

Court No. - 79

Case :- APPLICATION U/S 482 No. - 15281 of 2024

Applicant :- Uma Shankar Yadav

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

Counsel for Applicant :- Aanjaneya Dwivedi, Aditya Narayan Shukla, Shiv Bahadur Yadav

Counsel for Opposite Party :- Amit Daga, G.A., Umesh Kumar Tripathi

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Aditya Narayan Shukla along with Sri Shiv Bahadur Yadav, learned counsel for the applicant, Sri Umesh Kumar Tripathi, learned counsel for opposite party No.2 and perused the record.

2. The present application has been filed for quashing the summoning order dated 07.03.2024 passed by learned Additional District and Sessions Judge/Special Judge, POCSO, Act, Jalaun at Orai as well as entire proceedings of Criminal Case No.37 of 2024, arising out of Complaint Case No.17 of 2024 (Sirman Vs. Om Prakash and others), under Section 376-D, 506 I.P.C. and 5g/6 of POCSO Act, 2012, Police Station Kalpi, District Jalaun.

3. When the matter was heard, learned counsel for the applicant ultimately argued that the opposite party no.2 is non-existing person and in support of his contention he has also filed Mark-sheet as well as Aadhar Card of opposite party no.2 which were forged. After hearing this matter, this Court by order dated 31.05.2024 directed the Superintendent of Police, Jalaun to conduct the enquiry after personal meeting with the complainant whether the complainant is existing person or not. The order dated 31.05.2024 is quoted as under:-

"Heard Sri R.C. Singh, learned Senior Counsel assisted by Sri Aditya Narayan Shukla along with Sri Shiv Bahadur Yadav, learned counsel for the applicant, Sri Amit Daga, learned counsel for the opposite party no. 2 and Sri Rajeev Kumar Singh, learned AGA for the State.

Contention of the counsel for the applicant is that the complainant Simran is a non-existing person but the impugned proceeding has been initiated on her behalf. The learned counsel for the applicant has relied upon the High School mark sheet of Simran having roll no. 1617670 which has been annexed at page no. 73 showing that this mark sheet was found to be forged as the another mark sheet on website with the same roll number belongs to Sonam

Sonkar. Another document which the learned counsel for the applicant is relied is Adhaar Card of the complainant, Simran and it is submitted that at page 77 on checking of Adhaar Card it was found that this is invalid Adhaar Card.

However, counsel for the opposite party no. 2 submits that he had got instructions on behalf of the complainant and he is appearing.

Learned AGA has also submitted that this question can be decided during trial.

However, considering the fact that there is a serious dispute between the parties which is also supported by two documents i.e. mark sheet as well as adhaar card of the complainant. Even otherwise, notice sent to the complainant, has been returned back with endorsement that no such person (complainant) is found at the address mentioned in the notice. Therefore, the Superintendent of Police, Jalaun is directed to conduct inquiry after personal meeting with the complainant, Simran whether the complainant is existing person or not and will submit his report on or before the next date of listing.

Put up this case on 08.07.2024 as fresh."

4. In pursuance of the order dated 31.05.2024, Superintendent of Police, Jalaun had submitted his report dated 06.08.2024 mentioning therein that the mark-sheet filed by opposite party no.2 before the Court was found to be forged and the Principal of the college which issued the mark-sheet clearly told that this roll number mentioned in the mark-sheet belongs to some other student not to the opposite party no.2. It was also mentioned in the report of S.P., Jalaun that complainant is not traceable and his address is also incorrect. After considering the report of S.P., Jalaun, this Court vide order dated 08.08.2024 directed the counsel for the opposite party no.2 to produce the opposite party no.2 before this Court. The order dated 08.08.2024 is quoted as under:-

"1. On 31.05.2024, this Court has passed the following order:

"Heard Sri R.C. Singh, learned Senior Counsel assisted by Sri Aditya Narayan Shuila along with Sri Shiv Bahadur Yadav, learned counsel for the applicant, Sri Amit Daga, learned counsel for the opposite party no. 2 and Sri Rajeev Kumar Singh, learned AGA for the State.

Contention of the counsel for the applicant is that the complainant Simran is a non-existing person but the impugned proceeding has been initiated on her behalf. The learned counsel for the applicant has relied upon the High School mark sheet of Simran having roll no. 1617670 which has been annexed at page no. 73 showing that this mark sheet was found to be forged as the another mark sheet on website with the same roll number belongs to Sonam Sonkar. Another document which the learned counsel for the applicant is relied is Adhaar Card of the complainant, Simran and it is submitted that at page 77 on checking of Adhaar Card it was found that this is invalid Adhaar

Card.

