

Court No. - 64

Case :- APPLICATION U/S 482 No. - 8514 of 2023

Applicant :- Om Prakash

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

Counsel for Applicant :- Raghav Ram, Vibha Diwedi

Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir,J.

The applicant seeks quashing of proceedings of Sessions Case No. 575 of 2020, State v. Om Prakash (arising out of of Case Crime No. 339 of 2020), under Sections 376(1), 323, 357-ka, 504, 506 of the Indian Penal Code, 1860 and Section 7/8 Protection of Children from Sexual Offences Act, 2012 (*'the Act of 2012' for short*), Police Station Kotwali, District Jhansi, pending before the Special Judge (POCSO Act) Jhansi.

According to the First Information Report (*'FIR' for short*) lodged by the complainant-opposite party no. 2, the said opposite party is a widow and became friends with the applicant, Om Prakash, who held out a false promise to marry her. The complainant has five children - two daughters and three sons begotten of her deceased husband. The FIR further says that on 23.08.2020, the complainant, deceitfully promising to marry her, had carnal relations with her and also molested her daughter with questionable intentions. Thereafter, he beat up the complainant. On 26.08.2020 at 10 o' clock in the night, the applicant ravished the complainant. On the basis of the said FIR, the present crime has been registered, including offences of rape and those under the Act of 2012. The complainant has supported her case before the Magistrate in her statement under Section 164 of the Code of Criminal Procedure, 1973 (*'Cr.P.C.' for short*). The allegations of rape and molestation is also supported in her statement under Section 164 Cr.P.C. by the

complainant 's daughter, who is a minor. Now, learned Counsel for the applicant points out that the applicant and the second opposite party have married according to Hindu rites on 15.08.2021 and are living together as man and wife. It is pointed out by the learned Counsel for the applicant that the complainant-opposite party has filed an application before the Special Judge that in view of parties' marriage, she does not want to pursue the prosecution, which should be disposed of on the basis of a compromise. It is submitted by the learned Counsel for the applicant that no useful purpose would be served in carrying on the prosecution, which would be an abuse of process of Court.

Upon hearing learned Counsel for the applicant and the learned A.G.A., this Court is of opinion that prosecution in heinous offences such as rape and molestation of minors, which are punishable under the Act of 2012, the victims do not have the freedom to compromise as if it were a compoundable offence or a civil cause. The State is the forerunner of the prosecution and it is the State who have to pursue the prosecution to its logical conclusion. The endeavour of the Court in a matter involving such a heinous offence is to determine the truth of the allegations. The purpose is not to persecute the accused nor is it to let him off, because his relations with the complainant has taken a happier turn. An offence of rape or one under Section 7/8 of the Act of 2012 is an offence against the society, the truth of which has to be established before a Court of competent jurisdiction on the basis of whatever evidence is led at the trial. The accused may be acquitted if the charge is not proved, or if proved, he would be convicted. Short of that, the accused can say that he is entitled to be discharged. Of course, he will have that right, wherever the law permits and at whatever stage. In any eventuality, in a matter like the present one, this Court

cannot interdict the prosecution and quash proceedings for the saying of the complainant, based on compromise between parties.

In the result, this application **fails** and stands **rejected**.

Order Date :- 15.3.2023

I. Batabyal