

GAHC040007212023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.Petn./98/2023

Dorjee Tsering Rhom and 2 Ors.
S/o Late Dorjee Passang,
Resident of Ngokmadung,
PO/PS Dirang, PIN 790101, District West Kameng, Arunachal Pradesh. 2: xxxx
Age:
Occupation :

3: Rinchin Tsewang
Age:
Occupation

VERSUS

THE STATE OF AP
through PP (AP)

Advocate for the Petitioner : 1 U Bori

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 02-08-2023

Heard Mr. U. Bori, the learned counsel petitioner and Ms L. Hage, the learned Additional Public Prosecutor for the State respondent.

2. This is an application filed under Section 482 Cr.P.C praying for quashing of FIR No.03/2020 dated 28.01.2020, registered as Rupa P.S. Case No. 04/2020 under Sections 363/342/34 IPC and Charge-Sheet No.02/2020 dated 29.02.2020 under Sections 363/342/34 IPC corresponding to POCSO Case No.09/2022 under Sections 363/342 read with Section 8/4 of POCSO read with Section 18 of the POCSO Act pending before the learned Special Judge (POCSO), Bomdila.

3. On January 28th 2020, the petitioner No.3, the stepfather of the petitioner No.2/victim, filed an FIR alleging that the petitioner No.2 was forcefully taken by one Shri Tenzin Choisang and his friends from Rupa and confined her in Bomdila area. The petitioner No.3 accompanied by a friend traced out the petitioner No.2 and rescued her from a boy who had used force against her. The boy was taken to the police station and later on it was revealed that the petitioner No.2 was abducted from Rupa market by 3 boys on two motorcycles. And accordingly, case has been registered under Sections 363/342/34 IPC. However, after investigation case was charge sheeted under Sections 363/342/34 IPC read with Section

8/4 of POCSO read with Section 18 of the POCSO Act

4. It is submitted by the learned counsel for the petitioner that at the time of the alleged offence, the petitioner No.1/accused was about 21 years old and victim who was a girl of 17 years and 8 months. Both the accused and the victim were at the tender age and hence, they were unaware of the legal implications involved in the case. And, after filing of an FIR, it has come to light that both the petitioner No.1 and petitioner No.2 were in romantic relationship but out of fear they could not disclose anything about their relationship to their family members. But when she was recovered from Bomdila, out of fear, she did not disclose regarding their relationship with the accused/petitioner. And as a result, the informant/petitioner No.3 out of anger lodged the FIR against the petitioner No.1. But at present all the petitioners has executed a Deed of Agreement dated 17.05.2023 for quashing above mentioned case. The accused and victim has also obtained approval from their respective parents and they will get married after completion of their education. Accordingly, the petitioner No.3 i.e. the informant, the father of the petitioner No.2 has no objection if the competent court exonerates or discharges or acquits the petitioner No.1 in the light of above mentioned settlement deed.

5. The settlement between the parties clearly signifies that they have already resolved their differences and has moved forward

in their respective lives. The offences alleged in the FIR arose only from love affairs between the accused and the victim and at present they are willing to enter into lawful marriage after completion of their studies.

6. Further, it is submitted by the learned counsel for the petitioner that POCSO Act was primarily enacted to protect the minor from sexually offences, and it is reasonable to assume that the legislature did not intend to criminalise innocent romantic relationship between individuals who genuinely care for each other. Further, the pendency of the criminal proceeding will cause a great hardship and stress to both the families involved in this case. And hence, in the interest of the justice and also to avoid the abuse of the process of the Court, this is a fit case where the FIR as well as Charge-Sheet and criminal proceeding can be quashed by invoking inherent jurisdiction under Section 482 Cr.P.C.

