

Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 35 of 2022

Date of Decision: 11.04.2023

Shri Honil Marak & Anr. Vs. State of Meghalaya & 2 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner(s) : Mr. S. Deb, Adv.

For the Respondent(s) : Mr. B. Bhattacharjee, AAG with
Mr. S. Sengupta, Addl. P.P (For R 1 & 2)

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

J U D G M E N T

1. Heard Mr. S. Deb, learned counsel for the petitioners who has submitted that this is a petition filed under Section 482 Cr.P.C. seeking to quash the criminal proceedings in Williamnagar Women P.S. Case No. 16(08) of 2020 under Sections 5/6 of the POCSO Act, 2012 wherein the petitioner No. 1 is the father of the victim girl and the petitioner No. 2 is

the accused.

2. The learned counsel has further submitted that in the year 2014, the petitioner No. 2 got married to the aunt of the victim girl but there was no issue out of the said marriage.

3. In the year 2019, the mother of the victim girl fell ill and was paralyzed which led the victim to visit the residence of her aunt and grandparents, which is also the residence of the petitioner No. 2. After a few visits, the said victim girl and the petitioner No. 2 developed romantic feelings for each other and being desirous of getting married, the wife of the petitioner No. 2 was informed of such decision to which she did not object.

4. At this juncture, the learned counsel has submitted that in the Garo community, it is customary for a man to marry more than one wife, in many cases, apart from being married to his wife, he may have to marry his widowed mother-in-law, on the death of his father-in-law and can marry upto three wives. Therefore, polygamy is not frowned upon in the community.

5. The petitioner No. 2 then proposed marriage to the victim girl in November 2019, such proposal being known to the family members and

clan elders of the parties. The relationship further developed to the extent that whenever they used to meet, occasionally, they would involve themselves in consensual sexual intercourse.

6. The victim girl was found to be pregnant and in the month of August 2020, on her expected date of delivery, she was admitted at Williamnagar Civil Hospital, but was later taken to Tura Civil Hospital where she delivered her baby on 25.08.2020.

7. To the surprise of the petitioner No. 2, he came to know that the respondent No. 3, who is the Member Secretary of the Child Welfare Committee, East Garo Hills had filed an FIR on 06.08.2020 informing the police of the fact that the victim girl was impregnated by the petitioner No. 2 who is her uncle and that she is still a teenager of 14 years and as such, it was requested that necessary steps be taken under the provisions of the POCSO Act.

8. On receipt of the said FIR, a criminal case was registered being Williamnagar Women P.S. Case No. 16(08) of 2020 under Sections 5/6 of the POCSO Act with the petitioner No. 2 as the accused person. The petitioner No. 2 accordingly surrendered before the police on 06.08.2020 itself and was taken into custody, but was released on default bail after

being in custody for more than 90 days.

9. On investigation being launched, the Investigating Officer (IO) then filed the Charge Sheet on 21.05.2021, coming to the finding that a *prima facie* case is well made out against the accused person/petitioner No. 2 herein under Sections 5/6 of the POCSO Act, 2012.

10. The learned counsel has submitted that the factors that may be considered in this case is the fact that there is a love relationship between the petitioner and the victim girl, secondly, that the prevailing customs and usages would allow the marriage between the two even while the first wife is still alive, thirdly, now that they are living under the same roof and having a child, continuing with the criminal proceedings would cause hardship and would jeopardize their lives and family considering the fact that they are a young couple and finally, it is the father of the victim girl who has approached this Court proving the bonafide of the petitioners' case.

11. Citing the case of Mohammad Waseem Ahamad v. State in Criminal Petition No. 5917 of 2022, wherein vide order dated 10.10.2022, the Hon'ble Karnataka High Court had quashed the criminal proceedings in a case under Sections 5(1)/6 and 17 of the POCSO Act and Sections 9

and 11 of the Child Marriage Restraint Act on the ground that the marriage between the petitioner/accused therein and the minor victim girl was acknowledged under Mohammedan tradition. The learned counsel has reiterated that in this instant case, the relationship between the petitioner No. 2 and the victim girl is based on Garo customary practices, this petition may be allowed and the said criminal proceedings be set aside and quashed.

12. Mr. B. Bhattacharjee, learned AAG resisting the submission and contention raised by the petitioners has submitted that this Court may take note that the act of sexual intercourse between the petitioner No. 2/accused and the victim girl was never denied, admittedly, the victim girl was about 14 years old at the time when the episode took place.

13. It is also not denied that the petitioner No. 2 is a married man with his wife still living with him, therefore, the provision of Section 494 IPC, which prohibits a second marriage while still married to the first wife, will be attracted in his case, if he maintains that he is now also married to the victim girl.

14. Another contention raised is that the victim girl is below the age of 18 years and as mandated under the POCSO Act, comes under the

definition of a child, who is incapable of giving consent either to sexual intercourse or marriage. Therefore any personal law or custom which allows a child to contract marriage or consent to sexual intercourse, such provision or practice will attract the provision of Section 42A of the POCSO Act, which override such law or practice.

