

Serial No.01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Pet. No. 27 of 2023

Shri. Heisa Kirupaia Lamare.
S/o Shri. Thayan Phawa
R/o Moodop, Nartiang Village,
West Jaintia Hills District,
Meghalaya

....Petitioner

-VERSUS-

1. State of Meghalaya duly represented by the Chief Secretary Govt. of Meghalaya, Shillong.
2. Office-in-Charge Madanrting Police Station, East Khasi Hills District, Meghalaya.
3. The Investigating Officer, Madanrting Police Station, East Khasi Hills District Meghalaya.
4. Shri. Michael Warjri (Complainant)
S/o Shri. Bijoy Joshi,
R/o Lumjingsuk Madanrting Block-A,
East Khasi Hills District,
Meghalaya
5. Miss XYZ (Victim)
D/o ABC
R/o XXX,
Meghalaya.

.....Respondents



Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. H.L. Shangreiso, Sr. Adv. With
Ms. M. Hajong, Adv.

For the Respondent(s) : Mr. H. Abraham, GA. (R: 1-3)
Ms. P. Riatham, Adv. (R: 4 &5)

Judgment

1. By this application under section 482 Cr.P.C., the petitioner has prayed for quashing of the criminal proceeding pending against him before the Court of the Special Judge (POCSO), Shillong in Special (POCSO) Case No. 1 of 2020.

2. The brief facts of the case are that an FIR dated 20.07.2017 was lodged by the respondent No. 4 with the Officer-in-Charge, Madanrting Police Station, Shillong informing that the respondent No.5/victim, was missing since 05:30 P.M. on 20.07.2017. Footnote dated 14.09.2017 of the Women Police Sub-inspector (WPSI) attached to the FIR indicates that on enquiry into the missing report, the respondent No.5/victim was found on 21.07.2017 and was sent for medical examination to Ganesh Das Hospital. The medical report, which was received on 14.09.2017, revealed that the respondent No.5/victim was sexually assaulted by the petitioner on 20.07.2017 while she visited his house. Thereafter, the FIR was registered vide Madanrting P.S. Case No. 89 (9) 17 u/s 3(a)/4 POCSO Act 2012 and the matter was investigated into. After completion of the investigation, a charge sheet bearing No. 63/2019 dated 30.11.2019 u/s 5(1)/6 POCSO Act 2012 was submitted against the petitioner and accordingly, he was made to face trial in Special (POCSO) Case No. 1 of



2020 before the Court of the Special Judge (POCSO) Shillong.

3. The criminal petition was filed by the petitioner by primarily contending that the petitioner and the respondent No.5/victim was in a romantic relationship and the incident alleged in the FIR had taken place with the consent of the respondent No.5/victim as boyfriend and girlfriend. On 17.10.2025, the petitioner filed an additional affidavit before this Court to bring on record the deposition of mother of the respondent No.5/victim recorded by the Trial Court during the course of the trial. In the said affidavit it was asserted that the mother of the respondent No.5/victim admitted that she had reduced the age of respondent No.5/victim by three years at the time of taking admission in School. It is, therefore, contended that the actual age of the respondent No.5/victim was above 18 years on the date of the alleged occurrence and thus, the proceeding against the petitioner under the POCSO Act is unsustainable in law.

4. The respondent No.5/victim has also filed an affidavit before this Court on 17.08.2023 asserting that the incident has not affected her life and she is living happily as a normal person. She further stated in the affidavit that she has married another person and, as such, would not like to proceed further against the petitioner. In her affidavit she also disclosed that she was born on 01.01.2002 and enclosed a photocopy of the birth certificate to support her date of birth.

