

Serial No. 06
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 59 of 2023

Date of Decision: 07.06.2023

Shri. Skolbha Lamare & Anr. Vs.

State of Meghalaya & 3 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. A.P. Kharsahnoh, Adv.
For the Respondent(s) : Mr. A.H. Kharwanlang, Addl.Sr.GA.

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT AND ORDER (ORAL)

1. This is a case where apparently a love relationship between a young couple has proceeded to the extent that they have indulged in a physical relationship, as a result of which the girl who is admittedly a minor being about 16 years old or so at the relevant time, became pregnant and has subsequently delivered a child out of the said relationship with the petitioner No. 1 herein. The said relationship took a turn for the worse, inasmuch as, the petitioner No. 1 has initially refused to recognize his relationship with the alleged victim girl and the petitioner

No. 2 who is the father of the victim, out of anger at the conduct of the petitioner No. 1, lodged a First Information Report on 21.11.2022 before the Officer-in-Charge, Ummulong Beat House, West Jaintia Hills District, Meghalaya.

2. Investigation then commenced on the case being registered as Jowai P.S. Case No. 151 (11) of 2022 under Section 5 (j) (ii)/6 of POCSO Act. The Investigating Officer (I/O) after completion of the investigation, has filed the charge sheet on 13.12.2022. It is the findings of the I/O on all the evidences collected during the investigation that a prima facie case under Section 5 (j) (ii)/6 of POCSO Act is found well established against the petitioner No. 1/accused and the matter was put up before the competent court for commencement of the trial. The case now is at the stage of evidence.

3. In the meantime, it appears that the accused/petitioner No. 1 and the complainant/petitioner No. 2 had a change of heart and that the relationship have come to a point that according to them, good sense have prevailed, with the relationship between the petitioner No. 1 and the minor daughter of the petitioner No. 2 being acknowledged by the families of both parties and also that both the concerned parties have agreed that as and when the time comes, particularly when the minor daughter of the petitioner No. 2 comes of age, they will bind themselves in a legally

marital relationship, until then, the petitioner No. 1 has assured that he will take care of the child born out of the relationship aforementioned.

4. In this backdrop, the petitioners have approached this Court, inter alia, with a prayer that the proceedings before the court concerned may be brought to a closure as continuance of the same would not serve any useful purpose, considering the fact that parties have come to an agreement, evidenced by the fact that a Deed of Settlement has been executed between them, indicating therein that they have arrived at a mutual understanding, bowing to the wishes of their son and daughter (petitioner No. 1 and the minor daughter of the petitioner No. 2) and also looking into the welfare of the new born child, the family members have thought it fit to allow the relationship to continue. The petitioner No. 2 has accordingly indicated that he is no longer willing to pursue the matter before the court.

5. Ms. A.P. Kharsahnoh, learned counsel for the petitioners has submitted that this being the case, this Court exercising its inherent power under Section 482 Cr.P.C may be pleased to quash the proceedings before the Court of the learned Special Judge (POCSO), West Jaintia Hills District, Meghalaya in Special (POCSO) Case No. 31 of 2022.

6. In course of these proceedings, a query was made by this Court on the basis of the materials on record, which has indicated that the

petitioner No. 1 was already a married man as to whether the same is factual, to this extent, the prosecution was requested to file status report in this regard.

7. Mr. A.H. Kharwanlang, learned Addl. Sr. GA appearing on behalf of the State respondents, has accordingly presented the status report before this Court, wherein in which report, it is clearly indicated that the petitioner No. 1 is not yet married even at the time of registration of the case.

8. This aspect of the matter being clear, it would now appear to this Court that there is a relationship between the two young persons out of which, a child was born to them. Apparently, the alleged victim girl being a minor, the provisions of the POCSO Act would come into play, inasmuch as, the act perpetrated by the petitioner No. 1 can be assumed to be an act of sexual assault under the relevant provisions of the said POCSO Act. However, this Court as well as other High Courts dealing with similar issues of this kind, has maintained that it would be a futile exercise for the trial in such circumstances to proceed, when apparently, in a situation where the complainant chooses to withdraw from the proceedings by way of retracting his/her complaint and also the fact that the alleged victim girl or survivor in her statements before the police or the court for that matter has clearly indicated that the act involved was

actuated out of mutual consent and is voluntary which in logical terms, would mean that no force was present. The same would show that no act of sexual assault, in its literal sense, is evident in such a scenario. Even so, this Court in many of its decision on this issue has time and again referred to reliable authorities pronounced by some of the Hon'ble High Courts in this country, particular reference being made to the case of ***Vijayalakshmi & Anr. v. State Rep. By. Inspector of Police, All Women Police Station, Erode: Crl. O.P No. 232 of 2021***, wherein at para 12 & 18 of the same, the Hon'ble Madras High Court has laid down certain observations relevant to the subject matter. For ready reference, the same are reproduced herein below:

“12. As rightly recognized by the Learned Single Judge of this Court in Sabari's Case (cited supra), incidences where teenagers and young adults fall victim to offences under the POCSO Act being slapped against them without understanding the implication of the severity of the enactment is an issue that brings much concern to the conscience of this Court. A reading of the Statement of Objects and Reasons of the POCSO Act would show that the Act was brought into force to protect children from offences of sexual assault, sexual harassment and pornography, pursuant to Article 15 of the Constitution of India, 1950 and the Convention on the Rights of the Child. However, a large array of cases filed under the POCSO Act seems to be those arising on the basis of complaints registered by the families of adolescents and teenagers who are involved in romantic relationships with each other. The scheme of the Act clearly shows that it did not intend to bring within its scope or ambit, cases of the nature where adolescents or teenagers involved in romantic relationships are concerned.

