

Serial No. 23
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 70 of 2022

Date of Decision: 15.03.2023

Shri. Biju Marak & Ors. Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P.A. Dohkrut, Adv.

For the Respondent(s) : Mr. H. Abraham, GA
Mr. S. Sengupta, Add. Sr. GA

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. Heard Mr. P.A. Dohkrut, learned counsel for the petitioners. Also heard Mr. H. Abraham, learned GA, appearing for the State respondents. The learned counsel for the petitioners has submitted that the facts leading to the filing of this application under Section 482 Cr.P.C before this Court is that the petitioner No. 1 and the petitioner No. 2 were in love with each

other, which relationship was looked at with disdain by the family members of the petitioner No. 2 who have, in fact, prohibited the petitioner No. 1 to have any contact with the petitioner No. 2.

2. However, the petitioner No. 2 on 28.07.2019 managed to leave her house and met petitioner No. 1 after which, the two of them eloped.

3. The petitioner No. 3, who is the father of the petitioner No. 2 on coming to know of the action of the petitioner No. 2 approached the police station and lodged an FIR before the Byrnihat Police Outpost on the same day to the effect that his daughter/petitioner No. 2 is reported missing from home and is suspected to have gone with the petitioner No. 1.

4. Initially, the police have registered the case as Women P.S. Case No. 39(7) 2019 under Section 363 but on coming to learn that the petitioner No. 2 is a minor who was 17 years at that point of time, relevant Sections under the POCSO Act, 2012 were added to the case.

5. The learned counsel for the petitioner has submitted that the stage of the case is now fixed for consideration of charges.

6. It is further submitted that good sense has prevailed and now the petitioner No. 3 and his family have reconciled to the fact that the petitioner No. 1 and 2 are living together as husband and wife, out of which union,

two children were born to them. At this point of time, since the petitioner No. 2 has attained majority, the petitioner No. 1 and 2 had accordingly got married and have registered their marriage under the Special Marriage Act 43 of 1954 on 18.07.2022 (Annexure-5 to the petition is a copy of the Marriage Certificate). Since all the parties concerned are happy with the relationship of the petitioner No. 1 and petitioner No. 2 who are now staying with the family of the petitioner No. 2, therefore the petitioners have thought if fit that to proceed with the complaint on the basis of the said FIR would be futile and would not serve any useful purpose.

7. To this effect, the parties have also executed a compromise deed dated 16.12.2022 duly signed by the petitioner No. 1, petitioner No. 2, petitioner No. 3 and all the family members who have in effect, indicated that what had happened was a case of misunderstanding and that they have now accepted the petitioner No. 1 as the son-in-law of the family and that they wish to end all differences and to live together as a happy family. On this premise, it is prayed that this petition may be allowed and necessary orders may be passed to set aside and quash the said FIR and the proceedings of Women P.S. Case No. 39(7) 2019 under Section 363 of Spl. (POCSO) Case No. 8 of 2020.

8. In support of his contention, the learned counsel for the petitioner has also referred to the case of Shri. Teiborlang Kurkalang & Anr. vs. State of Meghalaya & Anr., wherein vide order dated 23.03.2022 in Crl. Petn. No. 62 of 2021, this Court, dealing with similar facts and circumstances had allowed the prayer of the petitioners therein and had also quashed the FIR and criminal proceedings related thereto.

9. Mr. H. Abraham, learned GA, appearing for the State respondent has not put in any strong objection to the prayer made by the petitioner and has left it to the discretion of this Court to pass necessary orders in this regard.

10. This Court having duly considered the submission made by the parties herein and under the facts and circumstances narrated, would conclude that this is a case where two young persons are involved in a love affair which has culminated in a union as husband and wife.

11. The petitioner No. 2 being a minor of 17 years or so at that relevant point of time, this Court is mindful of the fact that a person of 17 years or so is quite capable of rational thinking and behavior and would have considered all aspects of the matter where it concerns her life and future. The fact that the petitioner No. 2 had stated in clear terms that she is willing

to stay together with the petitioner No. 1 and that they are now living together as husband and wife with two children born to them, it would indeed be futile to proceed with the criminal proceedings and to prosecute the petitioner No. 1 under such circumstances. This Court, time and again, in similar cases have relied on the off repeated case of *Ranjit Rajbanshi v. The State of Bengal & Ors.*: C.R.A. No. 458 of 2018, wherein the Hon'ble High Court of Calcutta at para 47, 48 and 49 of the same has succinctly laid down the parameters as regard relationship between a young couple, one of whom is a minor vis-à-vis the provision of the POCSO Act. For proper elucidation, the said paras are reproduced herein:

“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.”

12. Yet another case cited by this Court in the case of Teiborlang Kurkalang (supra) is the case of Vijayalakshmi & Anr. v. State Rep. by The Inspector of Police, All Women Police Station, Erode. Crime No. 2 of 2018 Crl. O.P. No. 232 of 2021 at paras 12 and 18 also reproduced herein below as:

“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.

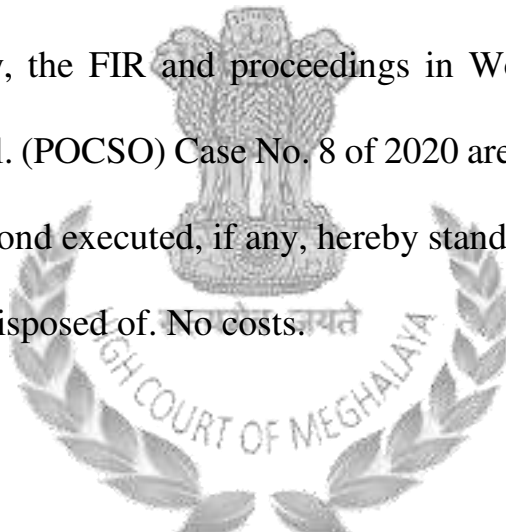
18. In the present case, the 2nd Petitioner who was in a relationship with the 2nd Respondent who is also in his early twenties, has clearly stated that she was the one who insisted that the 2nd Respondent take her away from her home and marry her, due to the pressure exerted by her parents. The 2nd 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."

13. In view of the above, this Court is of the considered opinion that this petition merits consideration and the same is accordingly allowed.

14. Accordingly, the FIR and proceedings in Women P.S. Case No. 39(7) of 2019 of Spl. (POCSO) Case No. 8 of 2020 are hereby set aside and quashed. The bail bond executed, if any, hereby stands discharged.

15. Petition is disposed of. No costs.



Judge

Meghalaya

15.03.2023

"Tiprilynti-PS"