

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-23281-2023
Date of Decision: 01.03.2024

Devender Nath ...Petitioner

Versus

State of U.T. Chandigarh and Others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Raina Godara, Advocate,
Mr. Abhimanyu Balyan, Advocate and
Mr. Neil Roberts, Advocate for the petitioner.

Mr. Manish Bansal, P.P., UT, Chandigarh and
Ms. Vasundhara Dalal Anand, Addl. P.P., UT, Chandigarh.

Mr. Amit Singh Panghal, Advocate
for respondent No. 2.

Mr. Vaibhav Sharma, Advocate as
Amicus Curiae.

Mr. Briz Mohan, Advocate for
District Legal Services Authority, Chandigarh.

HARPREET SINGH BRAR, J. (Oral)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of FIR No. 13 dated 20.02.2023 registered under Section 376(2)(n) of the Indian Penal Code, 1860 (hereinafter ‘IPC’) and Section 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter ‘POCSO Act’) at Police Station Sarangpur, Chandigarh and its subsequent proceedings pending in the Court of learned Additional Sessions Judge, Chandigarh.

FACTUAL BACKGROUND

2. Briefly, the facts are that respondent no. 2-victim T married the petitioner on 12.09.2022 of her own accord when she was 17.5 years old, with the blessings of their respective families. The couple started cohabitating in a rented accommodation in Burali and during the course of their marriage, victim T got pregnant. On 20.02.2023, victim T was 8 months pregnant when she visited the Government Multi Specialty Hospital, Sector 16, Chandigarh, along with her husband, complaining of stomach pain.

3. Suspecting the victim to be a minor, the doctors asked for a copy of her Aadhar Card. On finding their suspicions to be true, the doctors reported the same to the police in view of Section 19 of the POCSO Act. Thereafter, FIR (*supra*) was registered, citing victim T to be the complainant, without her consent and forced her to sign some documents. Consequently, the police arrested the petitioner, without verifying any of the documents.

4. Victim T gave birth to a baby boy on 22.02.2023 at Government Multi Specialty Hospital, Sector 16, Chandigarh. However, the baby was shifted to PGIMER, Sector 12, Chandigarh owing to his critical condition. Unfortunately, his condition deteriorated further and the baby boy died on 08.03.2023.

5. The petitioner was provided a Legal Aid counsel who moved his bail application before the concerned Court. However, the same was rejected vide order dated 14.03.2023 (Annexure P-3) passed by Fast Track Special Court, Chandigarh. Thereafter, this Court took suo moto cognizance

of the same and the following directions were issued vide order dated

29.03.2023 (Annexure P-4) in CM-4621-CWP-2021 in CWP-3799-2023:

“In order to reduce the agony of these two young persons in future, a direction is given to the respondents to get the statements of the victim, the accused (Devender Nath) and their family members recorded before the concerned Court. District Legal Service Authority, Chandigarh is also directed to get a Legal Aid Counsel for both the victim and Devender Nath and thereafter, get their statements recorded. The Social Welfare Department can also send a Child Welfare Counsel and record statement of the victim. After getting their statements recorded, the Legal Aid Counsel can file a petition under Section 482 Cr.P.C. before this Court and get the FIR quashed in accordance with law. A further direction is given to the Legal Service Authority, Chandigarh, to give compensation to the victim for undergoing such trauma, in which she has lost the child for no fault of her.

The above exercise be completed within a period of six (06) weeks.”

6. In compliance of the above-mentioned directions, respective statements of the petitioner and victim T were recorded by the learned trial Court on 18.04.2023 (Annexure P-5 and P-6, respectively). A compromise dated 30.04.2023 (Annexure P-11) was arrived at wherein it was stated that there is no ill will between the parties and the victim has no objections if the FIR(*supra*) is quashed. In compliance of the above order, a report dated 12.02.2024 has been received from the concerned jurisdictional Court that the compromise between the parties is genuine and arrived at without any pressure or coercion from anyone.

