

**A.F.R.**

Neutral Citation No. - 2024:AHC-LKO:13338

**Court No. - 28**

**Case :- APPLICATION U/S 482 No. - 1327 of 2024**

**Applicant :-** Pradeep Yadav

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Govt. Of U.P.  
Lucknow And 6 Others

**Counsel for Applicant :-** Ashok Kumar Yadava, Aditya Singh

**Counsel for Opposite Party :-** G.A.

AND

**Case :- APPLICATION U/S 482 No. - 1677 of 2015**

**Applicant :-** Ram Gopal

**Opposite Party :-** The State Of U.P And Anr.

**Counsel for Applicant :-** Shailendra Pathak

**Counsel for Opposite Party :-** Govt. Advocate

CONNECTED WITH

**Case :- APPLICATION U/S 482 No. - 3413 of 2014**

**Applicant :-** Bahau And Anr.

**Opposite Party :-** The State Of U.P And Anr.

**Counsel for Applicant :-** Shailendra Pathak

**Counsel for Opposite Party :-** Govt. Advocate

AND

**Case :- APPLICATION U/S 482 No. - 6425 of 2023**

**Applicant :-** Nem Kumar Alias Neme Kumar Mishra

**Opposite Party :-** State Of U.P Thru. Prin. Secy. Home Civil Sectt.  
Lko And 2 Others

**Counsel for Applicant :-** Arjun Singh Kalhans

**Counsel for Opposite Party :-** G.A., Brijesh Singh Vishen, Yogesh  
Gupta

**Hon'ble Rahul Chaturvedi, J.**

[1]. The aforementioned four Applications u/s 482 Cr.P.C. on behalf of different applicants have been filed with the prayer that the criminal proceedings against them may be quashed in exercise of extraordinary power u/s 482 Cr.P.C. In all aforementioned cases there is a common legal question involved, and thus, for the sake of

brevity, all these petitions are being decided by a common judgment and order.

[2]. In Application u/s 482 No.1327 of 2024 Shri Karm Veer Yadav, learned counsel for opposite party no.7 has filed his *Vakalatnama* in the Court, is taken on record.

[3]. Heard learned counsels named above appeared for respective appellants, learned counsel for opposite party as well as learned Additional Government Advocate for the State of U.P. at length and to their satisfaction. Perused the record.

[4]. In Application u/s 482 No.1677 of 2015, despite of the time given to learned A.G.A. as well as notices were served upon opposite party no.2, no one has put his appearance on behalf of opposite party no.2 nor any counter affidavit has been filed. The mater relates to Year 2015, whereby two young persons after attaining their majority decided to marry, and they got married. Applicant- Ram Gopal is the husband, who is knocking the doors of this Court for quashing the entire criminal prosecution against him.

[5]. In Application u/s 482 No.6425 of 2023 the contesting parties are represented by their respective counsels, but despite of the notice issued to opposite party nos.2 and 3, no one has filed any counter affidavit.

[6]. Before analysing the legal aspect of the issue, it is imperative to give a bird's eye view to the facts of each case one by one.

FACTUAL MATRIX :

[7]. APPLICATION U/S 482 No. - 1327 of 2024  
(Pradeep Yadav vs. State of U.P. & 6 others)

(i). The prayer sought in the present petition is to quash the impugned Charge Sheet No.2A/16 dated 18.5.2016, summoning order dated 24.01.2017 as well as entire criminal proceeding in Session Trial No.2/17 (State vs. Pradeep Kumar), arising out of Case Crime No.138/2013, u/s 363, 366, 376 I.P.C. and  $\frac{3}{4}$  POCSO Act, P.S.-Kotwali Kunda, District Pratapgarh, pending in the court of Additional Session Judge (POCSO Act), Pratapgarh.

(ii). Affidavit of this petition is sworn by Pradeep Yadav-applicant himself.

Long and short of the case is that way back on 20.7.2023 the informant- Ravi Shankar Mishra has lodged an F.I.R. against Pradeep Yadav, Shyam Sunder Yadav and Ravi Gupta, all are resident of Kunda, Pratapgarh, with the allegation that the informant's daughter Ms. 'K' was pursuing her studies in Kripalu Balika Mahavidyalay, Kunda, a student of B.Sc.-Ist Year. The informant dropped his daughter to the college on 19.7.2013 around 8.00 in the morning and thereafter her daughter did not come back to home. After making inquiry, it is surfaced that Pradeep Yadav- applicant, his father Shyam Sundar Yadav and one Ravi Gupta have enticed her away. It is alleged in the F.I.R. that the date of the birth of the girl is 24.10.1997, allegedly a minor girl on the date of incident, and therefore, it was requested to lodge an F.I.R. against above persons.

