

Court No. - 11

Case :- APPLICATION U/S 482 No. - 1685 of 2024

Applicant :- Akash Bhanupratap Singh

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

Counsel for Applicant :- Jaydeep, Alok Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Ms. Arti Singh, learned counsel for the petitioner and Sri Aniruddha Kumar Singh, learned Additional Government Advocate-I for the State.

2. In view of the proposed order, the notices to opposite party Nos.3 & 4 are hereby dispensed with.

3. By means of this petition filed under Section 482 Cr.P.C., the petitioner has prayed for the following relief:-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the judgment and order dated 08.01.2024 passed by the learned Special Judge, POCSO Act/ Additional District & Sessions Judge, Lucknow thereby rejected the application for discharge in Session Trial No.762 of 2016 (State vs. Akash Bhanupratap Singh & others), arising out of Case Crime No.80 of 2013, under Sections 363, 366, 376 & 506 I.P.C. and Section 3/4 of POCSO Act, as well as the entire proceedings initiated against the petitioner may be set aside, in the interest of justice."

4. By means of the aforesaid order, the learned trial court has observed that earlier due to typographical error the charges under Section 376 I.P.C. was not properly framed, therefore, it should be framed as per law. In the aforesaid order, the court concerned has indicated that the paper-book produced before the court after lunch. Accused is present. Witness is absent. List/ put up the paper-book on 18.01.2024 for evidence.

5. Learned counsel for the petitioner has stated that it is clear from the order dated 08.01.2024 that the charge under Section 376 I.P.C. has not been framed against the petitioner but the learned trial court has fixed the next date for evidence, which is against the law.

6. Attention has been drawn towards Annexure No.2 of the petition, which is an order dated 18.01.2024 passed by the learned trial court framing the charges against the petitioner

under Sections 363, 366 & 376 I.P.C. and Section 3/4 of Protection of Children from Sexual Offences Act (in short "POCSO Act"). By means of para-3, the charge under Section 376 I.P.C. has been framed.

7. Further attention has been drawn towards subsequent order dated 18.01.2024 passed by the learned trial court whereby the learned trial court passed the order after hearing the parties on charge by observing that the allegations and statement of the prosecutrix convince the Court that the charge against one 'Ajay' under Sections 363, 366 & 376 I.P.C. read with Section 3/4 of POCSO Act, prima-facie, appears to be established, therefore, the petitioner be tried on such sections.

8. Ms. Arti Singh, learned counsel for the petitioner has stated that the reasons, so assigned in the subsequent order dated 18.01.2024, are absolutely wrong and misconceived inasmuch the charges under Sections 363, 366 & 376 I.P.C. and Section 3/4 of POCSO Act have been framed against one 'Ajay' whereas the name of accused is 'Akash'. She has further submitted that the opening paragraph of the subsequent order dated 18.01.2024 reads that the order has been passed after 3:15 p.m. but the concluding para of the aforesaid order says that the victim be appeared for evidence after lunch.

9. Learned counsel for the petitioner has stated that when opening paragraph of the subsequent order dated 18.01.2024 itself says that such order has been passed on or after 03.15 p.m., as to how the paper-book may be placed before the court concerned after lunch. She has also submitted that the statement of the victim has been recorded before the court concerned wherein she has not supported the prosecution, rather, has given her statement in favour of the present petitioner. However, the certified copy of that statement has not been received, therefore, the same could not be filed.

10. On the other hand, Sri Aniruddha Kumar Singh, learned Additional Government Advocate-I has submitted that the same issue was placed before the court seeking some different relief and this Court disposed of that petition vide order dated 04.01.2024 passed in Application (U/S 482 Cr.P.C.) No.07 of 2024 (Akash Bhanupratap Singh vs. State of U.P. & others), which reads as under:-

"1. Heard Sri Vipul Gupta assisted by Sri Sandeep Kanoujia, learned counsel for petitioners and learned AGA for State.