18. In the present case, the 2nd Petitioner who was in a relationship with the 2nd Respondent who is also in his early twenties, has clearly stated that she was the one who insisted that the 2nd Respondent take her away from her home and marry her, due to the pressure exerted by her parents. The 2nd Respondent, who was placed in a very precarious situation decided to concede to the demand of the 2nd Petitioner. Thereafter, they eloped from their respective homes, got married and consummated the marriage. Incidents of this nature keep occurring regularly even now in villages and towns and occasionally in cities. After the parents or family lodge a complaint, the police register FIRs for offences of kidnapping and various offences under the POCSO Act. Several criminal cases booked under the POCSO Act fall under this category. As a consequence of such a FIR being registered, invariably the boy gets arrested and thereafter, his youthful life comes to a grinding halt. The provisions of the POCSO Act, as it stands today, will surely make the acts of the boy an offence due to its stringent nature. An adolescent boy caught in a situation like this will surely have no defense if the criminal case is taken to its logical end. Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act. An adolescent boy and girl who are in the grips of their hormones and biological changes and whose decision-making ability is yet to fully develop, should essentially receive the support and guidance of their parents and the society at large. These incidents should never be perceived from an adult's point of view and such an understanding will in fact lead to lack of empathy. An adolescent boy who is sent to prison in a case of this nature will be persecuted throughout his life. It is high time that the legislature takes into consideration cases of this nature involving adolescents involved in relationships and swiftly bring in necessary amendments under the Act. The legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act.”

9. Similarly, the Hon'ble High Court of Calcutta in the case of

Ranjit Rajbanshi v. State of West Bengal & Ors: C.R.A. No. 458 of 2018

at para 47, 48 & 49, has observed as under:

“47. In the present case, the victim girl was admittedly 16 ½ years old and studied in Class XII at the relevant point of time. She was not naïve enough not to know the implication of sexual intercourse; rather, the victim admittedly had a physical relationship with the accused, who was also of a very young age, on several occasions prior to the incident. Although the consent of a minor is not a good consent in law, and cannot be taken into account as 'consent' as such, the expression 'penetration' as envisaged in the POCSO Act has to be taken to mean a positive, unilateral act on the part of the accused. Consensual participatory intercourse, in view of the passion involved, need not always make penetration, by itself, an unilateral positive act of the accused but might also be a union between two persons out of their own volition. In the latter case, the expression 'penetrates', in Section 3(a) of the POCSO Act might not always connote mere voluntary juxtaposition of the sexual organs of two persons of different genders. If the union is participatory in nature, there is no reason to indict only the male just because of the peculiar nature of anatomy of the sexual organs of different genders. The psyche of the parties and the maturity level of the victim are also relevant factors to be taken into consideration to decide whether the penetration was a unilateral and positive act on the part of the male. Hence, seen in proper perspective, the act alleged, even if proved, could not tantamount to penetration sufficient to attract Section 3 of the POCSO Act, keeping in view the admitted several prior occasions of physical union between the accused and the victim and the maturity of the victim.

48. As such, it cannot be said that the accused was guilty of penetrative sexual assault, as such, since here the act of penetration, even if true, would have to be taken not as an unilateral act of the accused but a participatory moment of passion involving the participation of both the victim and the accused.

49. Although the question of consent does not arise in case of a minor, in order to attract Section 376(1) of the IPC, it had to be established that the alleged offence was committed against the will of the victim. Read in conjunction, the provisions of Section 376 of the IPC and Section 3 of the POCSO Act ought to be construed on a similar footing and cannot incriminate the accused for a voluntary joint act of sexual union.”

10. This Court as mentioned above, being in respectful agreement with the said observations made by the Hon’ble Madras High Court as well as the Hon’ble High Court of Calcutta and in application of the same principle to the case in hand, would agree that ends of justice would be met if the proceedings in question is brought to a closure.

11. Accordingly, this petition is allowed. The said FIR dated 21.11.2022 filed by the petitioner No. 2 herein and also the consequent proceedings in Special (POCSO) Case No. 31 of 2022 are hereby set aside and quashed.

12. The petitioner No. 1 is hereby discharged from all liabilities, if any, pertaining to the case referred to hereinabove.

13. In view of the above, this petition is accordingly disposed of. No costs.

Judge

Meghalaya
07.06.2023
“D. Nary, PS”