(iii). After holding due investigation, the name of Ravi Gupta was exonerated by the police and the name of two more persons were inserted as accused, namely, Bachcha Yadav @ Jagdish and Pawan Kumar Yadav. A charge sheet was submitted by the police on 02.01.2014 against the aforesaid persons u/s 363, 366 I.P.C.

(iv). In paragraph 10 of the petition, in no uncertain terms it is stated that the applicant Pradeep Yadav and the prosecutrix Ms. 'K' have solemnized marriage on 19.8.2014 at Arya Samaj Temple Aliganj, Lucknow and later on at Belha Devi Temple, Pratapgarh on 11.4.2016. Not only this, they have got their marriage registered on 26.5.2023, a copy of Marriage Certificate is annexed as Annexure-5 to the petition.

(v). Submission advanced by the counsel for applicant is that on earlier occasion the Division Bench of this Court had protected the interest of petitioner and the prosecutrix vide order dated 26.9.2014 while disposing of Writ Petition No.9971 (M/B) of 2014 (Smt. Kriti and another vs. State of U.P. and others), directing the couple for their medical examination and recording the statements u/s 161 & 164 Cr.P.C. It was also directed by the Division Bench that till this exercise is over, the interest of the petitioners was protected and they shall not be arrested during investigation.

(vi) Meanwhile, there were certain issues cropped up for which the couple have again approached this Court for redressal of their grievances and the coordinate Bench of this Court has accommodated them and the statements of the girl u/s 161 & 164 were recorded. But despite of the favourable statement u/s 161 and 164 Cr.P.C., the Investigating Officer, after adopting regular practice, submitted a report u/s 173(2) Cr.P.C./charge-sheet on 18.5.2016 bearing Charge-sheet No.2A/2016 and the learned Magistrate too without applying his judicial mind have taken the cognizance of those offences and passed a summoning order on 24.1.2017. The applicants have again rushed to this Court by filing Crl. Misc. Application u/s 482 No.2072 of 2017 for quashing of the charge

sheet and summoning order, but the co-ordinate Bench of this Court without looking into the factual aspects of the issue have dealt the scope and ambit of Section 482 Cr.P.C. In that long order dated 3.4.2017 the scope and ambit of Section 482 Cr.P.C. was discussed without touching any iota of factual issue and it was also held that the police after investigation found a *prima facie* case against the accused-applicant and submitted a charge sheet before the court below. It was further observed that the offences are cognizable offences and the accused applicants ought to be tried before the court of the law. There is no reason or occasion to quash the charge sheet at this stage and thus that application u/s 482 Cr.P.C. stood dismissed.

(vii) On the other hand, the applicant and his wife-prosecutrix were residing at Delhi and they were leading a happy marital life in the company of each other. This wedlock has given birth to two babies, a girl child was born on 5.2.2017 and a baby boy was born on 26.11.2018. On this ground it has been canvassed by learned counsel for applicant that though this petition is second petition with the same prayer, but under the different and changed circumstances. Now the life of four persons are at stakes. On this score, learned counsel for applicant has drawn attention of the Court to the judgment of Hon'ble Apex Court in the case of ***Vinod Kumar, IAS vs. Union of India, 2021 SCC Online SC 559***, in which, the Apex Court while relying upon yet another judgment of Hon'ble Apex Court in the case of ***Superintendent and Rememberancer of Legal Affairs, West Bengal vs. Mohan Singh, (1975) 3 SCC 706***, have clearly opined that dismissal of earlier 482 application does not create bar in filing of subsequent petition u/s 482 Cr.P.C., in case the facts so justify. A similar view was also taken by the Hon'ble Apex

Court in a case of *Anil Khadkiwala vs. State (Govt of NCT of Delhi) and another, (2019) 17 SCC 294*, in which it has been clearly laid down that successive 482 applications under the changed circumstances or being materially different from earlier application, are maintainable and the dismissal of earlier quashment application shall not come into the way and would not act as a bar.

