



2026:AHC:54643-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 3487 of 2026

Smt. Chanda And Another

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s) : Vinod Kumar Yadav

Counsel for Respondent(s) : G.A., Ganesh Mani, Sugandha Yadav

Court No. - 47

HON'BLE RAJEEV MISRA, J.

HON'BLE LAKSHMI KANT SHUKLA, J.

1. Heard Mr.Vinod Kumar Yadav, the learned counsel for petitioners,the learned A.G.A. for State-respondents 1, 2 and 3 and Mr. Ganesh Mani Tripathi, the learned counsel representing first informant-respondent-4.

2. Supplementary affidavit filed by the learned counsel for petitioners in Court today, is taken on record.

3. Perused the record.

4. Petitioners-Smt. Chanda and Fuldev have approached this Court by means of present criminal misc. writ petition challenging the FIR dated 07.06.2024 lodged by first informant-respondent-4 Guddi Devi and registered as Case Crime No. 0479 of 2024, under Section 363 IPC, Police Station-Gulriha, District-Gorakhpur.

5. Learned counsel for petitioners in challenge to the impugned FIR submits that in view of the facts and circumstances as have now crystallized on record, the criminal prosecution of petitioners pursuant to the impugned FIR dated 07.06.2024 is not only malicious but also an abuse of the process of Court. As such, the impugned FIR is liable to be quashed by this Court.

6. In furtherance of aforesaid submission, the learned counsel for petitioners submits that though petitioner-1 Smt. Chanda (prosecutrix) was minor on the date of her marriage with petitioner-2 Fuldev, however, in view of the fact that the prosecutrix has solemnized marriage with petitioner-2 Fuldev,

therefore, the criminal prosecution of petitioners pursuant to the impugned FIR cannot be sustained. According to the learned counsel for petitioners, by virtue of the provisions contained in Section 5 of the Hindu Marriage Act, in case, the bride or the bridegroom is below the prescribed age, then in such a circumstance, the marriage shall not be void but voidable at the instance of other party. It is then submitted by the learned counsel for petitioners that no proceedings have been initiated by the prosecutrix i.e. petitioner-1 for declaration of her marriage with petitioner-2 as void. Learned counsel for petitioners then submits that petitioner-2 is major, which fact is evident from the Aadhar Card of petitioner-2. Copy of same has been brought on record as Annexure-2 to the writ petition. According to the learned counsel for petitioners, petitioners fell in love with each other, therefore, on account of love and fascination for each other, they solemnized their marriage in accordance with Hindu Rites and Customs. A categorical averment to that regard has been made in paragraph-3 of the supplementary affidavit filed by the learned counsel for petitioner in Court today. As such, petitioners are now living together as husband and wife. On the above conspectus, the learned counsel for petitioners thus submits that criminal prosecution of petitioners cannot be sustained either in law or on fact. For ready reference, paragraph-3 of the supplementary affidavit is reproduced herein below;-

"3. That it is submitted here that the petitioners are solemnized their marriage at Gorakhpur Temple according to Hindu Rites and Rituals as well as Saptapadi (Seven Steps) on 05.02.2026 by Acharya Sumit Shukla, in this regard Acharya Sumit Shukla had clarified the marriage of petitioners in his own writing. A Photostat copy of marriage clarification of petitioners dated 05.02.2025 is being filed herewith and marked as Annexure no. S.A.1 to this affidavit"

7. To buttress his submission, the learned counsel for petitioners has relied upon the judgments of Supreme Court in (1) **K. Dhandapani Vs. State by the Inspector of Police, 2022 SCC OnLine SC 1056**, (ii) **Mafat Lal Vs. State of Rajasthan, (2022) 6 SCC 589** and (iii). **Criminal Appeal No. 41 of 2024 (Shriram Urav Vs. State of Chhattisgarh) decided on 30.01.2025**, wherein the Apex Court quashed the FIR on the ground that the accused therein has solemnized marriage with the prsoecutrix and secondly, the Court cannot turn a blind eye to the said fact. On the above conspectus, the

learned counsel for petitioners thus submits that the impugned FIR is liable to be quashed by this Court.

8. Per contra, the learned G.A. for State-respondents 1, 2 and 3 has vehemently opposed the present writ petition. However, he could not dislodge the factual and legal submissions urged by the learned counsel for petitioners in support of present writ petition with reference to the record at this stage.

9. On the other hand, Mr. Ganesh Mani Tripathi, the learned counsel representing first informant-respondent-4 submits that he has received instructions not to oppose the present writ petition. He has invited the attention of Court to the short counter affidavit filed on behalf of first informant-respondent-4 and has referred to paragraphs 4, 5 & 6 of the said short counter affidavit. For ready reference, the same are extracted herein under;-

"4. That it is submitted here that the respondent no. 4/informant does not want press any criminal proceeding against the petitioners, as the respondent no. 4/informant has accepted the petitioner no. 2 as her son-in-law, in this regard she given her personal affidavit on 07.02.2026. A true copy of affidavit dated 07.02.2026 is being filed herewith and marked as Annexure no. C.A. 2 to this affidavit.

5. That the petitioners are solemnized marriage in temple on 05.02.2026 in present of both family members and the petitioners are living happily as husband and wife, the respondent no. 4 having no objection from the marriage and she accepted to the petitioners.

6. That the respondent no. 4/first informant does not want to press the proceedings of case crime no. 0479 of 2024, under Section 363 IPC, Police Station Gulriha, District Gorakhpur and same may be quashed on the basis of affidavit given her informant before respondent no. 2 herself."

10. On the above premise, it is thus urged by the learned counsel representing first informant-respondent-4 that the first informant-respondent-4 has now accepted petitioner-2 as her son-in-law. Therefore,

in such a circumstance, she cannot have any grievance, in case, the present writ petition is decided by this Court in the light of averments made in paragraphs 4, 5 & 6 of the short counter affidavit.

11. Having heard the learned counsel for petitioners, the learned A.G.A. for State-respondents 1, 2 & 3, the learned counsel representing first informant-respondent-4 and upon perusal of record, this Court finds that petitioners have duly solemnized their marriage in accordance with Hindu Rites and Customs. Though the prosecutrix i.e. petitioner-1 was below 18 years of age on the date of her marriage, however, by virtue of the provisions contained in Section 5 of the Hindu Marriage Act, the marriage of petitioner-1 with petitioner-2 shall not be void but voidable at the instance of other parties. Admittedly, the prosecutrix has joined petitioner-2 and is now residing with him as his legally wedded wife. No proceedings have been initiated by the prosecutrix i.e. petitioner-1 for declaration of her marriage with petitioner-2 as void. In view of above and also the law laid down by Apex Court in the judgments referred to above, the inescapable conclusion is that criminal prosecution of petitioners pursuant to the impugned FIR cannot be sustained either in law or on fact.

12. As a result, the present writ petition succeeds and is liable to be allowed.

13. It is, accordingly, **allowed**.

14. The impugned FIR dated 07.06.2024 lodged by first informant-respondent-4 Guddi Devi and registered as Case Crime No. 0479 of 2024, under Section 363 IPC, Police Station-Gulriha, District-Gorakhpur (Annexure-1 to the writ petition) shall stand quashed.

March 17, 2026

Vinay

(Lakshmi Kant Shukla,J.) (Rajeev Misra,J.)