr.P.C. is liable to be dismissed with cost.

From the perusal of the materials on record and looking into the facts of the case and after considering the arguments made at the bar, it does not appear that no offence has been made out against the applicant. The offence under Section 376 I.P.C. and Section 3/4 of POCSO Act are heinous offence and are also against the society. This Court is not a stage where proceedings of the case in hand can be quashed as factual question of facts is involved in this case. The judgments cited by learned counsel for the applicants are totally distinguishable from the facts of the present case. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

Accordingly, in view of the aforesaid observations, the present application is liable to be dismissed, which is accordingly **dismissed**.

Order Date :- 16.5.2024

Saurabh