

Court No. - 70

Case :- APPLICATION U/S 482 No. - 38757 of 2024

Applicant :- Shivam

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

Counsel for Applicant :- Ram Shiromani Yadav

Counsel for Opposite Party :- Atul Kumar

Kushwaha,G.A.,Krishna Kant Yadav

Hon'ble Rajeev Misra,J.

Re: Criminal Misc. Impleadment Application No.3 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 proposed- opposite party-5.

2. Perused the record.

3. At the very outset, Mr. Atul Kumar Kushwaha, the learned counsel for proposed opposite party-5 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 the 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 legally wedded wife of applicant. On the above premise, it is thus urged by the learned counsel for applicant that in view of changed circumstances victim 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. Atul Kumar Kushwaha, the learned counsel representing victim opposite party-5

2. Supplementary affidavit filed by the learned counsel for applicant in Court today, is taken on record.

3. Perused the record.

4. Applicant-Shivam, 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 30-10-2016 alongwith cognizance order dated 28-04-2017 passed by learned Additional District and Sessions Judge Court No.12 Moradabad in Session Trial No.453 of 2017 (State Vs. Shivam) arising out of Case Crime No.511 of 2016, Under Section 363, 366, 376 I.P.C., 3/4 POCSO Act, police Station- Bilari, District-Moradabad, pending in the court of learned Special Judge (POCSO) Court No.3 District-Moradabad 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.453 of 2017 (State Vs. Shivam) arising out of Case Crime No.511 of 2016, Under Section 363, 366, 376 I.P.C., 3/4 POCSO Act, police Station- Bilari, District-Moradabad, pending in the court of learned Special Judge (POCSO) Court No.3 District-Moradabad.

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."

5. At the very outset, the learned A.G.A. submits that notice of this application under Section 482 Cr.P.C. has been served upon first

informant-opposite party-2 on 29.10.2024. 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.

6. Learned counsel for applicant submits that though applicant is a named and charge sheeted accused and also facing trial before Court below, however, in view of the facts as have now emerged on record, the criminal prosecution of applicant cannot be sustained any further. As such, the present application is liable to be allowed.

7. In furtherance of aforesaid submissions, the learned counsel for applicant submits that criminal prosecution of applicant was set in motion when an FIR dated 16.09.2016 was lodged by first informant-opposite party-2 Jai Prakash (father of the prosecutrix) and was registered as Case Crime No. 0511 of 2016, under Sections 363, 366, 506 IPC, Police Station-Bilari, District-Moradabad. In the aforesaid FIR, 8 persons namely (1) Murari, (2) Rajwati, (3) Ankush, (4) Shivam, (5) Shivaram, (6) Shivani, (7) Subhash and (8) wife of Subhash have been nominated as named accused.

8. However, prior to the aforesaid FIR dated 16.09.2016, applicant had solemnized marriage with the prosecutrix on 13.07.2016 in accordance with Hindu Rites and Customs. Consequently, the prosecutrix became the legally wedded wife of applicant. By reason of above, the prosecutrix started residing with applicant as his legally wedded wife. The bona-fide of the parties is further evident from the fact that marriage of the parties has been registered under the provisions of U.P. Marriage Registration Rules, 2017. Photo copy of the Marriage Registration Certificate

dated 14.09.2016 has been brought on record and is at page-7 of the supplementary affidavit dated 17.03.2025 filed on behalf of applicant. From the aforesaid wedlock, two children namely Abhigya and Krishna were born. Their Aadhar Card have also brought on record, which are on record at pages 9 and 10 of the aforementioned supplementary affidavit. On the above premise, the learned counsel for applicant submits that in view of aforementioned subsequent developments the criminality, if any, committed by applicant, now stands washed of. As such, no useful purpose shall now be served in prolonging the criminal prosecution of applicant.

9. It is then contented by the learned counsel for applicant that on account of the facts mentioned above, the parties entered into a compromise. Accordingly, a deed of compromise was prepared, wherein the first informant Jai Prakash and accused-applicant Shivam are the parties. By means of the said compromise agreement, the first informant has acknowledged the marriage of the prosecutrix with applicant. It is thus urged by the learned counsel for applicant that in view of above, no good ground exist to prolong the criminal prosecution of applicant. In case, the criminal prosecution of applicant is allowed to continue, a happy family shall stand broken. Furthermore, in view of the compromise entered into by the parties, the chances of conviction of accused-applicant are not only remote but also bleak. It is thus urged by the learned counsel for applicants that the impugned proceedings pending against accused-applicant before Court below are, therefore, liable to be quashed by this court and the present application be allowed.

