

Court No. - 70

Case :- APPLICATION U/S 482 No. - 44120 of 2024

Applicant :- Manjeet And 4 Others

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Avinash Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Avinash Pandey, the learned counsel for applicants, the learned A.G.A. for State-opposite party-1 and Mr. Neetesh Kumar, the learned counsel representing opposite party-4, first informant and opposite party-5, victim.

2. Perused the record.

3. Applicants-Manjeet and 4 Others, who are charge sheeted accused and facing trial before Court below, have 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 kindly be pleased to allow this application and quash the entire proceedings of P.S.T. No. 67 of 2019 (State vs. Manjeet & others) including Summon/cognizance order dated 27.10.2016 passed by Additional District & Session Judge, Muzaffarnagar, arising out of Case Crime No. 153 of 2016, Under Section-363, 366, 506, 365, 376 IPC and 3/4 POCSO Act, Police Station-Thana Bhawan, District- Shamli, Pending in the Court of Additional District & Session Judge/POCSO Act, Shamli on the basis of compromise and in the interest of justice.

It is further prayed that the further proceedings of the P.S.T. No. 67 of 2019 (State vs. Manjeet & others) arising out of Case Crime No. 153 of 2016, Under Section-363, 366, 506, 365, 376 IPC and 3/4 POCSO Act, Police

Station- Thana Bhawan, District- Shamli, Pending in the Court of Additional District & Session Judge/POCSO Act, Shamli shall remain stay, during the pendency of the present application before this Hon'ble Court, and/or pass such other and further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

4. Learned counsel for applicants submits that though applicants 1 and 3 are named and charge sheeted accused, whereas other applicants are not charge sheeted accused but and also facing trial before Court below, however, in view of the subsequent developments that have taken place, the criminal prosecution of applicants cannot be sustained now. As such, the present application is liable to be allowed and the impugned criminal proceedings pending against applicants before Court below are liable to be quashed by this Court.

5. In furtherance of aforesaid submission, the learned counsel for applicants submits that criminal prosecution of applicants was set in motion when in respect of an occurrence, which is alleged to have occurred on 20.10.2015, a delayed FIR dated 26.10.2015 was lodged by the first informant-opposite party-4 Indrapal (father of the prosecutrix) and was registered as Case Crime No. 0526 of 2015, under Sections 366, 363 IPC, Police Station-Thana Bhawan, District-Shamli. In the aforesaid FIR, two persons namely (1) Manjeet Singh and Balveer Singh (i.e. applicants 1 and 3 herein) were nominated as named accused.

6. After aforementioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. On the basis of material collected by him, during course of investigation, he came to the conclusion that complicity of not only named accused i.e. Manjeet Singh and Balveer Singh but also not named accused Manoj, Smt.

Jagwanti and Smt. Rinku is also established in the crime in question. He, accordingly, submitted the charge sheet/police report dated 18.09.2016, in terms of Section 173(2) Cr.P.C., whereby and whereunder, aforementioned accused were charge sheeted under Sections 363, 366, 506, 365, 376 IPC and Sections 3/4 POCSO Act.

7. Upon submission of above-mentioned charge sheet/police report, cognizance was taken upon same by Court concerned and consequently, charge sheeted accused were summoned to face trial. Resultantly, Sessions Trial No. 637 of 2019 (State Vs. Manjeet Singh and Others), under Sections 363, 366, 506, 365, 376 IPC and Sections 3/4 POCSO Act, Police Station-Thana Bhawan, District-Shamli came to be registered and is now said to be pending in the Court of Additional District and Sessions Judge (POCSO Act), District-Shamli.

8. During pendency of aforesaid proceedings, applicant-1 Manjeet solemnized marriage with the prosecutrix. As such, the prosecutrix became the legally wedded wife of applicant-1. By reason of above, the prosecutrix started residing with applicant-1 as his legally wedded wife. From the cohabitation of applicant-1 Manjeet and the prosecutrix as husband and wife, 3 children namely Bhavdeep, Dikshant and Disha were born. Their birth certificates have brought on record and are at pages 116 onwards of the paper book. As per the birth certificate of the children born out of the wedlock of applicant-1 and the prosecutrix, applicant-1 Manjeet is shown as the father, whereas the prosecutrix is shown as the mother of aforementioned children. In view of the aforesaid subsequent developments, the parties entered into an amicable settlement outside the Court. On the basis of settlement so arrived

at between the parties, a compromise was entered into. Thereafter, in view of the compromise entered into by the parties, a compromise application dated 22.08.2024. duly signed by all the parties, was submitted before Court below. Copy of same is on record at page 122 of the paper book. By means of said compromise application, it was prayed that in view of the compromise entered into by the parties, the proceedings of aforementioned Sessions Trial be terminated.

9. On the above premise, the learned counsel for applicants submits that in view of the subsequent developments that have taken place between the parties and as noted herein above, the criminality, if any, committed by applicant-1 and others now stands washed of. As such, no useful purpose shall now be served in prolonging the criminal prosecution of applicants. Attention of the Court was then invited to the counter affidavit filed by opposite parties 4 and 5, which has been sworn by first informant as well as the prosecutrix. With reference to above, the learned counsel for applicants submits that first informant-opposite party-4 and the prosecutrix opposite party-5 duly acknowledge the marriage of applicant-1 with the prosecutrix and also the birth of three children from the aforesaid wedlock. It is then submitted that both the opposite parties 4 and 5 do not wish to prolong the criminal prosecution of applicants, in fact, they have supported the present application.

