

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 73 of 2022

		Date of Decision: 02.05.2023
Shri. Banteikupar Marwein	Vs.	State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. S.M. Suna, Adv.
For the Respondent(s)	:	Mr. S. Sengupta, Addl. PP. Mr. K.P. Bhattacharjee, GA. for R 1. None for R 2.

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. S.M. Suna, learned counsel appearing on behalf of the petitioner who has submitted that the petitioner has filed an additional affidavit dated 01.05.2023 bringing on record the compromise agreement, wherein the respondent No. 2 herein who is the mother of the survivor who has filed the related FIR on being reconciled to the fact that her minor daughter is now living together with the petitioner as husband and wife, though not formally married, out of which relationship, a child was born to them, the family being aware of the situation and the circumstances

involved have decided to compromise the matter and to accept the petitioner as part of the family. In view of the said compromise agreement, the respondent No. 2/complainant does not wish that the criminal proceedings against the petitioner be continued and that the same may be brought to a formal closure to enable the concerned parties to start a new life as a family.

2. Referring to the averments made in the petition, it is the submission of the learned counsel that on 28.01.2021, the respondent No. 2 has filed a missing report before the Officer-in-Charge, Jhalupara Police Outpost, Shillong, stating, inter alia, that on 26.01.2021 at about 9:00 PM or so, her minor daughter had gone missing probably under the influence of the petitioner herein. The police on being made aware of the said report, has accordingly registered the case as Lumdiengjri P.S. Case No. 10 (01) of 2021 and investigation was launched.

3. The learned counsel further submits that on 02.02.2021, the police were able to discover the whereabouts of the alleged missing minor girl who was found in the company of the petitioner herein from Sohma village (Nongpdeng) Kynrud, West Khasi Hills District, Meghalaya. Upon such recovery, the petitioner was arrested and was taken into custody. He was however later enlarged on bail in due course.

4. It is also submitted that on completion of the investigation, the Investigating Officer (I/O) had filed his Final Report, finding a prima facie

offence being made out against the accused/petitioner under Section 363 IPC read with Section 5 (j) (iii)/6 of POCSO Act. The petitioner was directed to appear before the Court of the learned Special Judge (POCSO), East Khasi Hills, Shillong to answer to the charges made therein.

5. It is, at this juncture, that the petitioner has approached this Court with a petition under Section 482 Cr.P.C for exercise of its inherent power to quash the said FIR and the consequent proceedings which has now been registered as Spl. (POCSO) Case No. 104 of 2021 under Section 363 IPC read with Section 5 (j) (iii)/6 of POCSO Act pending before the Court of the learned Special Judge (POCSO), East Khasi Hills, Shillong.

6. The contention of the petitioner is that his relationship with the alleged victim is consensual, inasmuch as, they are in a love relationship which had culminated in a sexual relationship, leading to the said victim girl to be pregnant and the delivery of a child out of the said union on 27.09.2021. It is also the submission of the learned counsel that the petitioner and the alleged victim girl are now living together as husband and wife with the consent and blessings of the family members from both sides.

7. Again, referring to the compromise agreement arrived at between the petitioner and the respondent No. 2 who is the mother of the said alleged victim girl, inasmuch as, now that the matter has been amicably settled between the parties, therefore, pursuing the said criminal case

before the Court of the learned Special Judge (POCSO) would be a futile exercise since the alleged victim girl has categorically stated that her relationship with the petitioner is consensual and there was no sexual assault involved. It is therefore, prayed that this petition may be allowed and the said Spl. (POCSO) Case No. 104 of 2021 may be quashed.

8. Mr. S. Sengupta, learned Addl. PP appearing on behalf of the State respondent has submitted that it is to be noted that the alleged victim girl is a minor and as such, the same cannot be allowed in a marital relationship with the petitioner herein as that would amount to an underage marriage, which is against the law of the land. However, considering the fact that the parties are now living together along with the child born to them, it is left open to this Court to apply its discretion and to pass necessary orders.

9. This Court, on consideration of the facts and circumstances of the case and also the submissions made by the learned counsel for the parties, has in its opinion, considered that the relationship between the petitioner and the alleged victim girl is not permissible under the relevant law or even under the provisions of the POCSO Act. However, it is to be noted that the alleged victim girl is about 16 years of age or so at the relevant period when the relationship with the petitioner started, but as of date, she would be about 17 years of age or more and as submitted, would be 18 years of age in the month of August, 2023. This is with reference to the observation

on the mental maturity and even physical maturity of the said alleged victim girl. The fact that they are now living together with the family members, having no objection to such a union, would also weigh with this Court to consider that the strict letters of the law at some point of time has to give way to actual and complete delivery of justice. Indeed, it would be an injustice to the parties, particularly if the petitioner and the alleged victim girl are to be separated at this juncture by the presence or the continuation of the criminal proceedings against the petitioner.

10. This Court in a number of similar matters have time and again referred to relevant observations made by some of the High Courts of this country, particularly before the Hon'ble Madras High Court in the case of ***Vijayalakshmi & Anr. v. State Rep. By. Inspector of Police, All Women Police Station, Erode: Crl. O.P No. 232 of 2021***, para 12 & 18 which reads as follows:

“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."

11. Again, in the case of *Ranjit Rajbanshi v. State of West Bengal & Ors: C.R.A. No. 458 of 2018*, the Hon'ble High Court of Calcutta, 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.”

12. On an overall consideration of the matter in the peculiar facts and circumstances of the case which should not be taken as a precedent and in respectful agreement with the abovementioned proposition, the prayer of the petitioner is hereby allowed.

13. Accordingly, the said FIR dated 28.01.2021 filed by the respondent No. 2 herein and also the consequent proceedings in Spl. (POCSO) Case No. 104 of 2021 are hereby set aside and quashed.

14. The petitioner is accordingly discharged from any liability as far as the said case is concerned.

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

Judge

Meghalaya
02.05.2023
"D. Nary, PS"