

Serial No. 01

Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn No. 61 of 2022

Date of Decision: 07.02.2023

Shri. Momin Miah

Vs.

State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.K. Hassan, Adv.

For the Respondent(s) : Mr. A.H. Kharwanlang, GA (R-1)
Ms. A.P. Kharsahnoh, Adv. (R-2)

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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

1. This is an application under Section 482 Cr.P.C. preferred before this Court with a prayer to quash the criminal proceedings in Special POCSO Case No. 05 of 2020 under Section 376 IPC read with Section 3(a) and 4 of the POCSO Act, 2012 pending before the Court of the learned Special Judge (POCSO), Ampati, South West Garo Hills District.

2. From the records, particularly the brief facts of the case as seen from the charge sheet No. 3 dated 07.10.2020, is that on 09.08.2020, the police

received a written FIR from the complainant who is the Chairperson, Child Welfare Committee (CWC), Ampati in South West Garo Hills District. The complaint is that the complainant on interaction with one minor girl aged about 16 years, it is found that she is said to have been married to the accused person herein Shri. Momin Miah and the child being below 18 years, it is prayed that necessary action may be taken in this regard.

3. The police on receipt of the said FIR has accordingly, registered a case being Women Police Case No. 3(8)2020 under Section 376 IPC read with Section 3(a)/4 of the POCSO Act, 2012. The said accused/petitioner was also accordingly arrested on 10.09.2020 in connection with the said case after he surrendered before the police and is still in judicial custody.

4. In course of trial, the evidence of two prosecution witnesses were recorded, the alleged victim being PW-1 and her mother being PW-2 respectively. It is at this juncture that the petitioner/accused has approached this Court with the aforesaid application and prayer.

5. Heard Mr. S.K. Hassan, learned counsel for the petitioner who has submitted that from the facts and circumstances of the case, particularly the complaint made by the Chairperson, CWC, Ampati, there is an allegation that a marriage has taken place involving the petitioner herein and the alleged victim minor girl and thus, being below 18 years of age, the said marriage is prohibited by the relevant laws for which the petitioner is liable to face prosecution before the competent court of law. Hence the FIR.

6. Mr. Hassan has however maintained that the allegation of a marriage ceremony having taken place on 03.08.2020 at the residence of the petitioner and that a sexual relationship between the petitioner and the alleged victim girl also happened on that day is not an actual narration of the factual situation. Infact, on the said date, the girl along with her mother came to the residence of the petitioner and a formal engagement ceremony took place according to their customs. However, since the girl was only about 16 years old at that time, it was agreed by both side that she will go back to her parental home till she attains the age of majority after which a formal marriage ceremony will be conducted.

7. Again, the learned counsel has submitted that the alleged victim girl in her statement under Section 164 Cr.P.C. recorded by the learned Magistrate has clearly said that though she went to the house of the petitioner on the said date, there was no physical sexual contact on that day or night as she stayed with her mother-in-law and returned home the next day. This statement was also reiterated in her deposition before the Court as PW-1.

8. In the light of the statement made by the alleged victim girl, the learned counsel has submitted that no case as charged against the petitioner/accused can be made out and the final outcome will only be the eventual acquittal for which this Court for ends of justice may be pleased to exercise its inherent powers under Section 482 Cr.P.C.

9. Mr. A.H. Kharwanlang, learned GA has submitted that contrary to

what the learned counsel for the petitioner has submitted, the medical report submitted by the Doctor who has examined the victim girl soon after the FIR was lodged and on being referred for medical examination would show that the victim girl has stated that on the said day, that is, on 03.08.2020 she has stayed for two days with her husband and had sexual intercourse with him. In this regard, the said medical examination also revealed that the hymen of the said victim girl was torn at 7 O'clock position. In the light of this evidence, the Investigating Officer (I/O) has returned the charge sheet with a finding that there exists a strong prima facie case against the accused/petitioner under Section 376 IPC read with Section 3(a)/4 of the POCSO Act. Accordingly, it is submitted that this is not a fit case for this Court to exercise its inherent powers to quash the aforesaid proceedings before the court of the learned Special Judge (POCSO) at Ampati.

10. Having heard the learned counsels for the rival parties, this Court is to consider as to whether a case has been made out for quashing of the said criminal proceedings before the said Special Judge (POCSO).

11. On the said day when the alleged occurrence of sexual intercourse happened, that is, on 03.08.2020, there is no denial of the fact that both the petitioner as well as the alleged victim girl were at her parental house for the engagement ceremony. It is also not denied that on that day, both of them went to the house of the petitioner/accused. However, as to the statement made that the prohibited marriage ceremony took place on that day, the I/O

has not been able to produce any proof of the same, whether in the form of marriage certificate or a corroboration from independent sources.

12. The learned GA has based his case on the medical report which has indicated that the hymen was torn at 7 O'clock position. However, all the details noted down in the said medical report would show that there was no evidence of violence used, no injury of any kind was found in the body of the alleged victim girl and there is also no clear findings as to whether the torn hymen was an old tear or a recent one.

13. Be that as it may, the clinching factor in this case is the statement of the alleged victim girl herself, when she has clearly stated in her statement under Section 164 Cr.P.C. and also while deposing in Court as PW-1 that there was no sexual intercourse with the accused/petitioner on the alleged date of occurrence and that the marriage will take place only when she has attain the age of majority.

14. In all fairness, this statement of the alleged victim girl will have a telling effect as regard the fate of the said criminal case as the sole testimony of a reliable witness, more so, an alleged victim of sexual assault will persuade and convince the court as to whether a case has been made out or not as far as conviction is concerned.

15. Apparently, in the case in hand, in the light of the statement of the alleged victim girl, this Court is convinced that no case for conviction is present and allowing the proceedings to continue will be an abuse of the

process of the court and ends of justice would not be met.

16. In view thereof, this Court is of the considered opinion that the petitioner has made out a case for due interference by this Court as far as proceedings in Special POCSO Case No. 5 of 2020 is concerned.

17. This petition is accordingly allowed, the proceedings in the said Special POCSO Case No. 5 of 2020 is hereby set aside and quashed. The accused/petitioner is hereby set at liberty from any liabilities in the case.

18. Registry to send back the relevant case records to the concerned court.

19. Petition disposed of. No costs.



Judge

Meghalaya
07.02.2023
"Tiprilynti-PS"