

Court No. - 70

Case :- APPLICATION U/S 482 No. - 35343 of 2024

Applicant :- Janam Singh @ Bobby

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Ram Shiromani Yadav

Counsel for Opposite Party :- Krishna Kant Yadav, Atul Kumar Kushwaha, G.A.

Hon'ble Rajeev Misra, J.

Re: Criminal Misc. Impleadment Application No.2 of 2025

1. Heard Mr. Ram Shiromani Yadav, the learned counsel for applicant, the learned A.G.A. for State opposite party-1 and Mr. Atul Kumar Kushwaha, the learned counsel representing victim opposite party-5.

2. Perused the record.

3. At the very outset, the learned counsel for applicant submits that the description of the section under which aforementioned impleadment application has been filed has wrongly been transcribed as Under Order 1 Rule 3 read with Section 151 C.P.C., whereas, the same should be Chapter XVIII Rule 1 of the High Court Rules. He therefore, seeks permission of Court to correct the same.

4. Prayer made by the learned counsel for applicant/proposed opposite party-5 is bona-fide. Same is not opposed by the learned A.G.A. for State-opposite party-1 and the learned counsel for applicant.

5. Accordingly, it is allowed.

6. Let necessary amendment/correction in the description of Section under which aforementioned impleadment application has been filed be carried out by the learned counsel for applicant/proposed opposite party-5 during course of the day.

7. Perused the affidavit filed in support of impleadment application.

8. This impleadment application has been filed by applicant-Rajni seeking her impleadment as opposite party-5 in present application

on the ground that she has solemnized marriage with applicant. As such, the victim is now the legally wedded wife of applicant. On the above premise, it is thus urged by the learned counsel for applicant/ proposed opposite party-5 that in view of changed circumstances the prosecutrix is now a necessary and proper party in present proceedings.

9. Per contra, the learned A.G.A. for State-opposite party-1 and Ram Shiromani Yadav, the learned counsel for applicant do not oppose the present impleadment application.

10. In view of the discussion made above, this Court finds that impleadment prayed for is not only necessary but also essential for just and effective adjudication of the controversy involved in present application.

11. As a result, the impleadment application is liable to be allowed.

12. It is accordingly **allowed**.

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

Order on Application under Section 482 Cr.P.C.

1. Heard Mr. Ram Shiromani Yadav, the learned counsel for applicant, the learned A.G.A. for State opposite party-1 and Mr. Krishna Kant Yadav, the learned counsel representing first informant opposite party-2.

2. Perused the record.

3. Applicant-Janam Singh @ Bobby, 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 allow this application and quash the impugned charge sheet dated 15-08-2019 cognizance order dated 16-12-2019 learned Civil Judge (S.D.)/Additional Chief Judicial Magistrate, Chandausi as well as entire criminal proceeding of Session Trial No.01 of 2024 (State Vs. Bobby) arising out of Case Crime No.86 of 2019, Under Section 363, 366, 376 I.P.C., 3/4 POCSO Act, police Station- Asmoli, District-

Sambhal, pending in the court of learned Additional District & Session Judge, Sambhal at Chandausi in terms of compromise made between the parties.

It is further prayed that this Hon'ble Court may kindly be please to stay the further proceeding of Session Trial No.01 of 2024 (State Vs. Bobby) arising out of Case Crime No.86 of 2019, Under Section 363, 366, 376 I.P.C., 3/4 POCSO Act, police Station- Asmoli, District-Sambhal, pending in the court of learned Additional District & Session Judge, Sambhal at Chandausi.

And/or pass such other and further order as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case otherwise the applicant shall suffer irreparable loss and injury."

4. Learned counsel for applicant submit that though applicant is a named and charge sheeted accused and facing trial in above mentioned criminal case. However, in view of the peculiar facts and circumstance of the case as have emerged on record, the impugned criminal proceedings pending against applicant before Court cannot be sustained any further. As such, present application is liable to be allowed.

5. In furtherance of aforesaid submission, the learned counsel for applicant submits that though criminal prosecution of applicant was set in motion when an FIR dated 04.04.2019 was lodged by first informant opposite party-2 (father of the prosecutrix) and was registered as Case Crime No.86 of 2019, under Sections 363, 366, 376 I.P.C., 3/4 POCSO Act, Police Station- Asmoli, District-Sambhal. In the aforesaid FIR, six persons namely (1) Bovi (2) Maya Devi (3) Sanjay (4) Mahipal (5) Jagat Singh and (6) Rekha have been nominated as named accused.

6. However, subsequent to the aforementioned FIR, the applicant solemnized marriage with the prosecutrix on 16.07.2018. As such, the prosecutrix is now the legally wedded wife of applicant. By reason of above, she is residing with the applicant as his legally wedded wife. The bona fide of the parties is further explicit from the fact that the marriage of the parties has been registered under the provisions of Uttar Pradesh Marriage Registration Rules, 2017. The photocopy of marriage registration certificate has been brought on record and is at page 44 of the paper book. In support of his submission, the learned counsel for applicant since the marriage of the parties have been registered. Therefore, there is no

statutory presumption regarding valid and legal marriage of the parties. From the cohabitation of applicant and the prosecutrix as husband and wife three children namely Jigar Prajapati (son), Janvi Prajapati (daughter) and Mayank Prajapati (son) were born. On the above premise, the learned counsel for applicant submits that in view of above subsequent developments that have taken place, the criminality if any, committed by applicant now stands washed off. On the above premise, he therefore, contends that no useful purpose shall be served in prolonging the criminal prosecution of applicant.