CONTENTIONS

7. Learned counsel for the petitioner *inter alia* contends that the petitioner and victim T are young persons in their early twenties who had

entered into a wedlock of their own volition, with the blessings of both the families. No complaint was made either by respondent No. 2 or her parents since solemnization of marriage on 12.09.2022. The doctors supplied information to the police after finding respondent no. 2 to be 8 months pregnant on examination on 20.02.2023, only to avoid prosecution under Section 21 of the POCSO. Neither respondent no. 2 nor her parents have supported the allegations in the FIR(*supra*) or want to pursue prosecution of the petitioner. Respondent no. 2 was made complainant immediately without informing her of the same. The counselor merely told her that in case she requires any assistance, a support person from the Child Welfare Committee will be provided to her.

8. He further contends that even though respondent no.2 had not attained the age of majority, the sexual contact between her and the petitioner was consensual and the incident is devoid of any *mens rea* as the couple are cohabitating as legally wedded couple. The petitioner and respondent no. 2 are roped in needless prosecution, disrupting their family life. In her statement dated 18.04.2023 (Annexure P-6), respondent no. 2 has categorically stated that she did not move any complaint before the police or the doctor. The petitioner was arrested when respondent no. 2 was going through labour. The continuation of criminal proceedings against the petitioner serves no just purpose but only inflicts avoidable agony on to the couple. In a bid to rescue her husband from this unjust prosecution, respondent no.2 could not look after their newborn baby properly which ultimately led to his untimely demise. The petitioner was not allowed to be with his wife during the birth of their child or after due to mishandling of the case by the police.

9. Finally, learned counsel for the petitioner submits that the respondent no. 2 has attained the age of majority and prays for quashing of the FIR (*supra*) by placing reliance upon the decision of Hon'ble Supreme Court in ***K. Dhandapaniani versus The State of Inspector of Police 2022 SCC Online SC 1056***, Full Bench of the Delhi High Court in ***Court on its Own Motion(Lajja Devi) versus State 2012(4) CCR 72***, Meghalaya High Court in ***Shri Skhemborlang Suting and another v. State of Meghalaya and another*** Criminal Petition No. 63 of 2021, decided on 23.03.2022, Madras High Court in ***Vijayalakshmi and others v. State*** Crl. O.P. No. 232 of 2021 and Crl. M.P. No. 109 of 2021 decided on 27.01.2021, Rajasthan High Court in ***Tarun Vaishnav v. State of Rajsthan and others*** Crl. Misc. (Pet.) No. 6323 of 2022 decided on 13.10.2022 and Full Bench of this Court in ***Kulwinder Singh v. State of Punjab 2007(3) R.C.R(Crl.) 1052***.

10. *Per contra* learned State counsel opposes the prayer of the petitioner on the grounds that respondent no. 2 was 8 months pregnant at the time of registration of the FIR (*supra*), which is sufficient to invoke the POCSO Act as well as attract Section 376(2)(n) of the IPC. Since respondent no. 2 was a minor, her consent for the sexual act at the time holds no relevance. He further relies upon the judgment rendered by the Hon'ble Supreme Court in ***Independent Thought v. Union of India and others 2017 AIR SC 4904*** whereby the Exception 2 to Section 375 of the IPC has been expressly struck down qua minor wife under the age of 18 years. Learned counsel submits that the Kerala High Court in ***Hafsal Rahman N.K. versus State of Kerala*** Crl. MC. No. 5576 of 2019(F) decided on 30.08.2019 has quashed the FIR registered under the POCSO Act on the basis of compromise and SLP No. 24362 of 2021 against the same is pending

consideration before the Hon'ble Supreme Court.

11. Learned *Amicus Curiae* submits that the facts of the case in ***Hafsal Rahman(supra)*** are totally distinguishable as the accused in that case was 36 years old and allegedly, a teacher of the victim and the FIR was quashed on the statement made by the mother of the victim. He further submits that the present case has arisen out of an admittedly consensual relationship between the accused and the victim, who are also married. In an identical case decided by the Rajasthan High Court titled ***Tarun Vaishnav v. State of Rajasthan and another (supra)***, the FIR was quashed on account of the nature of relationship between the accused and the victim being consensual and SLP (Crl.) 1890 of 2023 preferred against the same was dismissed by the Hon'ble Supreme Court vide judgment dated 03.03.2020.

12. Learned *Amicus Curiae* further submits that the proximity of age between the petitioner and respondent no. 2 must be given due consideration and a compassionate view be taken considering their young age. While teenage relationships are looked at with disdain by the society, the law must consider their consensual nature and the human tendency to seek companionship. In view of the same, following suggestions are made regarding quashing of such FIRs:

(a) **Assessment of Voluntary Consent:** It must be ensured that if the alleged sexual act is claimed to be consensual, it must emanate from a place of volition, untainted by coercion, duress or undue influence.