5. Mr. H.L. Shangreiso, learned Senior counsel appearing for the petitioner, by referring to the materials on record including the FIR and the Charge Sheet, submitted that the stand of the prosecution with regard to the age of the respondent No.5/victim is totally inconsistent and unsupported by any legally acceptable piece of evidence. He submits that the deposition of mother of the respondent No.5/victim clearly establishes that the respondent No.5/victim's age was reduced by 3 years at the time of School admission and if her actual age is considered, she was above 18 years on the date of the



alleged incident. He contends that once the respondent No.5/victim is proved to be a major, the proceeding under the POCSO Act against the petitioner is not attracted and continuation of such proceeding is, therefore, not tenable in law. The learned Senior counsel places reliance on paragraph 108 Clause (3) of the decision of the Apex Court in *State of Haryana and Others V. Bhajan Lal and Others*, AIR 1992 SC 604 and submits that where the evidence collected in support of the allegation does not disclose the commission of any offence and make out a case against the accused, the inherent powers u/s 482 Cr.P.C. should be invoked to quash the criminal proceeding. In addition, he also places reliance on the decision of the Apex Court in *Parbatbhai Aahir and Others V. State of Gujarat and Another*, (2017) 9 SCC 641.

6. Mr. H. Abraham, learned GA appearing for the State respondent Nos. 1-3, strongly objected to the contentions raised on behalf of the petitioner and submitted that the birth certificate of the respondent No.5/victim clearly shows that she was a minor on the date of the occurrence of the offence. He further submits that the FIR discloses that the respondent No.5/victim was only 14 years old at the time of the incident. He submits that the age of the respondent No.5/victim in the chargesheet on the basis of ossification test also projects that the respondent No.5/victim was only 14-15 years old. He contends that the evidence adduced by the mother of the respondent No.5/victim with regard to the age does not in any way contradict the stand of the prosecution in the case. He submits that it is for the Trial Court to evaluate the evidence and decide whether the respondent No.5/victim was a minor or not on the date of the incident and the High Court, at this stage, cannot be asked to take over the task in exercise of its jurisdiction u/s 482 Cr.P.C. He submits that the instant petition deserves no consideration and is liable to be dismissed being devoid of merit.

7. Ms. P. Riatham, learned counsel appearing for the respondent Nos. 4&5 submits that the date of birth mentioned in the affidavit of the respondent



No.5/victim is on the basis of her birth certificate and the affidavit was filed prior to the recording of the evidence of her mother by the Trial Court. She submits that the respondent No.5/victim is now married to another person and, as such, would not like to proceed further with the case against the petitioner.

8. Upon hearing the submissions advanced on behalf of the respective parties and on perusal of the materials on record, it transpires that the FIR dated 20.07.2017 was filed by alleging that the respondent No.5/victim was 14 years old at the time of the of the alleged incident. The birth certificate brought into record of this Court by the affidavit dated 17.08.2023 of the respondent No.5/victim shows her date of birth on 01.01.02. Further, the charge sheet dated 30.11.2019 discloses that the ossification test report of the respondent No.5/victim opined her age between 14-15 years. Therefore, the contention of the petitioner that the evidence of mother of the respondent No.5/victim clearly establishes that she was above 18 years on the date of the alleged incident cannot be accepted at this stage. The question of determination of age of the respondent No.5/victim requires proper evaluation of evidence by the Trial Court.

9. Section 34 of the POCSO Act, 2012 lays down procedure in case of commission of offence by child and determination of age by Special Court. Sub-section (2) of Section 34 reads as under: -

“(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.”

From the above, it is clear that Section 34(2) empowers the Special Court to determine the age of both the offender and the victim. Whenever any question arises with regard to age of the victim in a trial under the POCSO Act, 2012, it is for the Special Court to determine the question after satisfying itself about the age of the victim. Such determination, therefore, is a part of



the trial. Hence, the plea raised on behalf of the petitioner in the instant case with regard to the age of the respondent No.5/victim cannot be entertained at this juncture by this Court in exercise of inherent jurisdiction u/s 482 Cr.P.C.

10. The authorities cited by the learned Senior Counsel for the petitioner have no application in the present case. None of the decisions of the Apex Court was rendered in the context of the factual background of the present matter in hand. The inherent power of the High Court u/s 482 Cr.P.C. cannot be invoked to short-circuit a criminal trial on the basis of the plea raised by the petitioner in this matter.

11. The assertion made in the affidavit filed on behalf of the respondent No.5/victim is also of no help to the petitioner in the present case as the question as to whether the respondent No.5/victim was above 18 years or not on the date of the alleged incident requires determination by the Trial Court.

12. For what has been discussed above, there is no merit in this criminal petition and the same is hereby dismissed.

Judge

Meghalaya
06.08.2026
"Abhinandan,PS"