



Serial No.12
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Pet. No. 57 of 2024

Date of order : 24.07.2026

Md. Saiful Ali Sk @ Babu,
S/o: Md. Hanif Sk,
R/o: Nalbari Village,
P.O: Moulakandi, P.S: Phulbari,
Dist: West Garo Hills, Meghalaya. **.....Petitioner**

-VERSUS-

1. State of Meghalaya,
Represented by the Under Secretary (Home),
Police Department, Meghalaya, Shillong.
2. Superintendent of Police,
West Garo Hills District, Tura, Meghalaya.
3. The officer-In-Charge,
Tura Women Police Station, Tura.
4. Shri. Abdul Salam,
S/o: Moynal Hoque,
R/o: Moulakandi Village,
P.O: Moulakandi, P.S: Phulbari,
Dist: West Garo Hills, Meghalaya.

.....Respondents

5. Smti. XXXXXX(Survivor)
C/O: The Officer-in-Charge/Investigation
Officer, of Phulbari Police Station,
Phulbari, West Garo Hills, Meghalaya.

.....Implead Respondent.



Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A.H. Hazarika, Adv.

For the Respondent(s) : Mrs. T. Yangi, B. AAG. With
Ms. Z.E. Nongkynrih, GA. (R: 1-3)
Mr. M. Sarkar, Adv. (R: 4 &5)

Judgment and Order (Oral)

1. By this application under section 528 of BNSS, the petitioner has prayed for quashing of the criminal proceeding pending against him before the Court of the Special Judge (POCSO), Tura in Special (POCSO) Case No. 31 of 2021.

2. The brief facts of the case are that an FIR dated 18.02.2021 was lodged by the respondent No. 4 with the Officer-in-Charge, Phulbari Police Station alleging that his daughter, the respondent No.5/victim, was not available at home and after conducting a search, it revealed that the respondent No.5 left home with the petitioner, a resident of Nalbari village. After preliminary inquiry, the FIR was forwarded to the Tura Women Police Station and a case was registered as Tura Women P.S Case No. 15 (02) 2021 u/s 366A IPC. After completion of the investigation, a charge sheet was filed by the police by adding Section 376(1) IPC r/w Section 3(a)/4 POCSO Act against the petitioner. Consequently, the petitioner was made to face trial in Special (POCSO) Case No. 31 of 2021 before the Special Judge (POCSO) Tura.

3. Mr. A.H. Hazarika, learned counsel appearing for the petitioner submits that the petitioner and the respondent No.5 met each other in a grocery shop at Nalbari village run by the mother the respondent No.5. Slowly they started liking each other and decided to elope as they were under fear that the parents of the respondent No.5 would not accept their relationship. He submits that



afterwards, the petitioner and the respondent No.5 got married on 20.02.2021 at Gauripur, Dhubri, Assam as per the provisions of Muslim Law before the Muslim Marriage Officer and since then, they are residing together as husband and wife. He submits that the petitioner and the respondent No.5 now have a daughter born to them on 10.01.2023. The learned counsel submits that the respondent No.5 does not wish to continue with criminal proceedings against the petitioner as they are now residing happily as a family. He submits that the petitioner has approached this Court seeking quashing of the criminal proceedings pending against him after obtaining consent of the respondent No.5. The learned counsel has placed reliance on the decision of this Court in Crl. Petn. No. 92 of 2023 to impress upon this Court about the permissibility of quashing of a POCSO Case by consent.

4. Mrs. T. Yangi B, learned AAG appearing for the State-respondent Nos. 1 - 3 has no objection to the prayer made in this criminal petition and submits that necessary order may be passed.

5. Mr. M. Sarkar, learned counsel appearing for the respondent Nos. 4 & 5 submits that both the respondent Nos. 4 & 5 have no objection to the quashing of the criminal proceeding against the petitioner and further submits that an affidavit to that effect has been filed by the respondent No.5 before this Court.