However, counsel for the opposite party no. 2 submits that he had got instructions on behalf of the complainant and he is appearing.

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However, considering the fact that there is a serious dispute between the parties which is also supported by two documents i.e. mark sheet as well as adhaar card of the complainant. Even otherwise, notice sent to the complainant, has been returned back with endorsement that no such person (complainant) is found at the address mentioned in the notice. Therefore, the Superintendent of Police, Jalaun is directed to conduct inquiry after personal meeting with the complainant, Simran whether the complainant is existing person or not and will submit his report on or before the next date of listing.

Put up this case on 08.07.2024 as fresh."

2. In compliance thereof, a report of the Superintendent of Police dated 06.08.2024 has been submitted by Sri Pankaj Srivastava, learned A.G.A. for the State. As per the report, the marksheet etc., which have been verified through the Arya Kanya Pathshala Inter College Kalpi, District- Jalaun and it has been reported by the Principal of the said college that the marksheet is forged as the roll number given in the marksheet belongs to some other person than the complainant herein and no detail of the complainant is available in the college. The aforesaid reports are taken on record. In view of the aforesaid situation, learned counsel for the opposite party no.2 is directed to produce the opposite no.2 before this court, with all relevant records to prove her identity by the next date of listing.

3. Before proceeding further in the matter, the trial court shall verify the identity of the complainant.

4. Put up this matter on 22.08.2024 as fresh."

5. The matter was posted for 22.08.2024, but on that date counsel for the opposite party no.2 could not produce the opposite party no.2 before this Court and arguing counsel Sri Amit Daga informed to the Court that he was not in direct contact with the opposite party no.2 and he was engaged by Sri Umesh Kumar Tripathi, Advocate to argue this case. However, on enquiry, Sri Umesh Kumar Tripathi informed to the Court that instant vakalatnama was sent to him by local counsel Sri Sudhir Kumar Mishra, Advocate practicing at Jalaun.

6. This Court taking serious view of the matter directed to trial court to conduct enquiry regarding the existence of complainant as well as other witnesses, who came before the trial court to depose their statements under Sections 200 and 202 of Cr.P.C. By order

dated 22.08.2024, the matter was posted on 21.10.2024. The order dated 22.08.2024 is quoted as under:-

"1. Heard Sri R.C. Singh, learned Senior Counsel assisted by Sri Shiv Bahadur Yadav and Sri Aditya Narayan Shukla, learned counsel for the applicant, Sri Amit Daga alongwith Sri Umesh Kumar Tripathi, learned for the opposite party no.2 and Sri Sandeep Choudhary, learned A.G.A. for the State.

2. On 08.08.2024, this Court has passed the following order:

"1. On 31.05.2024, this Court has passed the following order:

"Heard Sri R.C. Singh, learned Senior Counsel assisted by Sri Aditya Narayan Shuila along with Sri Shiv Bahadur Yadav, learned counsel for the applicant, Sri Amit Daga, learned counsel for the opposite party no. 2 and Sri Rajeev Kumar Singh, learned AGA for the State.

Contention of the counsel for the applicant is that the complainant Simran is a non-existing person but the impugned proceeding has been initiated on her behalf. The learned counsel for the applicant has relied upon the High School mark sheet of Simran having roll no. 1617670 which has been annexed at page no. 73 showing that this mark sheet was found to be forged as the another mark sheet on website with the same roll number belongs to Sonam Sonkar. Another document which the learned counsel for the applicant is relied is Adhaar Card of the complainant, Simran and it is submitted that at page 77 on checking of Adhaar Card it was found that this is invalid Adhaar Card.

However, counsel for the opposite party no. 2 submits that he had got instructions on behalf of the complainant and he is appearing.

Learned AGA has also submitted that this question can be decided during trial.

However, considering the fact that there is a serious dispute between the parties which is also supported by two documents i.e. mark sheet as well as adhaar card of the complainant. Even otherwise, notice sent to the complainant, has been returned back with endorsement that no such person (complainant) is found at the address mentioned in the notice. Therefore, the Superintendent of Police, Jalaun is directed to conduct inquiry after personal meeting with the complainant, Simran whether the complainant is existing person or not and will submit his report on or before the next date of listing.

Put up this case on 08.07.2024 as fresh.