2. By means of this present petition under Section 482 Cr.P.C. the petitioner has prayed as under:

"For the facts, reasons and circumstances stated in the accompanying affidavit, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the entire proceedings of S.T. No. 762/2016 in Case Crime No. 80/2013, State Vs Akash & Ors., U/s 363,366,376,506 I.P.C, and 3/4 POCSO Act P.S.-Ashiyana, District-Lucknow, pending before Court of Ld. Special judge POCSO Act, Lucknow. It is further prayed that this Hon'ble Court may kindly quash the Charge Sheet no. 92/14 dated 04.06.2014, impugned Cognizance Summoning order dated 26.08.2016, impugned rejection order of Discharge dated 21.10.2023 and impugned order dated 05.12.2023, by which charges have been framed against the applicant/accused, by Ld. Special Judge POCSO Act/ Addl. District Judge, Lucknow in "State vs. Akash Bhanupratap Singh and others" annexed as Annexure No. 2, 3, 4 & 5 respectively, in the interest of justice.

It is further prayed that during the pendency of this application/petition, further proceeding of the S.T. No. 762/2016 in Case Crime No. 80/2013, State Vs Akash & Ors., U/s 363,366, 376, 506 I.P.C, and 3/4 POCSO Act P.S.-Ashiyana, District- Lucknow, may kindly be stayed in the interest of justice."

3. At the very outset learned counsel for the petitioner has submitted that on 12.12.2023 the present petitioner not pressed his earlier petition filed u/s 482 Cr.P.C. bearing Application U/S 482 No. 12058 of 2023 seeking liberty to file a fresh petition.

4. Learned counsel for the petitioner has stated that there is an error apparent on the face of the record inasmuch as while taking cognizance of the charge-sheet the court concerned has taken cognizance of the offences against the present petitioner u/s 363, 366, 506, 376 I.P.C. and section 3/4 of POCSO Act, However, against other accused persons namely, Guddu Sharma, Deepak Tiwari and R.K. Singh the cognizance of section 363, 366 and 506 I.P.C. has been taken. However, the process has been issued on a typed proforma by filling up the sections and court indicating therein section 363, 366, 506 and 3/4 POCSO Act.

5. Learned counsel for the petitioner has stated that the law is trite on the point that while issuing process in furtherance of taking cognizance of the charge-sheet there may not a difference of sections, however, some sections may be added and may be deleted in the subsequent stage of the trial, therefore, as per learned counsel for the petitioner the process has been issued not only in an inappropriate format but also the same has been issued without application of mind. Learned counsel for the petitioner has also drawn attention of this Court towards the order dated 5.12.2023 passed by the court concerned framing charge against the petitioner u/s 363, 366, 506 I.P.C. and section 3/4 of POCSO Act but on the same date the charge u/s 376 I.P.C. has been framed against the petitioner on the basis of ingredients of section 506 I.P.C. Even while passing both the orders on 5.12.2023 the competent court has not noticed that in both the orders his first name is correct but his second name is incorrect.

6. Therefore, learned counsel for the petitioner has stated that in the present case the entire exercise which has been undertaken by the trial court is not only illegal and unwarranted but the same has been undertaken without application of mind, so the learned counsel for the

petitioner has requested that the entire proceedings may be quashed.

7. Per contra, learned AGA has stated that though the process has been issued on the typed proforma and proper sections have not been indicated in such process but on the basis of aforesaid irregularity which is curable the entire proceedings may not be quashed for the reason that serious allegations have been levelled against the petitioner.

8. Be that as it may, having considered the arguments of learned counsel for the parties and having perused the material available on record, I am also of the considered opinion that the process should not be issued on the typed proforma but the court concerned should indicate complete details by transcribing its own order indicating correctly the details of the case and sections for which the process has been issued. Besides, while issuing process the court concerned should remain careful as to whether those sections have been properly indicated under which the cognizance has been taken. If the process is issued by a speaking and reasoned order, the apparent mistake which has been committed would have been avoided.

9. Therefore, on the aforesaid reasons the process issued against the petitioner is liable to be set aside. The issue is remanded back to the court concerned to issue fresh process strictly in accordance with law by applying its judicious mind.

10. The court concerned may also frame charges against the petitioner strictly in accordance with law inasmuch as the charges framed vide order dated 5.12.2023 have not been framed properly following the provisions of law strictly, therefore, the orders dated 5.12.2023 are also set aside being not sustainable in the eyes of law.

11. Since the petitioner has already been granted bail by the competent court concerned on 6.1.2021 for sections 363, 366, 376, 506 I.P.C. and vide corrected order dated 11.1.2021 for section 3/4 POCSO Act, as those orders have been enclosed as Annexure no. 16 with this application, therefore, the petitioner may not be compelled to apply his fresh bail, if the proper process is issued and charges are framed against the petitioner by the court concerned.