7. The learned counsel for the petitioner further relied on decision of the Hon'ble Madras High Court reported in **2021 SCC Online Mad 317** in the case of **Vijayalakshmi and Another Vs. State Rep. By the Inspector of Police and Another**. Another decision of Hon'ble Meghalaya High Court reported in **2022 SCC Online Megh 575** in the case of **Silvestar Khonglah and Another Vs. State of Meghalaya and Another**. He has also

relied on decision of Hon'ble Rajasthan High Court reported in **2022 0 Supreme(Raj) 1159** in the case of **Tarun Vaishnav Vs. State of Rajasthan and Others.**

8. The learned counsel for the petitioner further gave stresses on the para-9 and 10 of the Judgement of the Hon'ble Madras High Court reported in **2021 SCC Online Mad 317** in the case of **Vijayalakshmi and Another Vs. State Rep. By the Inspector of Police and Another** which reads as under;

“9. The learned Additional Public Prosecutor appearing on behalf of the Respondent Police submitted that though the parties are entering into a compromise while the trial in this case is pending, this Court, taking into account the seriousness of the offence has to consider the issue as to whether an offence of this nature can be quashed on the ground of compromise between parties.

10. This Court is instantaneously reminded of an earlier order passed by a learned Single Judge of this Court, in Sabari v. Inspector of Police reported in 2019 (3) Mad LJ CrI 110, wherein he had discussed in detail about the cases in which persons of the age group of 16 to 18 years are involved in love affairs and how in some cases ultimately end up in a criminal case booked for an offence under the POSCO Act. The relevant portions of the judgment are extracted here under for

proper appreciation:

“ 21. When this case was taken up for hearing, this Court became concerned about the growing incidence of offences under the POCSO Act on one side and also the Rigorous Imprisonment envisaged in the Act. Sometimes it happens that such offences are slapped against teenagers, who fall victim of the application of the POCSO Act at a young age without understanding the implication of the severity of the enactment.

26. In addition to the above, this Court is of the view that 'warning' of attraction of POCSO Act must be displayed before screening of any film, which have teenage characters suggesting relationship between boy and girl.

27. Apart from the above, this Court is of the view that as per the 3rd respondent's report, majority of cases are due to relationship between adolescent boys and girls. Though under Section 2(d) of the Act, 'Child' is defined as a person below the age of 18 years and in case of any love affair between a girl and a boy, where the girl happened to be 16 or 17 years old, either in the school final or entering the college, the relationship invariably assumes the penal character by subjecting the boy to the rigours of POCSO Act. Once the age of the girl is established in such relationship as below 18 years, the boy involved in the relationship is sure to be sentenced 7 years or 10 years as minimum imprisonment, as the case may be.

28. When the girl below 18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such

relationship would be the result of mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes. But in such cases where the age of the girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured, unfortunately, the provisions of the POCSO Act get attracted if such relationship transcends beyond platonic limits, attracting strong arm of law sanctioned by the provisions of POCSO Act, catching up with the so called offender of sexual assault, warranting a severe imprisonment of 7/10 years.

29. Therefore, on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous 46 provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence”.

9. Citing those judgments, the learned counsel for the petitioner submits that herein the instant case also boy is of 21/22

years old and the girl is of 17 years 8 months old and because of their tender age they were not aware about any legal implications or seriousness of their offence. And they enter into relationship only for their love affairs and with the intervention of their family members, the matter has already been settled and compromised and hence, considering this aspect also, it is a fit case where the criminal proceeding can be set aside and quashed along with the FIR and the Charge-Sheet filed thereof.

10. The learned Additional Public Prosecutor, Ms L. Hage has submitted in that regard that from the contents of the FIR, statement made by the victim as well as the accused and other witnesses, it is seen that there was no love relationship between the parties rather the accused was not known to her prior to the incident and she also refused to talk with him when she received phone call from the present accused person. Further, from the statement made by the witnesses as well as the victim, it is seen that she was forcefully taken to Bomdila and even, she was not allowed to come home. She was locked in a room with the present petitioner No.1, where he kissed her and even thrown her on bed and tried to commit rape on her. The accused while giving his statement under Section 161 Cr.P.C also corroborated the prosecution case and he admitted that he tried to have sexual relationship with her and during that process he kissed her and also pushed her on bed.

