

Court No. - 71

Case :- APPLICATION U/S 482 No. - 22603 of 2024

Applicant :- Rajpal

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

Counsel for Applicant :- Devendra Kumar Shukla

Counsel for Opposite Party :- G.A., Satish Chandra Dubey

Hon'ble Rajeev Misra, J.

1. Heard Mr. Devendra Kumar Shukla, the learned counsel for applicant, the learned A.G.A. for State and Mr. Satish Chandra Dubey, the learned counsel for first informant/opposite party-2.

2. Perused the record.

3. This application under section 482 Cr.P.C. has been filed by charge sheeted accused Rajpal with the following relief:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the impugned charge sheet dated 1.06.2022 as well as impugned cognizance/ summoning orders dated 15.07.2022 including the further proceedings of Sessions Case No. 486/2022, (State vs. Rajpal), Pending in the court of Special Judge POCSO Act, Court No. 1, Kushinagar at Padrauna arising out of Case Crime No. 291/2021, under Sections 363, 366, 376 IPC & 5/6 POCSO Act, Police Station-Kaptanganj, District-Kushinagar in terms of compromise dated 12.02.2024 entered into by the applicant and opp. party no. 2;

AND

It is, further prayed that during pendency of the present application this Honble Court may graciously be pleased to stay the effect and operation of impugned charge sheet dated 1.06.2022 as well as impugned cognizance/ summoning orders dated 15.07.2022 including the further proceedings of Sessions Case No. 486/2022, (State vs. Rajpal), Pending in the court of Special Judge POCSO Act, Court No. 1, Kushinagar at Padrauna arising out of Case Crime No. 291/2021, under Sections 363, 366, 376 IPC & 5/6 POCSO Act, Police Station-Kaptanganj, District-Kushinagar in terms of compromise dated 12.02.2024 entered into by the applicant and opp. party no. 2. And/or pass such other and further order or direction which this Hon'ble Court may deem fit and proper to meet the ends of justice."

4. Learned counsel for applicant contends that though applicant is a named and charge sheeted accused and also facing trial before Court below in aforementioned Sessions Trial but in view of the peculiar facts and circumstances of the case as have emerged on record, the present application is liable to be allowed. In furtherance of aforesaid submission, the learned counsel for applicant submits that subsequent to the F.I.R. dated 4.9.2021, lodged by first informant/opposite party-2 Uday Bhan Prasad (father of the prosecutrix) giving rise to present criminal proceedings, the prosecutrix solemnized marriage with

applicant. Consequently, the prosecutrix became the legally wedded wife of applicant. In view of above, the prosecutrix started residing with the applicant as his legally wedded wife. From the aforesaid wedlock, two children were born. On the above premise, the learned counsel for applicant submits that the criminality committed by applicant now stands washed off. In view of the aforesaid subsequent developments, no useful purpose shall be served in prolonging the criminal prosecution of applicant. As such, the same are liable to be quashed by this Court. In case the criminal prosecution of applicant is allowed to continue, a happy family shall stand broken. It is thus urged that the present application is liable to be allowed.

5. Attention of the Court was then invited to the counter affidavit filed by first informant/opposite party-2. With reference to above, the learned counsel for applicant contends that the first informant/opposite party-2 has clearly admitted the factum of marriage of the prosecutrix with the applicant. It is also admitted to the first informant/opposite party-2 that from the wedlock of the prosecutrix, two children were born. He therefore submits that even the first informant does not wish to prolong the criminal prosecution of applicant.

6. Per contra, the learned A.G.A. representing State/Opposite party-1 has however, opposed the present application. He submits that since the prosecutrix was a child within the meaning of the term "child" as defined in the POCSO Act, on the date of occurrence, therefore, the subsequent development, if any, will not wash off the criminality committed by applicant. As such, no indulgence be granted by this Court in favour of applicant. However, the learned A.G.A. could not dislodge the factual and legal submission urged by the learned counsel for applicant, with reference to the record.