15. Referring to the case of Khaledur Rahman v. State of Kerala, the learned AAG has submitted that this is a case where bail was under consideration by the Hon'ble Kerala High Court in Bail Appl. No. 8216 of 2022 and vide order dated 18.11.2022, the High Court rejected the application, noting that the case is with regard to an alleged marriage relationship between the victim girl and the petitioner therein, the girl being about 16 years of age, who due to pregnancy and on being examined at the Family Health Centre, Kaviyoor, the police were informed of the same which led to registration of a criminal case and launching of investigation.

16. The petitioner therein while applying for grant of bail has taken the plea that he is married to the victim girl according to Mohammedan law which allows such union and therefore, that they are living together as husband and wife. However, this contention was rejected by the High

Court taking recourse to the provision of the POCSO Act, particularly Section 42A to hold that marriage between Muslims under personal law is not excluded from the sweep of the POCSO Act. Bail was not granted therein.

17. In this view of the matter, this case being of similar nature and character, it is submitted that this petition is devoid of merits and the same is liable to be dismissed.

18. This Court on the basis of the submission made and the materials on record, would at the outset, note that on the query of the Court as to the status of the case before the Trial Court, the petitioners have responded that the evidence of some prosecution witnesses have been recorded and copy of the evidence of the victim girl recorded as PW-1 was made available to this Court.

19. Facts which emerged from the records included in the petition as well as from the submission and contention of the rival parties would confirmed that the relationship between the petitioner No. 2/accused person and the alleged victim girl is that of uncle and niece. That there was a sexual relationship between the two culminating in the pregnancy and subsequent birth of a child by the victim girl was also not denied.

Again, that the petitioner No. 2 is married to the aunt of the victim girl is also not denied.

20. What is found missing from the records is the factum of no objection to the alleged relationship by the parent of the victim girl. There is also no indication as to whether the wife of the petitioner No. 2 has consented to such a relationship as required under the said customary practice.

21. The petitioner No. 1 is the father of the victim girl, he is not the complainant who filed the FIR, there is nothing to show that he was authorized by the victim girl to file this petition along with the petitioner No. 2, therefore, it cannot be presumed that he is speaking on behalf of the victim girl.

22. In this petition it is averred that the petitioner No. 2 and the victim girl are living together in his house and are ready to get married as soon as the victim girl completes her schooling. As observed, nothing is found from the records that the victim girl has agreed to such an arrangement that she will be married to the petitioner No. 2 in due course. Even an affidavit sworn by her and produced in this Court would suffice to prove this factum, but no such assertion in any form is found.

23. In her statement under Section 164 Cr.P.C, annexed to this petition as Annexure-5, the victim girl has related only to one occasion when she had sexual intercourse with the petitioner No. 2 and in a one line statement she did say that she loved him. Nothing is said about getting married and staying together. On the contrary, from the deposition made by her before the Trial Court on 22.11.2022 as PW-1, she has stated that she has dropped out from school in the year 2020 and that she is staying with her parents at Matwa Apal. She went on to say that in the year 2018, the petitioner No. 2 came to her house when no one was there and had sexual intercourse with her. The second time was when she had gone to cut bananas from the plantation area when the petitioner No. 2 suddenly came and had sexual intercourse with her. In cross-examination she also stated that she did had sexual intercourse with him at his house when she stayed overnight.

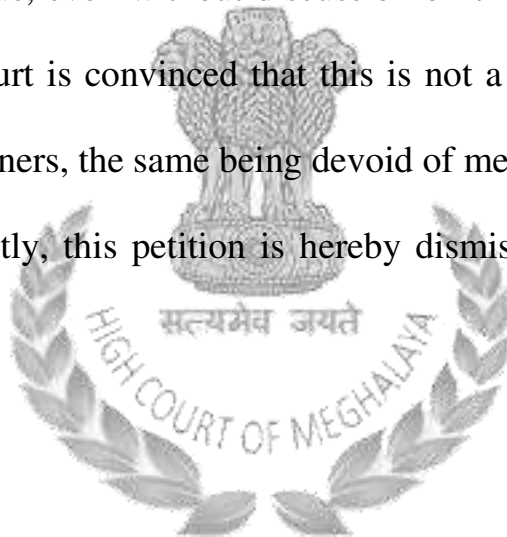
24. What is damning for the case of the petitioner No. 2 is that the victim girl in her deposition has clearly stated that the accused person/petitioner No. 2 had threatened her not to reveal about the incident to anyone, else he will beat her.

25. This is definitely not a sign of a love relationship between two

young person and no indication of any intention on the part of the victim girl to get married to the petitioner No. 2. Since the victim girl is not before this Court in these proceedings, the petitioner No. 1 not having demonstrated that he is speaking on her behalf, this Court has no option but to presume that the victim girl was not taken into consideration or confidence when this petition was filed.

26. Viewed thus, even without discussion on the authorities cited by the parties, this Court is convinced that this is not a fit case to allow the prayer of the petitioners, the same being devoid of merits.

27. Consequently, this petition is hereby dismissed and disposed of accordingly.



Judge

Meghalaya
11.04.2023
"Tiprilynti-PS"