(b) **Proximity in Age:** Due regard must be given to the age differential between the parties so as to ascertain the nature of the relationship.

(c) **Upholding the Best Interests of the Minors:** The welfare of the minors is the paramount consideration which includes their

psychological well being and prospects of a dignified future.

(d) **Acknowledgment of Socio-cultural Dynamics:** An assessment of such situations must duly consider the socio-cultural context enveloping the relationship.

(e) **Engagement with Parental or Guardian Perspectives:** The insights and apprehensions of parents or legal guardians or absence thereof must be judiciously considered to ensure the relationship does not go against the best interest of the minors.

(f) **Implication of Criminal Proceedings:** It must be contemplated that the perpetuation of criminal proceedings can incite potential stigma, social alienation and psychological afflictions on the minors.

(g) **Mandate for Legal and Social Counselling:** It is incumbent upon the State to ensure that the minors have been afforded comprehensive legal and social counselling, facilitating informed decision-making and a nuanced understanding of legal contours and societal ramifications.

(h) **Vigilance against Exploitation:** No strait jacket formula can be adopted for dealing with such cases therefore the Courts must remain vigilant to discern any indications of exploitation, abuse or disparity in the relational dynamics ensuring the relationship is rooted in mutual respect and equality.

13. Learned *Amicus Curiae* further submits that the situation might be looked at through a compassionate lens and the petitioner and respondent no. 2 be given the advantage of the consensual nature of their relationship that culminated into marriage as well as their young age and the nature of their circumstances. He places reliance on the following judgments to

support his stance:

Sr. No.	Case Title	Court
1.	K. Dhandapani v. The State 2022(2) R.C.R.(Criminal) 987	Hon’ble Supreme Court
2.	Ananda D.V. V. State and others 2021(OLR) 1074	
3.	Kapil Gupta v. State of NCT of Delhi and others 2022(4) R.C.R.(Criminal) 497	
4.	Jatin Aggarwal v. State of Telangana and others 2022(2)R.C.R(Criminal) 603	
5.	Ranjeet Kumar v. State of H.P. and others MANU/HP/2314/2013	Himachal Pradesh High Court (DB)
6.	Narinder Kaur @ Ninder Kaur and others v. State of Punjab and others CRM-M-41204-2020	Punjab and Haryana High Court
7.	Ashik Ramjan Ansari v. The State of Maharashtra and others 2023 CriLJ 3633	Bombay High Court
8.	Sabari v. Indpector of Police, Belukurichi Police Station and others 2019(3) R.C.R(Criminal) 452	Madras High Court
9.	Jitender Kumar Sharma v. State and others 2010(4) R.C.R.(Criminal) 20	Delhi High Court (DB)
10.	Skhemborlang Suting and others v. State of Meghalaya and others MANU/MG/0054/2022	Meghalaya High Court
11.	Tarun Vaishnav v. State of Rajasthan and others MANU/RH/16181/2022	Rajasthan High Court
12.	Kundan and another v. State and others CrI.M.C. 27/2022	Delhi High Court

OBSERVATIONS AND ANALYSIS

14. Having heard learned counsel for the parties and the learned *Amicus Curiae* and after perusing the record with their able assistance, it transpires that the marriage between petitioner and respondent no. 2 was solemnised on 12.09.2022, with the blessings of their families, when respondent no. 2 was a minor of the age of 17.5 years. The couple had been blissfully residing together and were on the family way when respondent no.

2 went to the hospital for a check-up on 20.02.2023. No complaints were made by respondent no. 2 or her parents during the subsistence of the marriage or before that. The genesis of the instant FIR lies in the reporting of respondent no. 2's pregnancy by the doctors under Section 19 of the POCSO Act. While the intent behind the statutes criminalising sexual exploitation of women, especially children is noble in all senses of the term, it must be understood that application of such statutes cannot be divorced from the reality of the situation. The criminal proceedings have wreaked havoc on the lives of the instant petitioner and his wife. The couple also, unfortunately, lost their newborn child in the process of securing justice.

