

Court No. - 70

Case :- APPLICATION U/S 482 No. - 987 of 2025

Applicant :- Arbaz

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

Counsel for Applicant :- Irshad Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Faiz, Advocate holding brief of Mr. Irshad Ahmad, the learned counsel for applicant and the learned AGA for State/opposite party-1.

2. Perused the record.

3. Applicant- Arbaz who is a charge-sheeted accused has approached this Court by means of present application under Section 482 CrPC with the following prayer :-

"It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the impugned charge sheet dated 25.09.2023 alongwith cognizance/summoning order dated 20.12.2023 passed by learned Chief Judicial Magistrate, Sambhal at Chandausi as well as entire criminal proceeding of Case No.6506 of 2023 (State v. Arbaz and others), arising out of Case Crime No.279 of 2023, under Section 376-D of IPC, P.S.- Nakhasa, District- Sambhal, pending in the court of learned Chief Judicial Magistrate, Sambhal at Chandausi.

It is further prayed that this Hon'ble Court may be pleased to stay the further proceeding of Case No.6506 of 2023 (State v. Arbaz and others), arising out of Case Crime No.279 of 2023, under Section 376-D of IPC, P.S.- Nakhasa, District- Sambhal, pending in the court of learned Chief Judicial Magistrate, Sambhal at Chandausi, 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 applicant submits that the prosecutrix/first informant/opposite party-2 is the wife of applicant. The said fact is established from the Nikahnama of the parties. Photocopy of which is on record as Page-57 of the Paper-book. It is then contended by the learned counsel for applicant that prosecutrix/first informant/opposite party-2 had also initiated proceedings under Section 144 BNSS against the applicant. Certified copy of the complaint made by the prosecutrix/first informant/opposite party-2 is on record as Annexure-9 of the affidavit.

5. On the above conspectus, the learned counsel for applicant

submits that since prosecutrix is the legally wedded wife of applicant, therefore, no offence as complained off can be said to be have been committed by the applicants. He, therefore, contends that applying the ratio laid down by Apex Court in the case of **State of Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335**, the impugned proceedings cannot be sustained. As such, present application is liable to be allowed.

6. Per contra, learned AGA has opposed the present application. Learned AGA submits that since the prosecutrix has fully supported the prosecution story as unfolded in the FIR in her statement under Sections 161 CrPC and thereafter in her subsequent statement under Section 164 CrPC, therefore, no illegality or infirmity can be attached to the criminal prosecution of applicant. As such, no interference is warranted by this Court in present application. However, the learned AGA could not dislodge the legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

7. Having heard the learned counsel for applicant, the learned AGA for State and upon perusal of record, this Court finds that matter requires consideration.

8. Notice on behalf of opposite party-1/State has been accepted by the learned AGA.

9. Issue notice to the first informant/opposite party-2 i.e. prosecutrix.

10. All the opposite parties may file their respective counter affidavits on or before the date fixed in the notice.

11. List this application for admission on 12.05.2025.

12. Considering the facts and circumstances of the case and also the submissions urged by the learned counsel for applicant in support of this application as noted herein above, as an interim measure, it is hereby provided that until further orders of this Court, further proceedings in Case No.6506 of 2023 (State v. Arbaz and others), arising out of Case Crime No.279 of 2023, under Section 376-D of IPC, P.S.- Nakhasa, District- Sambhal now pending in the court of learned Chief Judicial Magistrate, Sambhal at Chandausi shall remain stayed.

Order Date :- 1.4.2025/ Rama Kant