

Court No. - 71

Case :- APPLICATION U/S 482 No. - 2483 of 2025

Applicant :- Deepak

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Sushil Kumar Tewari

Counsel for Opposite Party :- G.A., Sarve Nazir, Zafar Abbas

Hon'ble Rajeev Misra, J.

1. Heard Mr. Sushil Kumar Tewari, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and Mr. Zafar Abbas, the learned counsel representing first informant/opposite party-2.

2. Counter affidavit filed by Mr. Zafar Abbas, the learned counsel representing first informant/opposite party-2 in Court today, is taken on record.

3. Learned counsel for applicant submits that he does not wish to file any rejoinder affidavit to the aforesaid counter affidavit.

4. Perused the record.

5. Applicant- **Deepak**, who is a charge sheeted accused and facing trial before Court below, has approached this Court by means of present application under Section 482 Cr.P.C. with the following prayer:-

"It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to admit and allow the present Criminal Misc. Application and quash the impugned order dt. 3.8.2024 passed by the learned Special Judge (POCSO Act), Court No. 2, Moradabad in Sessions Trial No. 528 of 2020 State Vs. Deepak and others (arising out of Case Crime No. 9 of 2020) under Section 363 366, 376 I.P.C. and Section 3/4 of Protection of Children from Sexual Offences Act. Police Station Nagphani, Moradabad, whereby the learned Court below rejected the application of the applicant dt. 31.7.2024 under Section 311 Cr.P.C for summoning of the record for the year of 2005 to 2011 in respect of the victim as well as to summon Shri Arshad Ali, S/o Afsar Husain and Shri Rajat Dikshit S/o Shri Suhil Dikshit as witnesses, so that the correct date of birth of victim could be ascertain the correct age of the victim as school first attended. and direct the learned trial court to summon and examine the documents as referred in the application dt 31.7.2024 as well as summon and examine the witnesses named in the said application, so that the justice may be done

It is further prayed that this Hon'ble Court may graciously be pleased to stay the further proceedings of Sessions Trial No. 528 of 2020 State Vs. Deepak and others (arising out of Case Crime No. 9 of 2020) under Section 363, 366, 376 IP C. and Section 3/4 of Protection of Children from Sexual Offences Act, Police Station Nagphani, Moradabad pending in the Court of learned Special Judge (POCSO Act), Court No. 2, Moradabad during the pendency of the present case before this Hon'ble Court and/or to pass any such other and further order, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case."

6. Present application came up for admission on 04.02.2025 and this Court passed the following order:

"1. Heard Mr. Sushil Kumar Tewari, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. On the matter being taken up, the learned A.G.A. submits that notice of this application under Section 482 Cr.P.C. has already been served upon first informant-opposite party-2 on 12.01.2025. However, in spite of service of notice, neither any counter affidavit has been filed by first informant-opposite party-2 nor any one has put in appearance on his behalf to oppose this application, even in revised call.

4. At the very outset, the learned counsel for applicant fairly submits that due to inadvertence, the necessary and proper parties could not be impleaded in present application. He, therefore, seeks permission of the Court to amend the cause title of this application by impleading the necessary and proper parties.

5. Prayer made by the learned counsel for applicant is bona-fide. Same is not opposed by the learned A.G.A.

6. Accordingly, it is allowed.

7. Let necessary correction/amendment in the cause title of this application be carried out by the learned counsel for applicant during course of the day.

8. Applicant-Deepak, who is a charge sheeted accused, has approached this Court by means of present application under Section 482 Cr.P.C. with the following prayer:-

"It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to admit and allow the present Criminal Misc. Application and quash the impugned order dt. 3.8.2024 passed by the learned Special Judge (POCSO Act), Court No. 2, Moradabad in Sessions Trial No. 528 of 2020 State Vs. Deepak and others (arising out of Case Crime No. 9 of 2020) under Section 363, 366, 376 I.P.C. and Section 3/4 of Protection of Children from Sexual Offences Act, Police Station Nagphani, Moradabad, whereby the learned Court below rejected the application of

the applicant dt. 31.7.2024 under Section 311 Cr.P.C. for summoning of the record for the year of 2005 to 2011 in respect of the victim as well as to summon Shri Arshad Ali, S/o Afsar Husain and Shri Rajat Dikshit S/o Shri Suhil Dikshit as witnesses, so that the correct date of birth of victim could be ascertain the correct age of the victim as school first attended, and direct the learned trial court to summon and examine the documents as referred in the application dt. 31.7.2024 as well as summon and examine the witnesses named in the said application, so that the justice may be done.

It is further prayed that this Hon'ble Court may graciously be pleased to stay the further proceedings of Sessions Trial No. 528 of 2020 State Vs. Deepak and others (arising out of Case Crime No. 9 of 2020) under Section 363, 366, 376 I.P.C. and Section 3/4 of Protection of Children from Sexual Offences Act, Police Station Nagphani, Moradabad pending in the Court of learned Special Judge (POCSO Act), Court No. 2, Moradabad during the pendency of the present case before this Hon'ble Court and/or to pass any such other and further order, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case."