7. It is then contended by the learned counsel for applicant that prosecutrix has put in appearance and has filed a short counter affidavit. However, first informant has duly acknowledge and admitted the marriage of the prosecutrix with applicant-1. A categorical finding has been made therein in view of subsequent development, he does not wish to pursue the criminal prosecution of applicant. The prosecutrix i.e. opposite party-5 has put in appearance by filing an impleadment application in the affidavit filed in support of impleadment application. The prosecutrix has also admitted her marriage with applicant and further the birth of the children from the aforesaid wedlock.

8. On the above conspectus, the learned counsel for applicant thus submits that impugned criminal proceedings pending against applicant before Court below are liable to be quashed by this Court and application be allowed.

9. *Per contra*, the learned A.G.A. for State-opposite party-1 has vehemently opposed the present application. Learned A.G.A. submits that since the applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Learned A.G.A. submits that since on the date of occurrence the prosecutrix was a child within the meaning of the term child as defined in the POCSO Act, therefore, in view of above, the criminality if any, committed by applicant against minor shall not get wiped out on account of the subsequent developments as suggested by the learned counsel for applicant. As such, no interference is warranted by this Court in present application. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant, with reference to the record at this stage.

10. Mr. Krishna Kant Yadav, the learned counsel representing first informant opposite party-2 and Mr. Atul Kumar Kushwaha, the learned counsel representing victim opposite party-5 do not oppose

present application. They submit that the first informant as well as the prosecutrix have admitted and acknowledge the marriage of the parties. Apart from above, from the marriage of the prosecutrix with applicant three children were born. As such, the parties have also entered into a compromise. Accordingly, a compromise deed dated 24.07.2024 was drawn and same is on record at page 70 of the paper book. They, therefore, submit that they cannot have any objection in case, the present application is decided by this Court taking into consideration the aforementioned facts.

11. Be that as it may, crux of the matter is that prosecutrix solemnized marriage with applicant and from the said wedlock three children have been born.

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 and upon perusal of record, this Court finds that applicant is a named and charge sheeted accused and facing trial in above mentioned criminal case. However, in view of the peculiar facts and circumstance of the case as have emerged on record, the impugned criminal proceedings pending against applicant before Court cannot be sustained any further. Subsequent to the FIR dated 04.04.2019 was lodged by first informant opposite party-2 Dal Chandra, and giving to present criminal proceedings. Applicant solemnized marriage with the prosecutrix on 16.07.2018. As such, the prosecutrix is now the legally wedded wife of applicant. By reason of above, she is residing with the applicant as his legally wedded wife. The bona fide of the parties is further explicit from the fact that the marriage of the parties has been registered under the provisions of Uttar Pradesh Marriage Registration Rules, 2017. The photocopy of marriage registration certificate has been brought on record and is at page 44 of the paper book. In support of his submission, the learned counsel for applicant since the marriage of the parties have been registered. Therefore, there is no statutory presumption regarding valid and legal marriage of the parties. From the cohabitation of applicant and the prosecutrix as husband and wife three children namely Jigar Prajapati (son), Janvi Prajapati (daughter) and Mayank Prajapati (son) were born. In view of above subsequent developments that have taken place, 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, then a happy family shall stand broken. Furthermore, the first informant Dal Chandra (father of the

prosecutrix) as well as the prosecutrix opposite party-5 have put in appearance in present application. They do not oppose the present application. To the contrary the factum of marriage between the parties and birth of three children from the said marriage is duly admitted and acknowledged by opposite parties 2 and 5. As such, there is no reason before this Court to continue the marriage of the parties.

12. At this juncture, reference be made to the judgment of the Supreme Court in **K. Dhandapani Vs. State by the Inspector of Police 2022 SCC Online SC 1056**, wherein the Court quashed the proceedings under the POCSO Act against accused on the ground that he has solemnized marriage with the prosecutrix. Since the judgment 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."

14. Similar view has been expressed by the Apex Court in the case of **Mafat Lal and Another Vs. State of Rajasthan 2022 SCC Online SC 433.**

15. In view of the discussion made above, this Court finds that the ratio laid down by the Apex Court in the cases of **K. Dhandapani (Supra) and Mafat Lal (Supra)** are squarely attracted in the present case as the accused herein has solemnized marriage with the prosecutrix.

16. As a result, the present application succeeds and is liable to be allowed.

17. It is, accordingly, **allowed.**

18. The entire proceedings in Session Trial No.01 of 2024 (State Vs. Bobby) arising out of Case Crime No.86 of 2019, under Sections 363, 366, 376 I.P.C., 3/4 POCSO Act, Police Station-Asmoli, District-Sambhal, now pending in the court of Additional District & Session Judge, Sambhal at Chandausi are, hereby, quashed.

19. In the facts and circumstances of the case, parties shall bear their own cost.

Order Date :- 20.3.2025/Imtiyaz