

A.F.R.

Court No. - 85

Case :- APPLICATION U/S 482 No. - 41580 of 2022

Applicant :- Fakre Alam @ Shozil

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

Counsel for Applicant :- Sudhir Kumar Tiwari

Counsel for Opposite Party :- G.A.,Jitendra Singh

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri S.K. Tiwari, learned counsel for the applicant, Sri Jitendra Singh, learned counsel for O.P. No.2 as well as learned A.G.A. for the State.
2. The present 482 Cr.P.C. application has been filed to quash charge sheet dated 25.9.2016, cognizance order dated 10.2.2017, non-bailable warrant dated 10.5.2022 and entire proceeding of Case No. 294 of 2021 (*State vs. Fakre Alam*) arising out of Case Crime No. 330 of 2015, u/s 363, 366, 376(2N), 506 I.P.C. and 6 POCSO Act, P.S. Baradari, District Bareilly.
3. Contention of learned counsel for the applicant is that in her statement u/s 164 Cr.P.C., the victim has stated that she had willingly married to the applicant and she has been residing with him as his wife. Thereafter, compromise was also entered between the parties regarding this case because victim as well as applicant have been residing as husband and wife and age of the victim is also above 18 years as per the medical examination.
4. This Court vide order dated 28.1.2023 directed the court below to verify the compromise entered between the parties. In pursuance of the order of this Court, compromise between the parties has been verified by Additional Sessions Judge/Special Judge (POCSO Act), Court No.1, Bareilly in Special Criminal Case No. 294 of 2021 (*State vs. Fakre Alam*) vide order dated 24.5.2023 which has been produced before this Court along second supplementary affidavit dated 30.5.2023, filed by counsel for the applicant. Here the sole question arises as to whether on the basis of compromise offence u/s 376 I.P.C. and POCSO Act can be quashed.
5. Allahabad High Court in the case of ***Pravin Kumar Singh @ Pravin Kumar and 2 others vs. State of U.P. & another (Application u/s 482 No. 2941 of 2023)*** as well as in the case of ***Om Prakash vs. State of U.P. and another (Application u/s 482 No. 8514 of 2023)*** observed that once the case is made out on the basis of statement of victim girl then proceeding under POCSO Act cannot be quashed on the basis of compromise between the victim and accused because the offence under

POCSO Act is offence against the society.

6. Similarly, Hon'ble Supreme Court in the cases of ***State of Madhya Pradesh. vs. Laxmi Narayan [AIR 2019 SC 1296]***; ***State of Madhya Pradesh vs. Dhruv Gurjar [AIR 2019 SC 1106]***; and ***Parvat Bhai Ahir vs. State of Gujarat [AIR 2017 SC 4842]*** observed that offence against the society should not be quashed on the basis of compromise or weak evidence. However, in the case of ***Ramawatar vs. State of Madhya Pradesh [2021 SCC Online SC 966]***, the Apex Court observed that the offence under special statute including SC/ST Act, though the offence is against society, can also be quashed in exercise of power u/s 482 Cr.P.C. in certain cases on the basis of compromise, but this power should be exercised during pendency of trial or appeal not thereafter. Paragra-10 of the above judgement is quoted as below:-

"10. So far as the first question is concerned, it would be ad rem to outrightly refer to the recent decision of this Court in the case of Ramgopal & Anr. v. The State of Madhya Pradesh, wherein, a two Judge Bench of this Court consisting of two of us (N.V. Ramana, CJI & Surya Kant, J) was confronted with an identical question. Answering in the affirmative, it has been clarified that the jurisdiction of a Court under Section 320 Cr.P.C cannot be construed as a proscription against the invocation of inherent powers vested in this Court under Article 142 of the Constitution nor on the powers of the High Courts under Section 482 Cr.P.C. It was further held that the touchstone for exercising the extraordinary powers under Article 142 or Section 482 Cr.P.C., would be to do complete justice. Therefore, this Court or the High Court, as the case may be, after having given due regard to the nature of the offence and the fact that the victim/complainant has willingly entered into a settlement/compromise, can quash proceedings in exercise of their respective constitutional/inherent powers."

7. This Court finds that although no specific provision has been incorporated in the Cr.P.C. for compounding any offence other than those mentioned in Section 320 Cr.P.C., there may still be cases where victim would prepare to condone the conduct of the accused even though the charge is not compoundable. In such cases Court can exercise its inherent power u/s 482 Cr.P.C. even the offence is non-compoundable u/s 320 Cr.P.C. Though the High Court should not normally interfere with the criminal proceeding involving sexual offence against women and children only on the basis of ground of settlement, however it is not completely foreclosed in exercising its extraordinary power u/s 482 Cr.P.C. to quash such proceeding. This Court opined that in such cases, a holistic approach ought to be adopted considering issue from different perspective, in order to identify the cases fit for compromise, keeping in mind: (i) the nature and effect of offence on the consciousnesses of society; (ii) the seriousness of injury, if any; (iii) voluntary nature of compromise between the accused and victim; and (iv) conduct to the accused person, prior to and after the occurrence of the purported offence or other relevant considerations.

8. In the present case it is clearly established from the statement of victim recorded u/s 164 Cr.P.C. as well as radiological examination of victim that she is above 18

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years and the victim in her statement u/s 164 Cr.P.C. has clearly stated that she got married to the applicant Fakre Alam on 10.7.2014 willingly.

9. In the judgement of *Ankit Jatav vs. State of Rajasthan, S.B. Criminal Misc. (Petition) No. 3075 of 2023* decided on 31.5.2023, the Single Bench of Rajasthan High Court quashed the proceeding under POCSO Act on the ground that victim in her statement u/s 164 Cr.P.C. has stated that no offence was committed by the accused and she willingly left her house to get married to him.

10. Section 2(1)(d) of POCSO Act clearly defines the child who is below the age of 18 years but from the material available on record it appears that victim is above 18 years then no case under POCSO Act is made out and victim also stated u/s 164 Cr.P.C. that applicant has not committed any sexual offence against her and since the date of marriage they have been residing as husband and wife and, her mother just to extract five lakh rupees from her husband (applicant), lodged the present false case. In the medical examination also, no injury was found on the person of the victim and no opinion about sexual assault was given against the victim. Therefore, from the evidence on record it is also clear that no offence is made out against the present applicant. Filing of the charge sheet against the applicant u/s 363, 366, 376; 2N, 506 I.P.C. as well as Section 6 of POCSO Act was itself incorrect.

11. Therefore, this Court opined that the proceedings under POCSO Act as well as u/s 376 I.P.C. can be quashed if no case is made out from the material available on record but the police has filed charge sheet in routine manner without looking into the material collected during the investigation.

12. In view of the above fact, the proceedings of Case No. 294 of 2021 (*State vs. Fakre Alam*), arising out of Case Crime No. 330 of 2015, u/s 363, 366, 376(2N), 506 I.P.C. and 6 POCSO Act, P.S. Baradari, District Bareilly, is hereby quashed.

13. The application is **allowed**.

Order Date :- 6.6.2023

Vandana