10. 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 applicant is a named and charge sheeted accused, therefore, no indulgence be granted by this Court in favour of applicant. According to the learned A.G.A., the prosecutrix was a child within the meaning of the term 'child' as defined in the POCSO Act on the date of occurrence. As such, the criminality, if any, committed by applicant shall not stand washed off in view of the subsequent developments as suggested by the learned counsel for applicant. It is thus contended by the learned A.G.A. that no interference is warranted by this Court in present application. However, he could not dislodge the factual/legal submissions urged by the learned counsel for applicant, with reference to the record at this stage.

11. On the other hand, Mr. Atul Kumar Kushwaha, the learned counsel representing victim opposite party-5 submits that he has received instructions not to oppose the present application. According to the learned counsel representing opposite party-5, it is now an admitted fact that applicant has solemnized marriage with the prosecutrix. The marriage of the parties has also been registered under the provision of the U.P. Marriage Registration Rules, 2017. From the aforesaid wedlock, two children namely Abhigya and Krishna were born. He, therefore, submits that he cannot have any objection, in case, the present application is decided by this court taking into consideration above-mentioned facts.

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

13. Having heard the learned counsel for applicant, the learned

A.G.A. for State-opposite party-1, Mr. Atul Kumar Kushwaha, the learned counsel representing the prosecutrix opposite party-5 and upon perusal of record, this Court finds that applicant is a named and charge sheeted accused and also facing trial before Court below subsequent to the FIR dated 16.09.2016 lodged by first informant-opposite party-2 Jai Prakash (father of the prosecutrix). However, prior to the aforesaid FIR, the applicant had solemnized marriage with the prosecutrix on 13.07.2016. Consequently, the prosecutrix became the legally wedded wife of applicant. By reason of above, the prosecutrix started residing with applicant as his legally wedded wife. Bona-fide of the parties is further evident from the fact that the marriage of the parties has been registered under the provisions of U.P. Marriage Registration Rules, 2017. Photo copy of the Marriage Registration Certificate dated 14.09.2016 has been brought on record and is at page-7 of the supplementary affidavit dated 17.03.2025 filed on behalf of the applicant. Since the marriage of parties has been registered under the relevant Rules, therefore, there is a statutory presumption with regard to valid and legal marriage of the parties. The prosecutrix has put in appearance in present application. However, she has not disputed her marriage with applicant nor the marriage certificate aforementioned. As such, there is nothing on record to disbelieve the marriage of the parties. From the aforesaid wedlock of applicant and the prosecutrix, two children namely Abhigya and Krishna have been born. In view of the aforesaid subsequent developments between the parties, Jai Prakash first informant-opposite party-2 (father of the prosecutrix) and the accused-applicant, entered into a compromise wherein the marriage of the prosecutrix with the accused applicant was acknowledged. In view of the aforesaid subsequent developments, this Court finds that the

criminality, if any, committed by applicant, now stands washed of. As such, no useful purpose shall now 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. At this juncture, reference be made to the judgments of Supreme Court in **K. Dhandapani Vs. State by the Inspector of Police, 2022 SCC OnLine SC 1056** and **Mafat Lal Vs. State of Rajasthan, (2022) 6 SCC 589**, wherein the Apex Court quashed the proceedings against accused therein on the ground that they had solemnized marriage with the prosecutrix. The judgment rendered by the Apex Court in **K. Dhandapani (Supra)** is a short one, therefore, the same is reproduced in it's 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 the 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."

15. The ratio laid down by the Apex Court in aforementioned judgments is squarely applicable to the facts and of present case inasmuch as the accused i.e. applicant herein has solemnized marriage with the prosecutrix. As such, no exception can be carved out in the case of present applicant with reference to the aforementioned judgments of Supreme Court. In view of above, in case, the criminal prosecution of accused-applicant is allowed to continue, the resultant trial 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.

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

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

18. The entire proceedings in Sessions Trial No. 453 of 2017 (State Vs. Shivam), under Sections 363, 366, 376 IPC and Sections 3/4 POCSO Act, Police Station-Bilari, District-Moradabad, now pending in the Court of Special Judge (POCSO Act), Court No.-3, District-Moradabad are, hereby, quashed.

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

Order Date :- 20.3.2025
Imtiyaz