9. After some arguments, it transpires that the prosecutrix has solemnized marriage with applicant and from the aforesaid wedlock, a son was also born. The birth certificate of the child is on record at page 73 of the paper book, wherein the applicant is shown as the father, whereas, the prosecutrix is shown as the mother. In view of above and also the judgment of Supreme Court in K. Dhandapani Vs. State by the Inspector of Police, 2022 SCC OnLine SC 1056, prima-facie the prosecution of applicant could not be sustained.

10. In view of above, let the prosecutrix along with minor child appear before this Court on 04.03.2025.

11. The Superintendent of Police, Moradabad shall ensure the presence of the prosecutrix before this Court on the date fixed.

12. Till 04.03.2025, no coercive action shall be taken by Court below against applicant."

7. In compliance of above order dated 04.02.2025, the prosecutrix along with her infant child has been produced before Court by Sub Inspector Rakesh Kumar Singh and Lady Constable 2395 Reena, P.S. Nagphani, District Moradabad. The presence of aforementioned police personnel as well as the prosecutrix shall be got endorsed on the order sheet.

8. Considering the sensitivity of the issue involved before this Court, the Court has proceeded to examine the prosecutrix and her reply is being reproduced ad-verbatim hereinunder:

(i) Aap ka naam kya hai?

Ans- Laiba

(ii) Kya apne Abhiyukt Deepak ke sath shadi ki hai?

Ans- Ji, han.

(iii) Kya aap abhiyukt Deepak ke sath rehna chahti hain?

Ans- Ji, han, main apne aur apne bacchon ki khatir Deepak ke sath rehna chahti hu.

9. Mr. Sushil Kumar Tewari, the learned counsel for applicant contends that subsequent to the FIR dated 09.02.2020 lodged by first informant/opposite party-2 Jahan Aara (mother of the prosecutrix), the prosecutrix solemnized marriage with the applicant. As such, prosecutrix is now the legally wedded wife of applicant. Consequently, the prosecutrix is residing with the applicant as his legally wedded wife. From the aforesaid wedlock, a son was born on 27.07.2024. He, therefore, contends that in view of aforementioned subsequent developments, the criminality, if any, committed by applicant now stands washed off. As such, no useful purpose shall be served in prolonging the criminal prosecution of applicant. In case, the criminal prosecution of applicant is allowed to continue, a happy family shall stand broken.

10. It is then contended by the learned counsel for applicant that the prosecutrix, in her statement before this Court, has clearly and categorically admitted the factum of marriage between the parties. She has further stated that she wants to reside with the applicant. The prosecutrix is now major and therefore, she has a right to choose her own life. In view of above, no justifiable ground now exists to prolong the criminal prosecution of applicant. On the above premise, the learned counsel for applicant thus submits that the criminal prosecution of applicant itself cannot be sustained. As such, the present application is liable to be allowed.

11. Per contra, the learned A.G.A. representing State-opposite party-1 contends that the prosecutrix is prima-facie major. There is nothing on record to conclude to the contrary. Moreover, in view of the statement of the prosecutrix before this Court, wherein, she has clearly admitted her marriage with applicant and further stated that she wants to reside with the applicant, he has nothing to submit in opposition to this application.

12. On the other hand, Mr. Zafar Abbas, the learned counsel representing first informant opposite party-2 has vehemently opposed the present application. With reference to the material on record, he submits that the statement of accused-applicant has

already been recorded under Section 311 Cr.P.C. No application was filed by accused-applicant before Court below in terms of Section 315 Cr.P.C. with the prayer that he wants to adduce defence evidence. Consequently, Court below has now placed the matter for final hearing. It is at this juncture that the application under Section 311 Cr.P.C. was engineered on behalf of accused-applicant only to delay the conclusion of trial. There is no bona-fide on the part of applicant in filing the application under Section 311 Cr.P.C. To buttress his submission, he has referred to the judgment of Supreme Court in **Raja Ram Prasad Yadav Vs. State of Bihar and Another (2013) 14 SCC 461**. In the submission of Mr. Zafar Abbas, the learned counsel representing first informant-opposite party-2, when the bona-fide of applicant in filing the application under Section 311 Cr.P.C. is examined in the light of parameters laid down by Apex Court in aforementioned judgment for judging the bona-fide in filing the application under Section 311 Cr.P.C., it is apparent that the same is conspicuous by its absence. In view of above, no illegality has been committed by Court below in rejecting the application dated 31.07.2024 under Section 311 Cr.P.C. filed by accused-applicant. As such, no interference is warranted by this Court in present application.