15. Section 5 of the Hindu Marriage Act, 1955 prescribes conditions for a Hindu marriage. Section 5(iii) is reproduced below:

“Section 5: Conditions for a Hindu Marriage:

A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled, namely:

(iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;”

However, the marriage between two persons who do not satisfy the age criterion does not become void *ab inito*. Such a marriage would be voidable at the instance of the minor party. Therefore, in absence of such declaration in view of the Prohibition of Child Marriage Act, 2006, the marriage subsists and the husband can be the legal guardian of his minor wife, as reaffirmed by a Division Bench of this Court in ***Mamta v. Rohan Verma 2022(2) R.C.R.(Civil) 349***. A Full Bench of the Delhi High Court in ***Court on its own Motion (Lajja Devi) v. State (supra)*** has confirmed the validity of such marriage, minor party be consenting as well as held that guardianship of the minor wife can be given to her husband if it serves her

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best interest. As far as the question of quashing of FIR under Section 376 of the IPC is concerned, speaking through Justice A.K. Sikri, the following was held:

“49. In case the girl is below 16 years, the answer is obvious that the consent does not matter. Offence under Section 376 Indian Penal Code is made out. The charge-sheet cannot be quashed on the ground that she was a consenting party. However, there can be special or exceptional circumstances which may require consideration, in cases where the girl even after attaining majority affirms and reiterates her consent.

50. Consummation, with the wife below the age of 15 years, is an offence under Section 375. No exception can be made to the said constitutional mandate and the same has to be strictly and diligently enforced. Consent in such cases is completely immaterial, for consent at such a young age is difficult to conceive and accept. It makes no difference whether the girl is married or not. Personal law applicable to the parties is also immaterial.

51. If the girl is more than 16 years, and the girl makes a statement that she went with her consent and the statement and consent is without any force, coercion or undue influence, the statement could be accepted and Court will be within its power to quash the proceedings under Section 363 or 376 I.P.C. Here again no straight jacket formula can be applied. The Court has to be cautious, for the girl has right to get the marriage nullified under Section 3 of the PCM Act. Attending circumstances including the maturity and understanding of the girl, social background of girl, age of the girl and boy etc. have to be taken into consideration.” (emphasis added)

16. The intention behind creation of the POCSO Act was to protect children from sexual exploitation and by means of special procedure and stringent punishment promote deterrence. This Court is conscious of the dictum of the Hon’ble Supreme Court in ***Independent Thought (supra)***, it appears to be a case of consensually married couple, where neither party desired litigation. While sincere efforts are made through various legislations and policies to combat the child marriage, time and again, the Courts have

reiterated that while dealing with minors, their welfare takes precedence

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over all else, therefore, adjudication of a case without considering the societal and cultural context would be a travesty of justice. The overarching aim of justice is to serve what is deserved and accountability and fairness are identifying features of the same. However, the said purpose would be defeated if justice is viewed in its absolute mechanical form, devoid of context and nuance. While justice in itself is a dynamic concept, directly influenced by the morality of an ever-evolving society, it can be said with certainty that absolute impartiality and lack of compassion often claims fairness as a casualty. In a welfare State, it is of the utmost importance that the vulnerability of the disadvantaged is recognised and the application of justice is viewed from a renewed perspective. The plight of this young married couple who have recently lost a child and are running from pillar to post to restore normalcy to their lives can only be truly addressed when compassion drives justice.

17. In the instant case, respondent no. 2 has been happily married to the petitioner and has categorically stated that she neither moved any complaint nor desires further action against the petitioner. Respondent no. 2 has attained the age of majority and wants to continue with her matrimonial life. If the criminal proceedings against the petitioner allowed to continue, not only will it lead to unnecessary incarceration of the petitioner but also leave respondent no.2 bereft of financial and emotional support. Therefore, this Court is of the considered view that justice can only be substantially realised if the FIR in the present case is quashed, in view of the compromise entered into between the parties.

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and FIR No. 13 dated 20.02.2023 registered under Section 376(2)(n) of the IPC and Section 6 of POCSO Act at Police Station Sarangpur, Chandigarh and its subsequent proceedings are quashed. However, before parting with this order, this Court appreciates the valuable and effective assistance rendered by Mr. Vaibhav Sharma, Advocate as *amicus curiae*.

(HARPREET SINGH BRAR)
JUDGE

01.03.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No