

GAHC040012762023



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

Case No. : Crl.Rev.P./24/2023

Pitam Lamnio

S/o Shri Dapung Lamnio and Brother of Shri Thomas Lamnio, Permanent resident of Village- Lamnio, P.O Khenewa, P.S Seppa, East Kameng District, Arunachal Pradesh, on behalf of the accused Shri Thomas Lamnio

VERSUS

THE STATE OF AP
through the Public Prosecutor.

Advocate for the Petitioner : T Lamnio

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 20-09-2023

Heard Mr. T. Lamnio, learned counsel for the petitioner and also heard Mr. T. Ete, learned Addl. PP for the State of Arunachal Pradesh.

2. This is an application under Sections 401/397 & 482 Cr.P.C. for quashing of order, dated 05.09.2023 passed by the learned Special Court (POCSO) for the

Districts of West Kameng, East Kameng and Tawang, Arunachal Pradesh in connection with POCSO Case No. 11/2022 pending in the said Court.

3. It is submitted by the learned counsel for the petitioner that the order of learned Special Judge (POCSO) for considering the prayer for determination of the age of the victim, the revision petitioner preferred revision before this Court on 3 (three) occasions in connection with Crl. Rev. P. No. 12/2023, Crl. Rev. P. 15/2023 and the present petition vide Crl. Rev. P. No. 24/2023. Thereafter, the Crl. Rev. P. No. 12/2023 was disposed of by this Court on 16.06.2023 with a direction to the learned Special Judge (POCSO) to determine the age of the victim by following the due procedure and to proceed with the matter as permissible under the law. In connection with Crl. Rev. P. No. 15/2023, this Court passed an order on 27.06.2023 suspending the proceeding of POCSO Case No. 11/2022. Subsequently, this Court also passed an order in connection with Crl. Rev. P. No. 15/2023 disposing the said revision petition on 17.07.2023 with a direction to the learned Trial Court to comply with the order, dated 16.06.2023 passed by this Court in Crl. Rev. P. No. 12/2023.

3. According to the learned counsel for the petitioner, learned Special Judge (POCSO) passed an order holding the fact that the victim was minor without making any such proper inquiry as such further proceeding of the POCSO Case No. 11/2022 needs to be suspended.

4. In response, the learned Addl. PP has fairly submitted that during trial, the determination of the age of the victim is exclusively on the Special Judge

(POCSO) as per Section 34 of the POCSO Act and the learned Trial Court had held that the victim was minor after considering the relevant documents made available in the record and as per instruction of this Court to determine the age of the victim prior to disposal of the case. It is also submitted that the case is at the stage of argument. After delivery of the judgment, if the petitioner is aggrieved, he would get the opportunity to file an appeal raising his objection on the point. The learned Addl. PP has also pointed out that the learned Special Judge (POCSO) has passed the order, dated 18.09.2023, wherein, it is clearly stated that the learned counsel for the petitioner is at liberty to submit his argument before the date of delivery of the judgment before the Court of Special Judge (POCSO).

5. I have considered the submissions of the learned counsel for the parties and perused the order of the Trial Court.

6. This Revision petition has been preferred by the petitioner against the order, dated 05.09.2023, wherein, the learned Special Judge (POCSO) has considered the relevant provisions to determine the age of the victim during trial. The learned Special Judge (POCSO) has held that as per documents made available in the record, the victim girl was 15 years 11 months and 7 days at the relevant time of the incident. As such, the victim girl was a child as per provisions of Section 2 (d) of POCSO Act at the time of the commission of the offence.

7. By this revision petition, the petitioner also challenged the order of the

learned Special Judge (POCSO), Bomdila, dated 18.09.2023 which reveals that on that day, the case was fixed for final argument. Though the accused was produced from the Judicial Custody, Seppa but the counsel who represented the accused was not present to argue the matter. It is also reflected from the order of the learned Special Judge (POCSO), dated 18.09.2023 that several dates were fixed for hearing the matter but each and every date, the counsel for the accused was found absent without showing any reasonable cause. As such, the trial of the case was delayed. After hearing the learned Special PP (POCSO), the case was fixed for pronouncement or delivery of judgment on 21.09.2023. It is also stated in the order that the learned counsel for the accused may submit their argument before the date of the judgment.

8. Section 34 of the POCSO Act deals with the procedure in case of the commission of the offence by a child and determination of age by Special Court, which is reproduced hereinbelow for ready reference:

“1..Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015;

2..If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination; and

3..No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person”.

9. On a bare look at the provision, it reveals that during trial, the Special Court has the exclusive power to determine the age of the victim after satisfying him or her about the age of such person. As per order, dated 05.09.2023, it is crystal clear that after considering the relevant documents available in the record, the learned Special Judge (POCSO) has considered the age of the victim that she was minor when the incident had occurred.

10. Under such backdrop, I do not find any merit in this petition and the same stands dismissed. However, the learned Trial Court shall consider the prayer of the petitioner if any application is filed to hear the matter before pronouncement of the judgment.

In view of the above, this revision petition stands disposed of.

JUDGE

Comparing Assistant