In compliance thereof, a report of the Superintendent of Police dated 06.08.2024 has been submitted by Sri Pankaj Srivastava, learned A.G.A. for the State. As per the report, the marksheet etc., which have been verified through the Arya Kanya Pathshala Inter College Kalpi, District- Jalaun and it has been reported by the Principal of the said college that the marksheet is forged as the roll number given in the marksheet belongs to some other

person than the complainant herein and no detail of the complainant is available in the college. The aforesaid reports are taken on record. In view of the aforesaid situation, learned counsel for the opposite party no.2 is directed to produce the opposite no.2 before this court, with all relevant records to prove her identity by the next date of listing.

3. Before proceeding further in the matter, the trial court shall verify the identity of the complainant.

4. Put up this matter on 22.08.2024 as fresh."

3. Pursuant to the aforesaid order, learned counsel for the opposite party no.2 was required to produce the opposite party no.2 in person before this Court. However, learned counsel for the opposite party no.2, Sri Umesh Kumar Tripathi, submits that he is not able to produce the opposite party no.2 as she is not in contact with him and he further submits that in the instant case, Vakalatnama was sent to him by the local counsel, which was signed and filed by him alongwith Sri Amit Daga as counsel for the opposite party no.2. Sri Amit Daga, learned counsel for the opposite party no.2 submits that he was engaged by Sri Umesh Kumar Tripathi, as counsel only for arguments in the instant case on merits and he is not in direct contact with the opposite party no.2.

4. In the instant case, a complaint for the offences under Sections 376D, 506 I.P.C. and 5/6 of the POCSO Act, was made out by the complainant and in support of her complaint, to prove her age she has produced a High School marksheet, which has been verified by the Superintendent of Police and has informed to be a fake document. After filing of the aforesaid complaint case, the statement of the complainant was also recorded by the Additional District and Sessions Judge, (POCSO Act), District- Jalaun and thereupon, the summoning order dated 07.03.2024 was passed against the applicant herein alongwith other co-accused persons.

5. As per the submission of learned Senior Counsel for the applicant, the complainant of the instant case is a non existing person and her document such as the marksheet has been found fake during the investigation conducted by the Superintendent of Police and learned counsel for the opposite party no.2 also failed to produce the complainant before this Court.

6. In view thereof, the learned trial court is directed to carry out a detailed inquiry regarding the existence of the complainant and the person, who came to depose the statement under Section 200 Cr.P.C. before the trial court. All the relevant documents with regard to the identity of the complainant should be placed on record alongwith inquiry report to this Court by the next date of listing.

7. Put up this matter on 21.10.2024 as fresh.

8. Till the next date of listing, no coercive action shall be taken against the applicant herein.

9. Registrar (Compliance) is directed to inform this order to the trial court concerned."

7. Today on perusal of the report dated 22.08.2024 of Additional District & Sessions Judge/Special Judge (POCSO), Jalaun at Orai, it appears that not only the documents filed by the opposite party no.2 were found to be forged but also the complainant as well as her witnesses namely Kapil Singh Chauhan and Vijay Kumar were also not traceable and their addresses were also found to be incorrect. The above facts shows the serious conspiracy to falsely implicated the applicant and also misuse the forum of Court just to falsely implicate the person through a non-existence complainant and witnesses. In such case, duty cast not only upon the concerned Presiding Officer but also the local counsel who file complaint and identified the complainant as well as witnesses.

8. In view of the above fact, this Court directs the S.P. Jalaun to register an F.I.R. and conduct investigation and after investigation of the same submit report to this Court also and also take necessary action against the person involved in this forgery. The District Judge, Jalaun is also directed to conduct enquiry regarding the involvement of any officer or any employee of the judgship and submit his report to this Court. While investigating this case, S.P. Jalaun will also ensure to examine the signature of opposite party no.2 on the vakalatnama as well as her statement before the lower court at Jalaun as well as her signature in the vakalatnama filed in the High Court.

9. The S.P., Jalaun as well as District Judge, Jalaun will submit their reports to this Court on or before the next date of listing.

10. Put up this case on 20.12.2024, as fresh.

11. Till the next date of listing, further proceeding of Criminal Case No.37 of 2024, arising out of Complaint Case No.17 of 2024 (Sirman Vs. Om Prakash and others), under Section 376-D, 506 I.P.C. and 5g/6 of POCSO Act, 2012, Police Station Kalpi, District Jalaun, shall remain stayed.

12. Registrar (Compliance) is directed to send copy of this order to District Judge, Jalaun as well as to S.P. Jalaun.

Order Date :- 21.10.2024

Jitendra