Further, the learned Additional Public Prosecutor has submitted that 7 members of witnesses has already been examined and victim has also narrated the same story alleging that she was forcefully taken to Bomdila and locked inside a room and present accused kissed her and also tried to commit rape on her. Thus, it is submitted that the *prima facie* Section 363/342 IPC read with Section 8/4 of the POCSO Act and read with Section 18 of the POCSO Act is well attracted against the present accused petitioner and in such a heinous offences a compromise cannot be the ground for quashing the criminal proceeding. The learned Additional Public Prosecutor further relied on the decision of Hon'ble Apex Court passed in ***Criminal Appeal No.770 of 2022***, in the case of ***Satish Kumar Jatav Vs. The State of U.P & Ors.*** wherein it is observed that prolonged the proceedings of the case cannot be a good ground to quash the criminal proceedings when a clear case is made out for the offences alleged. Further, the learned Additional Public Prosecutor has also relied on another decision of Hon'ble Delhi High Court passed in ***Criminal M.C. 1002/2021*** in the case of ***Dinesh Sharma and Ors. Vs. State And Anr.*** Wherein it is observed that the Hon'ble Supreme Court in the case of Lakshmi Narayan in the point of 15.2 is categorically stated that heinous crime like rape cannot be quashed by the High Court by exercising the power under Section 482 of the Cr.P.C. even if the accused and the prosecutrix have entered into a compromise. When the petitioner or accused is accused of an offence

under the POCSO Act as the objects and purpose of the enactment of the POCSO Act is to protect the minor from sexual assault.

11. After hearing the submission made by the learned counsel for both the sides, I have perused the case record and the statements made by the witnesses as well as victim and the accused of this case. From the statements made in the FIR as well as from the evidence of the victim and other witnesses and also from the statement of victim and accused recorded under Section 161 Cr.P.C, it is seen that there was no love relationship between the accused and the victim rather accused was not known to the victim prior to the incident though she received a phone called from the accused from a unknown number. However, it cannot be denied that after request made by her friends she boarded on a motorcycle and went Bomdila. But thereafter, she was confined in a room along with the present petitioner No.1/accused where, he tried to have sexual relationship with her and in that process he also kissed her. The statement made by the victim under Section 161 Cr.P.C as well as her evidence before the learned Special Judge (POCSO) also corroborates the statement made by the accused under Section 161 Cr.P.C.

12. Thus, it is not a case where both the petitioner No.1 and 2

were in love relationship and out of their relationship they had some physical sexual activities between them. Nor there is any evidence or statement that due to fear of their parents they could not disclose their relationship before their respective parents. Further, it is seen that they have entered into a comprise in the month of May 2023 when evidence of almost 7/8 numbers of witnesses were recorded by the learned Special Judge (POCSO). And further, it is not the case that out of their love relationship and tender age they have entered into physical relationship or due to fear for disclosure of their relationship they went to Bomdila and stayed in a room. So merely on the ground of comprise, I do not find it a fit case to invoke the Section 482 of the Cr.P.C for quashing the criminal proceeding as well as the FIR and Charge-Sheet of the present case. Further, insofar the guidelines passed in Hon'ble Apex Court in the Lakshmi Narayan's and Bhajanlal's case, it is not at all a fit case where proceeding can be quashed by invoking the section of 482 of the Cr.P.C.

13. In view of the above, the Petition for quashing of FIR No. 03/2020 dated 28.01.2020, registered as Rupa P.S. Case No. 04/2020 under Sections 363/342/34 IPC and Charge-Sheet No.02/2020 dated 29.02.2020 under Sections 363/342/34 IPC corresponding to POCSO Case No.09/2022 under Sections 363/342 read with Section 8/4 of POCSO read with Section 18 of the POCSO

Act pending before the learned Special Judge (POCSO), Bomdila, stands dismissed.

JUDGE

Comparing Assistant