

Serial No. 07
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 75 of 2022

Date of Decision: 22.02.2023

Shri. Ananto Boro & Anr.

Vs.

State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. M. Mahanta, Adv. with
Ms. B. Rymbai, Adv.

For the Respondent(s) : Mr. S. Sengupta, Addl. PP

ORDER (ORAL)

1. The petitioner No. 1 is a named accused in connection with Special POCSO Case No. 125 of 2021 pending before the court of the learned Special Judge (POCSO) at Shillong.

2. The brief background leading to the registration of the said POCSO case is that an FIR dated 23.09.2021 was filed before the Officer-in-Charge, Laban Police Station by Sub-Inspector D. Synrem wherein it was informed that on 14.09.2021 at about 4:00 pm a telephonic information was received at Laban Police Station to the effect that the minor daughter of the petitioner No. 2 herein

who had gone for medical check-up at Ganesh Das Hospital, Shillong, upon examination was found to be pregnant. On enquiry, the minor victim has revealed that she was in a physical relationship with the petitioner No. 1 herein and in course of this relationship, she has also had sexual intercourse with him on a number of occasion.

3. On receipt of the said FIR, a police case was registered being Laban P.S. Case No. 70(9) 2021 under Section 5(j)(ii)/6 of the POCSO Act, 2012 and investigation was carried out in the case.

4. Upon investigation being completed, the Investigating Officer (I/O) has filed the Final Form Report under Section 173 indicating therein the steps taken by the said I/O who has taken down the statements of the alleged victim girl, the accused/petitioner No. 1 and also that of the mother/petitioner No. 2 of the alleged victim girl. The statement of the alleged victim girl made under Section 164 Cr.P.C was also recorded.

5. On the basis of the investigation, the I/O has filed the chargesheet and has concluded that on analysis of all evidence collected during investigation, a *prima facie* case under Section 5(j)(ii)(1)/6 POCSO Act is found well established against the accused/petitioner No. 1.

6. Accordingly, on the basis of the chargesheet, the court of the learned Special Judge (POCSO), Shillong took cognizance of the same and Special

POCSO Case No. 125 of 2021 was accordingly instituted. The case is at the stage of framing of charge.

7. It is at this stage that the petitioners have now approached this Court with this application under Section 482 Cr.P.C craving the exercise of the inherent power of this Court to quash the FIR and the related proceedings before the Court of the Special Judge (POCSO).

8. Heard Ms. M. Mahanta, learned counsel for the petitioners, who has submitted that from the facts and circumstances of the case, the conduct of the alleged victim girl has to be taken into account inasmuch as she has clearly stated in her statement under Section 161 as well as that under Section 164 Cr.P.C that she has developed a relationship with the petitioner No. 1 for the last two-three years and in course of such relationship, the couple had got involved in a physical relationship which has eventually resulted in her being pregnant and eventually, in giving birth to a baby girl on 28.11.2021.

9. The learned counsel has further submitted that the narrative of the alleged victim girl would only confirm that she is now living together with the petitioner No. 1 as husband and wife, with the consent and blessings of the family members from both sides. Therefore, if this situation is marred by the apprehension or even conviction of the petitioner No. 1 in the case, the alleged victim girl and her child will be left without any emotional and material support

required from any father in a family.

10. It is under these peculiar facts and circumstances and also the stated stand of the alleged victim girl and her family members that they do not wish to proceed with the criminal proceedings against the petitioner No. 1 and that they are now living in a happy and congenial family relationship supported by the petitioner No. 1, continuation of the proceedings indicated would not be for ends of justice, but rather would only cause injustice to all concerned.

11. The learned counsel has also submitted that this Court on similar facts and circumstances had allowed the prayer of the parties therein and has quashed the criminal proceedings related thereto. In this regard, the case of Shri. Adelbert Marbaniang & Anr. v. State of Meghalaya & Ors., in CrI. Petn. No. 31 of 2022, particularly order dated 16.08.2022 passed thereon was referred to by the learned counsel in support of her submission.

12. Under the circumstances, it is prayed that this petition may be allowed and the proceedings under the Special POCSO Case No. 125 of 2021 be quashed.

13. Mr. S. Sengupta, learned Addl. PP appearing on behalf of the respondents has submitted that this Court in cases where the facts and circumstances are similar to the case in hand has indeed passed relevant orders and as such, the prosecution would leave to the discretion of this Court to pass

necessary orders in this case.

14. Upon hearing the learned counsels for the parties, and on consideration of the submission made, facts not necessarily required to be repeated, what is apparent is that this is yet another case of a love affair and an eventual relationship between a couple, one of whom is still a minor. The situation has become more complicated with the birth of a child in the process.

15. Though the rigours of the provisions of the Protection of Children from Sexual Offences (POCSO) Act, 2012 would demand that any sexual relationship involving a minor below 18 years would be considered an act of sexual assault or in certain cases, aggravated sexual assault, yet this Court has time and again maintained that taking the literal meaning of assault and applying the same to an act of sexual intercourse between two consenting persons, when such act is done voluntarily and more importantly in the spirit of love and affection, the term 'sexual assault' cannot or may not be attributed to such an act.

16. Be that as it may, when in a particular and peculiar facts and circumstances of the case where both the parties are said to be staying together in a family relationship as husband and wife with the husband providing for the welfare of the wife and the child, this Court has opined that such a union may not be put asunder only to satisfy the technicalities of law, where adherence to

the same would not actually meet the standard that justice demands.

17. Again, in cases of similar nature as this, this Court has often relied to the case of *Ranjit Rajbanshi v. State of West Bengal & Ors.* wherein the Hon'ble Calcutta High Court in C.R.A. No. 458 of 2018 at para 47, 48 and 49 vide judgment dated 17.09.2021 has observed as follows:

“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

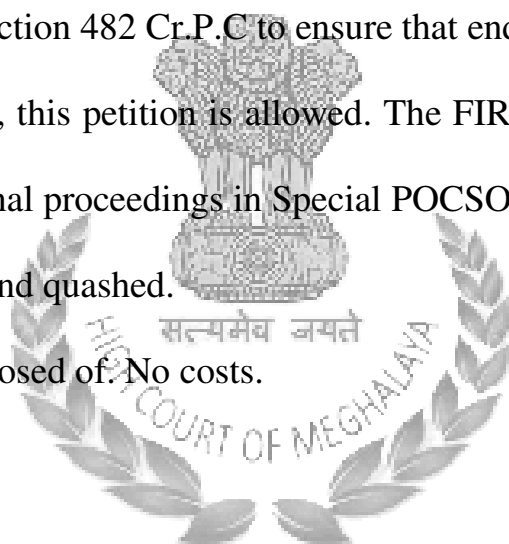
the victim and the accused.

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.”

18. On consideration of the submissions made above, this Court is persuaded to believe that the petitioners have been able to make out a case for interference under Section 482 Cr.P.C to ensure that ends of justice are met.

19. Accordingly, this petition is allowed. The FIR dated 23.09.2021 and the consequent criminal proceedings in Special POCSO Case No. 125 of 2021 are hereby set aside and quashed.

20. Petition disposed of. No costs.



Judge

Meghalaya
22.02.2023
“Tiprilynti-PS”