6. Before proceeding further with the facts and situation of the case in hand, it would be appropriate to take note of the relevant part of the judgment dated 12.03.2026 passed in Crl. Petn. No. 92 of 2023. Para 34 of the judgment reads as under: -

“Thus, from the aforesaid discussion, quashing of a POCSO case under Section 528 BNSS by consent, is permissible even if it is a special statute and there is no specific exclusion of any present law/custom. However, the said discretion has to be used with due care and caution and circumspection in exceptional cases, to do justice. As noted earlier, there cannot be any straitjacket formula as to in which cases the said discretion can or cannot be exercised, inasmuch as, that would depend on the facts and



circumstances of each case i.e., the age of the parties coming before the Court; whether the consent given by the victim is an informed consent and not under coercion of the family members or the boy; that the victim and the accused are married and have a child or are living together as husband and wife, per the customs in the State of Meghalaya, etc. Where parties are living together as husband and wife or are married, a police report, or a report from any authority, be called for, verifying the said claim. Also, while considering whether the consent of the victim is an 'informed consent', it is necessary that the victim places her affidavit on giving her 'No Objection' to the quashing of the case. That, before such an affidavit is accepted, in order to ensure that the consent is an informed consent, the victim may be sent before the Secretary, MLSA or Secretary, DLSA to ascertain whether the consent given is an informed consent, by giving her time to ponder over the same; and a report be called for, before such quashing petition is considered. While quashing the case, the Government schemes that may be available to a victim in a POCSO Act and the child born from the said relationship also be given due weightage as suggested and directed by the Apex Court in the case of Re: Right to privacy of adolescents(supra)''

7. Since, the present criminal petition seeks quashing of the entire proceeding of Special (POCSO) Case No. 31 of 2021 with the consent of the respondent No.5/victim on premises that the petitioner and respondent No. 5 have got married and have a child from the said marriage, they were directed to be present before the Secretary, High Court Legal Services Committee, for the purpose of ascertaining whether the consent given by the respondent No.5 was an informed consent or not. The Secretary, High Court Legal Services Committee, has forwarded a report dated 11.06.2026 by enclosing the minutes of meeting of the District Legal Services Authority, West Garo Hills, Tura held on 07.05.2026 wherein the petitioner and the respondent No.5 were present. The minutes of the meeting reveals that the respondent No.5 had expressed her intention to withdraw the case against the petitioner out of her free will without any force, coercion or undue influence from anyone. The petitioner and the respondent No.5 have been residing together along with their 3 years old daughter as a family. The respondent No.5 also stated that



the petitioner is the sole bread earner of the family.

8. The respondent No.4 has also filed an affidavit on 24.03.2025 stating that the FIR was filed out of anger as the petitioner and the respondent No.5 got married without seeking his consent. However, he stated that at present he and his wife are not opposed to the marriage and do not want to disturb their marriage. He also acknowledged that the petitioner and respondent No.5 have a daughter.

9. In addition to the above, the respondent No.5 has filed a separate affidavit on 03.07.2026 before this Court asserting that she is happily married and living with the petitioner along with the minor child and she has no issues with her marriage as the petitioner is taking due care of her and the child. She also expressed that she does not have any objection to the quashing of the criminal proceeding against the petitioner pending before the Special Judge (POCSO), Tura. The respondent No.5 in her affidavit further asserted that the consent/no objection accorded by her is free from any influence, coercion and consideration of any kind and the same is accorded out of her own free will and volition and in sound health and mind.

10. Perusal of the affidavit filed by the respondent No.4(father of the respondent No.5/victim) reveals that the date of birth of the respondent No.5 is 15.10.2002, meaning thereby that she was more than 18 years when the marriage was performed. It appears from the affidavit attached to this petition that the petitioner was around 25 years of age at the time of filing of this case. The minutes of meeting dated 07.05.2026 of the District Legal Services Authority, West Garo Hills, Tura and the affidavit dated 03.07.2026 of the respondent No.5 undoubtedly project that the consent given by her is an informed consent and not under any threat or coercion from the family members or the petitioner. It is also clear that the petitioner and the respondent No.5 are married and have a child and are living together as husband and wife.

11. As the petitioner and respondent No.5 are married and are living



together as husband and wife and have a child, sending the petitioner to jail would not serve the cause of justice, rather it would cause great injustice to the respondent No.5 and the child born out of their relationship. Since, it is clear to this Court that the consent given by the respondent No.5 is a genuine and informed consent and that it would be greater injustice to send the petitioner to jail, a case has been made out by the petitioner for invoking inherent jurisdiction of this Court for issuing necessary direction.

12. Resultantly, further proceedings of Special (POCSO) Case No. 31 of 2021 arising out of Tura Women P.S. Case No. 15 (02) of 2021 pending before the Court of the Special Judge (POCSO), Tura is hereby set aside and quashed.

13. The criminal petition stands allowed.

Judge

Meghalaya
24.07.2026
"Abhinandan,PS"