13. Having heard the learned counsel for applicant, the learned A.G.A. for State-opposite party-1, the learned counsel representing first informant/opposite party-2 and upon perusal of record, this Court finds that subsequent to the FIR dated 09.02.2020 lodged by the first informant/opposite party-2 Smt. Jahan Aara (mother of the prosecutrix) and registered as Case Crime No. 9 of 2020, under Sections 363 366, 376 I.P.C. and Sections 3/4 of POCSO Act, Police Station -Nagphani, District-Moradabad, the applicant solemnized marriage with the prosecutrix. As such, the prosecutrix became the legally wedded wife of applicant. By reason of above, the prosecutrix started residing with applicant as his legally wedded wife. On account of co-habitation of applicant and prosecutrix as husband and wife, a son was born on 27.07.2024. As such, applicant is the father whereas, the prosecutrix is the mother of the new born child. In view of aforementioned subsequent developments, the criminality, if any, committed by applicant shall stand washed off. As such, no useful purpose shall be served in prolonging the criminal prosecution of applicant. In case, the criminal prosecution of applicant is allowed to continue, a happy family shall stand broken.

14. Apart from above, the prosecutrix in her statement before this Court has admitted the factum of her marriage with the applicant

in unequivocal terms. She has further stated that she wants to reside with applicant in her own interest and for the interest of her children. Admittedly, the prosecutrix is now major inasmuch, as no such material has been brought on record in the counter affidavit filed by the first informant-opposite party-2 to establish that the prosecutrix is still a child within the meaning of the term child as defined in the POCSO Act. Since the prosecutrix is major, therefore, she has a right to choose her own life. As such, in case, the criminal prosecution of applicant is allowed to continue, the resultant trial of accused-applicant shall only entail loss of judicial time in a futile pursuit particularly when torrents of litigation drown the Courts with an unimaginable flood of dockets.

15. This Court is not unmindful of the judgments of the Supreme Court in the case of **K. Dhandapani Vs. State by the Inspector of Police 2022 SCC Online SC 1056** and **Mafat Lal and Another Vs. State of Rajasthan 2022 SCC Online SC 433**, wherein the Apex Court quashed the criminal prosecution of accused on the ground that he had solemnized marriage with the prosecutrix. No exception can be carved out to the aforementioned judgments of the Supreme Court in present case. Since the judgment rendered by the Apex Court in the case of **K. Dhandapani (Supra)**, is a short one, therefore, the same is reproduced in its entirety:-

"1. Leave granted.

2. The appellant who is the maternal uncle of the prosecutrix belongs to Valayar community, which is a most backward community in the State of Tamilnadu. He works as a woodcutter on daily wages in a private factory. FIR was registered against him for committing rape under Sections 5(j)(ii) read with Section 6, 5(I) read with Section 6 and 5(n) read with Section 6 of Protection of Child from Sexual Offences (POCSO) Act, 2012. He was convicted after trial for committing the said offences and sentenced to undergo rigorous imprisonment for a period of 10 years by the Sessions Judge, Fast Track Mahila Court, Tiruppur on 31.10.2018. The High Court, by an order dated 13.02.2019, upheld the conviction and sentence. Aggrieved thereby, the appellant has filed this appeal.

3. Mr. M.P. Parthiban, learned counsel appearing for the appellant, submitted that allegation against him was that he had physical relations with the prosecutrix on the promise of marrying her. He stated that, in fact, he married the prosecutrix and they have two children. 4. The appellant submitted that this Court should exercise its power under Article 142 of the Constitution and ought to do complete justice and it could not be in the interest of justice to disturb the family life of the appellant and the prosecutrix.

5. After hearing the matter for some time on 08th March, 2022, we directed the District Judge to record the statement of the prosecutrix about her

present status. The statement of the prosecutrix has been placed on record in which she has categorically stated that she has two children and they are being taken care of by the appellant and she is leading a happy married life.

6. Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

7. In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with maternal uncle.

8. For the aforesaid mentioned reasons, the conviction and sentence of the appellant is set aside in the peculiar facts of the case and shall not be treated as a precedent. The appeal is accordingly, disposed of. Pending application(s), if any, shall stand disposed of.

9. In case, the appellant does not take proper care of the prosecutrix, she or the State on behalf of the prosecutrix can move this Court for modification of this Order."

16. It is thus apparent that the Apex Court in the case of **K. Dhandapani** (supra) quashed the proceedings against the accused therein even when out of the marriage solemnized between the accused therein and the prosecutrix, the first child was born when the prosecutrix was aged about 15 years and the second child was born when the prosecutrix was aged about 17 years.

17. In view of the subsequent developments, which have taken place between the parties and as noted herein above, as also the ratio laid down in aforementioned judgments, this Court finds that the very purpose of prolonging the criminal prosecution of applicant stands frustrated.

18. In view of the discussion made above, the present application succeeds and is liable to be allowed.

19. It is, accordingly, **allowed**.

20. The entire proceedings in Special Sessions Trial No. 528 of 2020 (State Vs. Deepak and others) arising out of Case Crime No. 9 of 2020, under Sections 363 366, 376 I.P.C. and Sections 3/4 of Protection of Children from Sexual Offences Act, Police Station -Nagphani, District-Moradabad, now pending in the Court of Special Judge (POCSO Act), Court No. 2, Moradabad, are, hereby, quashed.

21. In the facts and circumstances of the case, the parties shall bear their own costs.

22. The prosecutrix shall be free to join the applicant to lead her happy married life.

Order Date :- 4.3.2025

S.A.