(viii). Relying upon the above judgments the learned counsel for applicant has hammered his submissions that earlier 482 application No.2072 of 2017 (Pradeep Kumar Yadav vs. State of U.P.) which was dismissed on 03.04.2017 does not contain a single averment, touching the facts of the present case. While dismissing the above 482 application, the Coordinate Bench of this Court has mainly focused upon the scope and ambit of Section 482 Cr.P.C. while taking into account the number of decisions given by Hon'ble Apex Court, in a most mechanical fashion come to the conclusion that a *prima facie* offence is made out against the applicant.

(ix). As mentioned above, there is a sea-change in the circumstances. Now the life of four persons are involved in this case and the Court in such a scenario should not apply only legal provisions in a mechanical fashion, but a humane face ought to be given. Thus, I am of the considered opinion that the present 482 application is maintainable in the larger interest of the parties. Though there is no quarrel with the settled legal proposition that successive 482 applications between the same parties is not maintainable, provided there is drastic change in the circumstances of the case.

[8]. APPLICATION U/S 482 No.1677 of 2015 (Ram Gopal vs. The State of U.P. and Another connected with APPLICATION U/S 482 No.3413 of 2014 (Bahau and another vs. State of U.P. and another).

(i) Both these petitions are connected petitions and in their respective parent orders while entertaining and granting the interim order, the Bench of this Court had directed the applicants to file a counter affidavit. Office report dated 12.11.2014 of 482 application No.3413 of 2014, indicates that notices were served upon opposite party no.2 personally, but no counter affidavit has been filed in this matter. Application u/s 482 No.3413 of 2014 (Bahau and another vs. State of U.P. and another) is the leading case. This petition should be decided with Crl. Misc. Application u/s 482 No.1667 of 2015 (Ram Gopal vs. State of U.P. and another). Ram Gopal happens to be close relative of prime accused Bahau.

(ii) The prayer sought in both petitions is same whereby the applicants have sought the quashing of impugned order dated 30.7.2014 passed by the learned C.J.M., Bahraich, arising out of Case Crime No.398 of 2014, u/s 363, 366A, 506 I.P.C., Police Station-Kotwali Nanpara, District Bahraich, including the entire proceeding initiated pursuant thereof. The order dated 26.8.2014 was the parent order directing the applicants and opposite party no.2 to appear in the Court and further proceeding of Case Crime No.398 of 2014 shall remain stayed.

(iii) Brief summary of the present case is that the F.I.R. was lodged by Sitaram Patel on 2.6.2014 which was registered as Case Crime No.398 of 2014, u/s 363, 366A, 506 I.P.C. at P.S.- Nanpara, District Bahraich against Bahau, Ram Gopal and Pairu for the alleged incident said to have taken place on 27.8.2013. It was alleged in the

F.I.R. that the informant's sister Ms. 'B' (applicant no.2 in 482 application no.3413/2014) went to attend the call of nature, whereby the above named accused persons have kidnapped her on the gun point. It is contended by the learned counsel for applicants that the averment of the FIR is nothing but ugly case of exaggeration of the incident, just to complicate the issue. In fact, Bahau and Ms. 'B' are in dense love affair with each other and they are major, known to each other and eventually they have decided to marry, but their family members were dead against this relationship and marriage. Left with no other option, both of them have decided to run away from their respective homes and performed their marriage in a temple and now they are leading a happy marital life. This wedlock has been blessed with a baby boy who is now aged about 8 years. As mentioned above, the family members were dead against this marriage, they have decided to harass and malign the couple to its optimum by filing a false criminal case against them.

(iv) After lodging of the F.I.R., the police have rounded up the prosecutrix and she was put to radiological/ossification test, in which the doctor has opined that the age of the girl is 19+ years. Besides this, the girl was put before the Magistrate for recording her statement u/s 164 Cr.P.C., in which in no uncertain terms she admitted that both of them are in torrid love affair, out of which they have decided to marry with each other. Being major they have every right to choose their life partners and accordingly they have chosen to each other as their life partners. As mentioned above, this wedlock has blessed with a boy, hence, now three lives are involved in the present criminal case.

(v) The interesting feature of this case is that when the girl was in the custody of police, three applications were moved by her father Banke Lal and sister-in-law for taking her custody. Learned C.J.M., Bahraich after assessing the entire circumstances and more particularly the age of the girl and subsequent development that she was a mother of a small kid, who is now 8 years of age, directed the Inspector to set her free so that she may join the company of person of her liking and choice.