12. It is also directed that while passing appropriate orders in compliance of the orders of this court, the court concerned may afford an opportunity of hearing to the opposite party no. 2 / informant and the petitioner strictly in accordance with law at the appropriate stage.

13. The petition is disposed of finally in view of aforesaid terms."

11. Sri Aniruddha Kumar Singh has further submitted that so far as the order dated 08.01.2024 and the subsequent order dated 18.01.2024 are concerned, it appears that the court concerned has not passed order by perusing the material available on record inasmuch as there is no accused in the name of 'Ajay'. In the present case, vide subsequent order dated 18.01.2024 the charge has been framed against one 'Ajay'. Besides, when the subsequent order dated 18.01.2024 is being passed on or after 3:15 p.m., he is unable to comprehend as to how the paper-book could have been placed before the court after lunch as the lunch

time had already expired. He has also stated that when this Court vide earlier order dated 04.01.2024 (supra), directed the learned trial court to pass a fresh order, at least due care and precaution should have been taken by the court, more particularly, considering the fact that the trial in POCSO matter should be conducted and concluded with expedition preferably within a period of one year in terms of Section 35 (2) of POCSO Act.

12. Sri Aniruddha Kumar Singh has further submitted that so far as the facts of the case is concerned, the educational paper of the petitioner has been enclosed with the petition, which indicates that the date of birth of the victim/ prosecutrix is 06.03.1998, therefore, at the time of incident in question, she was aged about 15 years. Therefore, if the physical relation has been established by the petitioner with the prosecutrix when she was aged about 15 years, it would attract all the sections, wherein the charges have been framed vide his first order dated 18.01.2024. However, the mistake, may be bonafide or unintentional, in the order dated 08.01.2024 and the subsequent order dated 18.01.2024 may affect the trial proceedings, therefore, the learned court concerned should pass appropriate order, strictly in accordance with law, with expedition.

13. Having heard learned counsel for the parties and having perused the material available on record, the order dated 08.01.2024 clearly shows that the victim/ prosecutrix was present before the court and she signed on the left corner of the order-sheet but the court concerned has indicated that such witness is not present. Likewise, the perusal of the subsequent order dated 18.01.2024 reveals that the order must have been passed on or after 3:15 p.m. but the concluding portion of order says that the paper-book be placed after lunch. I am unable to comprehend that when the court passes an order on or before 3:15 p.m. as to how such paper-book could be placed before the court after lunch. Besides, by means of the subsequent order dated 18.01.2024, the trial court has incorrectly observed that against the accused 'Ajay' the allegations relating to Sections 376, 366 & 363 I.P.C. and Section 3/4 of POCSO Act convince the court that such charges are, prima-facie, being attracted against him. Surprisingly, there is no accused in the name of 'Ajay', therefore, it is clear that the learned trial court did not go through the order carefully. Notably, in the same case, such type of typographical error was noted earlier when the court framed charge against the petitioner under Section 376 I.P.C.

14. Therefore, in view of the aforesaid facts and circumstances, the learned trial court shall pass another order ignoring the order dated 08.01.2024 inasmuch as when the victim was

present before the court on 08.01.2024 as her signature is there on the order-sheet, as to why it has been indicated that she was absent. The subsequent order dated 18.01.2024 is hereby set aside/ quashed wherein the court concerned has committed an apparent error to the effect that the order in question was passed on or after 3:15 p.m. but the direction was issued to put up the paper-book after lunch and in the same order it has been indicated by writing that after lunch the statement of the victim/ prosecutrix have been recorded. If the typed portion of the order indicates the time as 3:15 p.m. as to how untyped portion which is in hand writing of either the court or by the P.A. saying that the portion of order has been passed after lunch is beyond any comprehension. However, the learned trial court may pass a fresh order, with expedition, say within a period of ten days from the date of receipt of the certified copy of this order, strictly in accordance with law, but taking all due care and precaution inasmuch as the issue in hand is related to the offence of Section 376 I.P.C. and Section 3/4 of POCSO Act and those proceedings should be conducted and concluded strictly in accordance with law with expedition in terms of Section 35 (2) of POCSO Act.

15. In view of the above, this petition is partly allowed.

[Rajesh Singh Chauhan,J.]

Order Date :- 22.2.2024
Suresh/