

**Case :-** APPLICATION U/S 482 No. - 26182 of 2023

**Applicant :-** Rakesh Yadav And 2 Others

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

**Counsel for Applicant :-** Raj Kumar Kesari

**Counsel for Opposite Party :-** G.A.,Ambikesh Kumar Sharma

**Hon'ble Sanjay Kumar Singh,J.**

1-Heard Mr. Raj Kumar Kesari, learned counsel for the applicants, Mr. O.P. Dwivedi, learned Additional Government Advocate-1st for the State of U.P./opposite party no.1 and Mr. Ambikesh Kumar Sharma, learned counsel for opposite party no.2.

2-This application under Section 482 Cr.P.C. has been filed by the applicants to quash the charge-sheet dated 24.12.2022, order dated 08.06.2023 by which cognizance has been taken against applicant no.1 under Sections 376, 506 I.P.C. and against applicant nos. 2 and 3 under Sections 504 and 506 I.P.C. and proceedings of Criminal Case No. 341 of 2023 (State Vs. Rakesh Yadav) in Case Crime No. 296 of 2022, under Sections 376, 504, 506 I.P.C., Police Station-Badlapur, District-Jaunpur, pending in the Court of learned Additional Civil Judge (Junior Division), New Court No.III/Judicial Magistrate, Jaunpur.

3-As per the prosecution case in brief, the victim lodged F.I.R. on 07.11.2022 with regard to an alleged incident dated 11.09.2022 against the applicants, namely, Rakesh Yadav, Rajesh Yadav and Lal Bahadur Yadav for the alleged offence under Sections 376 and 506 I.P.C. with the allegations inter alia that her marriage was solemnized in the year 2001 with Ajay Kumar and thereafter from their wedlock two children, namely, Akash and Akansha were born, who are presently aged about 18 years and 16 years respectively, but there was acrimonious relation between her and her husband-Ajay Kumar. Applicant no.1-Rakesh Yadav taking the benefit of this situation, coaxed her by assuring that he will solemnize marriage with her, therefore she stayed with Rakesh Yadav for five months. During this period

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Rakesh Yadav on the pretext of marriage made physical relation with her. Co-accused Rajesh Yadav and Lal Bahadur who are brother and father of the applicant no.1 also assured her that they will get her married with Rakesh Yadav. Subsequently, on mounting pressure by her, they took her to district Court, Jaunpur on 07.03.2023 and took her signature on plain stamp paper and told that her notary marriage has been done, whereas, no such marriage was solemnized.

4-The main substratum of argument of learned counsel for the applicants is that applicant nos.1 and 2 are real brothers and applicant no.3 is father of applicant nos. 1 and 2. The victim is married lady aged about 40 years and mother of two children. She is matured enough to understand the significance and morality of the act for which she was consenting with the applicant no.1. It is not a case of rape but a case of consensual relation between applicant no.1 and the victim. She has not given consent under any misconception of the facts, hence, her consent for making physical relation with applicant no.1 was the valid consent. It is also pointed out that against the applicant no.2 and 3, charge sheet has been submitted only under Sections 504 and 506 I.P.C. Learned counsel for the applicants placing reliance upon the judgment of the Apex Court in the case of **Shambhu Kharwar vs. State of U.P. and Another, 2022 SCC OnLine SC 1032** submits that under the facts of the case, criminal proceeding against the applicants is abuse of the process of the Court.

5-On the other hand, learned Additional Government Advocate for the State of U.P. and learned counsel for opposite party no.2 opposed the prayer of the applicants by reiterating the prosecution case as mentioned in F.I.R.

6-Having heard the learned counsel for the parties, I find that it is not disputed that victim is an adult and married woman aged about 40 years. She without giving divorce to her husband and leaving her two children, started living in live-in relationship with the

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applicant no.1 in order to achieve her aim of marriage with the applicant no.1. This Court is of the view that if a married woman having experience in sex does not offer resistance, it cannot be said that her physical relation with a man was against her will.

7-Prima facie, matter requires consideration.

8-Opposite parties may file counter affidavit within six weeks. Rejoinder affidavit, if any, may be filed within three weeks thereafter.

9-List this case after nine weeks.

10-Until further order of this Court, further proceedings of the aforesaid case against the applicants shall remain stayed.

**Order Date :- 4.8.2023**

Kashifa