(vi) In connected Application u/s 482 No.1677 of 2015 (Ram Gopal vs. State of U.P. and another), Ram Gopal is the real brother of Bahau, who has also been chargesheeted and Ram Gopal in his application has sought a similar prayer as of co-accused Bahau in Crl. Misc. Application u/s 482 No.3413 of 2014 (Bahau vs. State of U.P. and another).

(vii) Thus, as per the facts of the case, there is no allegation of any kidnapping attracting the provisions of Sections 363 or 366A I.P.C. In fact, it is a malicious story tailored by the informant with ulterior motive and harass and malign the couple, but as mentioned above, the most significant circumstance is that the accused-applicant and the prosecutrix are happily and safely residing as husband and wife with their small child.

[9]. APPLICATION U/S 482 NO.6425 of 2023 (Nem Kumar @ Nem Kumar Mishra vs. State of U.P. & 2 others)

(i) The extra-ordinary power of this Court u/s 482 Cr.P.C. is being invoked by the applicant for quashing of the entire proceeding of Case No.4775 of 2021 (State vs. Nem Kumar) pending before the learned First Additional Civil Judge (S.D.), Sitapur, u/s 363, 366

IPC, including the impugned summoning order dated 8.2.2021 and the Charge Sheet No.1 dated 03.10.2020 arising out of Case Crime No.257 of 2020, u/s 363, 366 IPC, Police Station-Rampur Mathura, District Sitapur.

(ii). Facts of the present case in brief is that on 01.8.2020 the opposite party no.2 has lodged an F.I.R. against the petitioner to the effect that during the night on 29.7.2020 around 10.00 in the night, applicant Nem Chandra Mishra has enticed away daughter of opposite party no.2. After lodging of the FIR, as a natural outcome the investigation of the case started rolling and the police have recorded statement u/s 161 Cr.P.C. On 15.9.2020 the prosecutrix opposite party no.3 reached to the police station and disclosed that she married with petitioner Nem Chand Mishra on her own free will and choice, disclosing her age about 18 years. Thereafter, the prosecutrix was produced before the Magistrate for recording her statement u/s 164 Cr.P.C. on 31.7.2020, in which she stated that there was no threat or coercion upon her to enter into this nuptial tie with the applicant. Not only this, she has also declined and refused to get her medically examined. The high-handedness and atrocities of the police started when they dumped the girl to Bal Kalyan Samiti, Sitapur before sending her to Nari Ashray Grih, Lucknow without taking her consent. Left with no option, they have approached this Court by filing a Habeas Corpus No.17589 of 2020 and the Court has come to rescue of petitioners and released the detenu/prosecutrix in favour of the husband-petitioner by order dated 8.12.2020.

(iii). This matter has got a new angle when on 12.10.2021 the prosecutrix-opposite party no.3 has given birth to a baby boy-Shantanu. As per High School Certificate the date of birth of the

prosecutrix is 01.01.2003 and at the time of incident she was about to reach the age of majority. Thereafter the husband and wife with their new born baby were peacefully and happily residing. On the other hand, the police personnel without anticipating the amount of damage to the couple, have submitted a charge sheet u/s 363, 366 IPC and the learned Magistrate without applying judicial mind have taken cognizance of those offence on a proforma order dated 8.2.2021, hence this petition.

LEGAL DISCUSSION :

[10]. Since in all the aforesaid petitions, the report u/s 173(2) Cr.P.C./charge sheet was filed by the police u/s 363, 366 I.P.C., the provisions of Sections 363, 366 I.P.C. are relevant to reproduce here, which reads thus :

"363. Punishment for kidnapping.—

*Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

*366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—*

*Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid."*

[11]. Now taking into account the aforementioned sections of Indian Penal Code and comparing the same with 164 statements of

respective victims, it is written on the canvass, that in all the cases the boys and girls are in previous acquiescence and having affair with each other. Both of them ran away from their respective houses, keeping in view the hostile treatment from their parties, who were dead against such type of relationship. Being major, they exercised their right to choose their life partners, and some how or the other they ran away and got married either in temple or some Arya Samaj Temple in a clandestine way. Not only this, they got their marriage registered. After the marriage both of them residing as happily married couple and were blessed with their progenies.

Under these circumstances, taking into account the victims statement u/s 164 Cr.P.C., the entire prosecution case would be reduced to big nullity. Still asking, the boy to face the criminal case is nothing but the harassment to the couple to its optimum and should be quashed at the earliest given opportunity.