7. Be that as it may, the crux of the matter is that subsequent to the F.I.R. giving rise to present criminal proceedings, the prosecutrix has solemnized marriage with applicant. Consequently, prosecutrix is now legally wedded wife of applicant. On account of above, she is residing with the applicant as his legally wedded wife. From the cohabitation of applicant and the prosecutrix, two children were born. Thus while the applicant is the father, the prosecutrix is the mother of the two children. However, this Court is not unmindful of the following judgements of Apex Court:

i. B.S. Joshi and others Vs. State of Haryana and another (2003) 4 SCC 675

ii. Madan Mohan Abbot Vs. State of Punjab, (2008) 4 SCC 582

iii. Nikhil Merchant Vs. Central Bureau of

Investigation[2008]9 SCC 677]

- iv. Manoj Sharma Vs. State and others (2008) 16 SCC 1**
- v. Shiji @ Pappu and Others VS. Radhika and Another, (2011) 10 SCC 705**
- vi. Gian Singh Vs. State of Punjab (2012) 10 SCC 303**
- vii. K. Srinivas Rao Vs. D.A Deepa, (2013) 5 SCC 226**
- viii. Dimpey Gujral and others Vs. Union Territory through Administrator, U.T. Chandigarh and others, (2013) 11 SCC 497**
- ix. Narindra Singh and others Vs. State of Punjab (2014) 6 SCC 466**
- x. Yogendra Yadav and Ors. Vs. State of Jharkhand and another (2014) 9 SCC 653**
- xi. Shlok Bhardwaj Vs. Runika Bhardwaj, (2015) 2 SCC 721**
- xii. C.B.I. Vs. Maninder Singh (2016) 1 SCC 389**
- xiii. C.B.I. Vs. Sadhu Ram Singla and Others, (2017) 5 SCC 350**
- xiv. Parbatbhai Aahir @ Parbatbhai Bhimsinhhbai Karmur and Others Vs. State of Gujarat and another, (2017) 9 SCC 641**
- xv. Anita Maria Dias and Ors. Vs. State of Maharashtra and Others, (2018) 3 SCC 290**
- xvi. Social Action Forum For Manav Adhikar and Another Vs. Union of India and others, (2018) 10 SCC, 443 (Constitution Bench)**
- xvii. State of M.P. VS. Dhruv Gurjar and Another, (2019) 5 SCC 570**
- xviii. State of M.P. V/s Laxmi Narayan & Ors., (2019) 5 SCC 688**
- xix. Rampal Vs. State of Haryana, AIR online 2019 SC 1716**
- xx. Arun Singh and Others VS. State of U.P. and Another (2020) 3 SCC 736**
- xxi. (Ramgopal and Another Vs. The State of M.P.), 2021 SCC OnLine SC 834**
- xxii. Daxaben Vs. State of Gujarat, 2022 SCC Online 936.**
- xxiii. State of Kerala VS. Hafsal Rahman N.R., Special Leave Petition (Criminal) Diary Nos. 24362 of 2021.**
- xiv. Shatrughna Atmaram Patil and Another Vs. Vinod Dodhu Chaudhary and Another, (2024) 4 SCC 458.**
- xv. Suraj Singh Gujar and Another Vs. State of Madhya Pradesh and Others, 2024 SCC OnLine SC 2414.**

wherein the Apex Court has categorically held that compromise can be made between the parties even in respect of certain cognizable and non compoundable offences. However, Apex Court in **State of M.P. Vs. Laxmi Narayan (Supra)** held that no compromise can be made in respect of offences against society as they are not private in nature. Similarly in **Ram Pal Vs. State of Haryana (Supra)** it has been held that no compromise can be made in cases relating to rape and sexual assault. Recently, the Apex Court in **Daxaben (supra)** has held that no compromise can be made in matter under Section 306 IPC. In state of **Kerala Vs. Hafsah Rahman (Supra)**, Court has held that no compromise can be entertained in matters under the POCSO Acts. Reference may also be made to the decision given by this Court in **Shaifullah and others Vs. State of U.P. And another [2013 (83) ACC 278]** in which the law expounded by the Apex court in some of the aforesaid cases has been explained in detail.