10. On the above conspectus, the learned counsel for applicants submits that no useful purpose shall now be served in prolonging the criminal prosecution of applicants. In case, the criminal prosecution of applicants is allowed to continue, a happy family shall stand broken. It is, therefore, urged by the learned counsel for

applicants that this application is liable to be allowed by this Court.

11. Per contra, the learned A.G.A. for State-opposite party-1 has vehemently opposed the present application. Learned A.G.A. contends 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 wipe out the criminality committed by applicant-1 and others as suggested by the learned counsel for applicants. Referring to the judgment of Supreme Court in **State of Kerala VS. Hafsai Rahman N.R., Special Leave Petition (Criminal) Diary Nos. 24362 of 2021**, the learned A.G.A. submits that the Apex Court in aforementioned judgment has itself provided that there can be no compromise in matters arising out of POCSO Act. As such, the compromise entered into by the parties as is evident from the compromise application occurring at page 122 of the paper book, is of no relevance. Learned A.G.A. thus submits that 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 applicants with reference to the record at this stage.

12. On the other hand, Mr. Neetesh Kumar, the learned counsel representing opposite parties 4 and 5 has supported the present application. He submits that he has received instructions not to oppose the present application. According to the learned counsel representing opposite parties 4 and 5, it is now an admitted fact that applicant-1 has solemnized marriage with the prosecutrix. Furthermore, from the said wedlock, three children i.e. two sons and one daughter namely (1) Bhavdeep, (2) Dikshant and (3)

Disha were born. He further submits that whereas first informant has accepted the marriage of the parties, the prosecutrix has admitted the factum of marriage of the parties i.e. the applicant-1 and the prosecutrix in the counter affidavit filed by opposite parties 4 and 5. Further no objection has been raised therein in opposition to this application. It is thus urged by Mr. Neetesh Kumar, the learned counsel representing opposite parties 4 and 5 that he cannot have any objection, in case, the present application is decided by this Court taking into consideration the aforesaid facts and circumstances.

13. Be that as it may, the crux of the matter is that applicant-1 Manjeet has solemnized marriage with the prosecutrix and from the said wedlock, three children have been born.

14. Having heard the learned counsel for applicants, the learned A.G.A. for State-opposite party-1, Mr. Neetesh Kumar, the learned counsel representing opposite parties 4 and 5 and upon perusal of record, this Court finds that criminal prosecution of applicants commenced when an FIR dated 26.10.2015, and was lodged by the first informant-opposite party-4 Indrapal (father of the prosecutrix). Though the applicants are named and charge sheeted accused and facing trial before Court below, however, during pendency of criminal proceedings detailed above, applicant-1 solemnized marriage with the prosecutrix. Consequently, the prosecutrix became the legally wedded wife of applicant-1. By reason of above, the prosecutrix started residing with applicant-1 as his legally wedded wife. From the aforesaid wedlock/cohabitation of applicant-1 and the prosecutrix as husband and wife, three children namely Bhavdeep (son), Dikshant (son) and Disha (daughter) were born. As per the birth

certificates of children, which are on record, applicant-1 Manjeet is shown as the father, whereas the prosecutrix is shown as the mother. In view of the aforesaid subsequent developments, the criminality, if any, committed by accused-applicants shall stand washed off. As such, no useful purpose shall now be served in prolonging the criminal prosecution of applicants.

15. Apart from above, the first informant-opposite party-4 and the prosecutrix-opposite party-5 have filed a short counter affidavit duly sworn by opposite parties 4 and 5. Both the opposite parties, in the aforesaid short counter affidavit, have duly acknowledged and admitted the marriage of applicant-1 with the prosecutrix and the birth of three children. First informant-opposite party-4 has accepted the marriage of the parties and therefore, no objection has been raised by him in the said counter affidavit qua the marriage of the parties. The prosecutrix has also admitted aforesaid facts. In view of above, this Court finds that no useful purpose shall now be served in prolonging the criminal prosecution of applicants. In case, the criminal prosecution of applicants is allowed to continue, a happy family shall stand broken.

16. 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 in aforementioned judgments quashed the criminal prosecution of accused therein on the ground that the accused 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 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 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."

When the ratio laid down by the Apex Court in aforementioned judgments is applied to the present case, this Court finds that the ratio laid down in aforementioned judgments is squarely applicable to the facts of present case inasmuch as, applicant-1 has solemnized marriage with the prosecutrix. As such, no exception can be carved out in the case of present applicants also. Moreover, this Court again turn a blind eye to the subsequent developments, which have taken place between the parties. The 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.

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

18. It is, accordingly, **allowed**.

19. The entire proceedings in Sessions Trial No. 637 of 2019 (State Vs. Manjeet Singh and Others), under Sections 363, 366, 506, 365,

376 IPC and Sections 3/4 POCSO Act, Police Station-Thana Bhawan, District-Shamli, now pending in the Court of Additional District and Sessions Judge (POCSO Act), District-Shamli are, hereby, quashed.

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

Order Date :- 19.3.2025

Vinay