[12]. As mentioned above, the undercurrent of all aforementioned cases is one and identical i.e. the couple who are major got married but their parent for the reason best known to them are creating hurdles and impediments in their marital life, instead of extending their good wishes to them, the parent are poisoning their marital life. In all these cases, there is apparent tussle and tug of war between the requirement of the law on one hand and the marital life of the couple with their kids on the other hand.

[13]. In a recent judgment *Mafat Lal and Another vs. State of Rajasthan in Crl. Appeal No.592 of 2022 decided on 28.3.2022*, Hon'ble Apex Court it has been opined in no uncertain terms that when the parties are agreed and living happy marital life with their small kids, there cannot be any conceivable impediment in accepting

the marriage. In yet another judgment **Shafin Jahan vs. Asokan K.M., (2018) 16 SCC 368**, it has been opined by the Hon'ble Apex Court that where an individual is over 18 years of age, no fetters could be placed on her choice on where to reside or about the person with whom she could stay. Whatever may be the date of birth of petitioner, fact remains, that she is at present more than 18 years of age. As the petitioner is *sui juris*, no fetters could be placed upon her choice of the person to whom she wants to stay, nor any restriction could be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of a person in such a matter.

(14). This Court has observed that the girls-prosecutrix, who have decided to marry, are either on the family way or they are blessed with their kids. The Court while deciding the petitions must wear a humane face and the practicality of the issue. The parties are in their marital union for a considerable period and they are parent of one or more kids. At this stage to ask them to face the criminal prosecution would amount to bundle load of injustice to the alleged wrongdoers and to their kids who are nowhere connected with the alleged offence.

[15]. The Court is conscious of its role that the judicial system is tasked not only with interpreting and upholding the law but also with understanding of the dynamics of society. The role of the Court is much more onerous and beyond mere application and interpretation of the statutes. It involves an understanding of the implications of its decisions on individuals and the community at large. Striking this balance requires a thorough examination of the facts, legal precedents and involving ethos of the society it serves. The Court

must weigh competing interests, considering the impact of its decisions on the parties involved and the broader implications for justice, fairness and social order.

[16]. The dilemma at times faced by the Court can be of trying to justify State/Police action against an adolescent couple who got married with each other and continued to lead a peaceful life and raise a family, and respect for obeying the law of the land. This Court has time and again reached to the conclusion that true love between the individuals, one or both of who may be a minor or at the verge of majority, cannot be controlled through rigours of law or State action. The cases as the present one are those where the dilemma of the Judge, which though may be rare, has to take into account the delicate balance which the constitutional court or courts of law have to strike a balance between the law and its strict application and the repercussions of its judgments and orders by application of such laws in the society as a whole and the individuals who are before it.

[17]. **When the scale of justice has to be weighed, they are not on the basis of mathematical precision or the mathematical formulas or theorems, but at times, while on one side of the scale there is the law and other side of scale may carry the entire life, happiness and the future of toddlers, their parents and the parents of their parents. The scale that reflects and portrays such pure happiness *sans* any criminality would definitely equal the scale carrying the law as the application of law is meant for maintaining the rule of law and an orderly society.**

[18]. Thus, in the light of the above discussion of factual and the legal aspects of the issue, this Court is of the considered opinion that the subsistence of respective trials of the applicants would make their

lives and new couple horrible and terrific. They would lead their life under the sword of democles and may sometimes adversely impact their *inter-se* marital relationship. This is not the objective of the law. The application of law has to be given a humane face so that it would facilitate an orderly society and not full of turmoil and disturbance, therefore, the Court in exercise its extra-ordinary power u/s 482 Cr.P.C., in order to achieve the larger goal and interest, allows all aforementioned four petitions i.e. (1) APPLICATION U/S 482 No. - 1327 of 2024 (2) APPLICATION U/S 482 No. - 1677 of 2015 connected with (3) APPLICATION U/S 482 No. - 3413 of 2014 and (4) APPLICATION U/S 482 No. - 6425 of 2023. The impugned charge sheets, summoning orders and the entire criminal proceedings arising out thereof, pending against the applicants in above mentioned case crime numbers are hereby quashed.

[19]. All the petitions stand ALLOWED.

[20]. The Senior Registrar of this Court is directed to communicate this judgment to the respective sessions courts within 15 days from today for communication and compliance.

[21]. Copy of this judgment shall be placed in all aforementioned petitions.

**Order Date :- 13.2.2024**

M. Kumar