8. Recently Apex court in **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur (Supra)** has laid down the following guidelines with regard to quashing of criminal proceedings as well compromise in criminal proceedings in paragraphs 16 to 16.10 of the report, which reads as under:

"16. The broad principles which emerge from the precedents on the subject, may be summarized in the following propositions

16.1. 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 recognises and preserves powers which inhere in the High Court;

16.2. 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.

16.3. 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;

16.4. 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;

16.5. 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;

16.6. 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;

16.7. 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;

16.8. Criminal cases involving offences which arise 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;

16.9. 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

16.10. There is yet an exception to the principle set out in propositions 16.8 and 16.9 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."

9. Recently in **Ramgopal and another (supra)**, Court has again reiterated the guidelines regarding quashing of criminal proceedings in view of compromise. Following has been observed in paragraphs 18-19 of the report:-

"18. It is now a well crystalized axiom that plenary jurisdiction of this Court to impart complete justice under Article 142 cannot ipso facto be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to Section 482 Cr.P.C. conferring powers on the Supreme Court to abrogate and set aside criminal proceedings, the jurisdiction exercisable under Article 142 of the Constitution embraces this Court with scopious powers to quash criminal proceedings also, so as to secure complete justice. In doing so, due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the sub-lime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.

19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercise carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations."

10. In **State of M.P. Vs. Laxmi Narayan (Supra)**, the Apex Court held that mere mention of Section 307 IPC cannot be sole basis for not quashing the proceedings. Court has to examine whether the prosecution has collected sufficient evidence for framing of charge under Section 307 IPC. The Court has further

required to examine the weapons used and nature of injury and whether injury has been inflicted on vital/delicate parts of the body, the previous antecedents of accused and whether they are absconding and how the compromise was got entered into by the parties are relevant factors, which must be considered. The above observations can be clearly delineated from the recital occurring in paragraphs 11 to 18 of the aforementioned report.

11. Reference may also be made to the judgement of the Supreme Court in **K. Dhandapani Vs. State by the Inspector of Police, 2022 SCC OnLine SC 1056**. The judgement is a short one and 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."

12. 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, upon perusal of record and in view of above and the observations made by the Apex Court as noted herein above, this Court finds that there does not exist any legal impediment in accepting the compromise entered into by the parties. Offence complained of is purely private in nature and not against State. In view of the compromise entered into by the parties, chances of conviction of accused-applicant is not only remote but also bleak. Admittedly, the prosecutrix has solemnized marriage with the applicant. Consequently, the prosecutrix is now the legally wedded wife of applicant. In view of above, the prosecutrix started residing with the applicant as his legally wedded wife. From the co-habitation of applicant and the prosecutrix, two children were born. As such, applicant is the father whereas the prosecutrix is the mother of the children born out of the wedlock of applicant and the prosecutrix. In such a circumstance, the continuation of criminal prosecution of applicant would itself cause injustice to the parties. Furthermore, in case the criminal prosecution of applicant is allowed to continue, a happy family shall stand broken. Apart from above, the trial would only entail loss of judicial time in a futile pursuit particularly when torrents of litigation drown the Courts with an unimaginable flood of dockets.

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

14. It is, accordingly, **allowed**.

15. The entire proceedings of Sessions Case No. 486 of 2022, (State vs. Rajpal), Pending in the court of Special Judge POCSO Act, Court No. 1, Kushinagar at Padrauna arising out of Case Crime No. 291/2021, under Sections 363, 366, 376 IPC & 5/6 POCSO Act, Police Station-Kaptanganj, District-Kushinagar, now pending in the Court of IInd Additional Chief Judicial Magistrate, Ghaziabad are, hereby, quashed.

Order Date :- 3.1.2025

Arshad