



2025:DHC:11460



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 12.12.2025

+ W.P.(CRL) 4123/2025, CRL.M.A. 37188/2025 STAY OF
PROCEEDINGS & CRL.M.A. 37189/2025 DELAY OF 10
DAYS

SAIVAN

.....Petitioner

Through: Mr. Raj Mani Mishra, Advocate

versus

STATE NCT OF DELHI AND ANR

... Respondents

Through: Mr. Amol Sinha, ASC

CORAM:-**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT(ORAL)****RAVINDER DUDEJA, J.**

1. This is a petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, seeking quashing of FIR No.122/2020, dated 07.02.2020, registered at P.S Khayala, Delhi under sections 363/366/376 IPC& Section 6 POCSO Act and all proceedings emanating therefrom on the basis of settlement between the parties.

2. As per the allegations in the FIR, on 01.02.2020 at around 2:00 PM, the father of respondent No. 2 alleged that respondent no. 2 a minor aged about 13 years, went missing from their residence without any intimation and could not be traced despite their best efforts. He further expressed apprehension that some unknown person might have



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induced and taken her away.FIR No. 122/2020, dated 07.02.2020, at P.S Khayala, Delhi under section363 IPC was registered at the instance of father of the respondent no.2.Chargesheet has since been filed under sections 363/366/376 IPC & Section 6 POCSO Act against the petitioner.

3. During the proceedings, the parties amicably resolved their disputes and petitioner no.1 and respondent no.2 executed a joint Compromise Deed/Affidavit dated 17.08.2025 declaring that both had solemnized their marriage/Nikah on 05.02.2020 according to Muslim rites and customs and there exists no disputes or grievance between them. The copy of Compromise Deed dated 17.08.2025 and the Nikahnama are annexed as Annexure4 & 3.

4. Ld. Counsel for the petitioner submitted that respondent no. 2/victim was major at the time of her marriage with petitioner. He further submits that in her cross examination prosecutrix/respondent no. 2 has supported the petitioner by submitting that she went by her own consent.

5. In this background, the Petitioner (purported husband) and Respondent No. 2, have approached this Court seeking quashing of the FIR.

6. Learned APP for the State has opposed the petition arguing that the victim was a minor girl aged 13 years old at the time of registration of FIR and the offence is grave and serious in nature.



7. This is precisely the kind of matter in which the statutory framework of the POCSO Act sits uneasily with lived reality and the tension between the two is stark. The material placed on record suggests a purported marriage of the victim at the age of about 13 years and the sexual relationship between petitioner and respondent started when she was certainly a child. It is pertinent to note that the contention of the petitioner that the prosecutrix was a major at the time of offence is a matter to be determined during the trial.

8. In ***Prince Kumar Sharma And Others v. The State NCT of Delhi And Another, CRL.M.C. 7145/2025, 2025:DHC:10080*** the coordinate bench of this court while dealing with a similar kind of issue discussed and held as under:

“9. The difficulty is that the legal position is not ambivalent. At the time of the incident, the victim was indisputably a child as per the definition under the POCSO Act. The statutory scheme of the Act proceeds on a clear and deliberate premise. Section 2(1)(d) defines a ‘child’ as any person below the age of 18 years. The offence-creating provisions, such as Sections 3 and 7, criminalise specified sexual acts ‘with a child’. Unlike Section 375 of the IPC, these provisions do not employ expressions such as ‘without her consent’ or ‘against her will’ as ingredients of the offence. Once it is shown that the victim was below 18 years of age on the date of the occurrence and that the physical acts described in the charge fall within the contours of Sections 3 or 7, the offence is, in principle, complete.

10. In other words, the Act does not treat absence of consent as a constituent element when the victim is a child. The law proceeds on the footing that a child lacks the legal capacity to consent to sexual activity, and that any such activity with a person below 18 is inherently exploitative. The apparent willingness of the child, howsoever genuine it may appear on facts, does not carry exculpatory value in determining guilt. The concept of ‘age of



consent' is thus built into the definition of 'child' itself; by fixing the age at 18, the Parliament has consciously removed the space for a defence founded on so-called consensual participation by a minor.

11. This approach is reinforced by the presumptions engrafted in Sections 29 and 30. Where the prosecution establishes the foundational facts that the accused committed the acts charged under the relevant provisions with a person who is a 'child', the court is required to presume that the accused has committed the offence and that the requisite culpable mental state was present, unless the contrary is proved. The child's statement that he or she went of his/her own accord' or was in a relationship with the accused may have a bearing on issues such as bail, sentencing, or the exercise of extraordinary jurisdiction in rare and hard cases, but it does not negate the ingredients of the offence under the POCSO Act.

12. The Supreme Court, while examining allied questions under the IPC and POCSO, has consistently recognised that consent of a person below the statutory age has no legal efficacy in the context of sexual offences. The philosophy that underlines POCSO is that of heightened protection, not neutrality, in respect of adolescent sexuality. Courts may, therefore, be slow to use the language of 'consensual sex' where one party is a child in terms of the statute. The proper inquiry in such cases is not whether the minor consented, but whether the prosecution has established the child's age and the occurrence of the proscribed act; once those elements stand proved, the supposed consent of the minor cannot be invoked as a defence to criminal liability."

9. Quashing in such case, where there are specific allegations of rape of minor on the basis of the settlement, are not desirable. Further, as per the settled law which has been consistently held by the Apex Court as well as this Court in several occasions, the consent of minor is no consent. Thus, even if respondent no. 2 affirms to marriage with petitioner, it would be deemed as no consent.

10. This Court has, in unambiguous terms and on multiple occasions, held that the power under Section 482 Cr.P.C. cannot be



exercised to quash criminal proceedings on the basis of compromise where the offence is heinous, not private in nature, and has a serious impact on society, relying upon the Supreme Court and this Court's decisions in ***Laxmi Narayan & Anr v. Govt Of Nct, Delhi & Anr*** CRL. M.C. 3653/2015, ***RE: Right to Privacy of Adolescents***, 2024 INSC 614, Suo Motu Writ Petition (C) No. 3/2023, and ***State of Haryana v. Bhajan Lal***, 1992 Supp (1) SCC 335. These precedents clearly emphasize that offences involving heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. transcend the realm of private disputes and affect the societal conscience at large. Therefore, when an incident of such nature and gravity is alleged, it cannot be characterized as a purely private offence having no serious impact on society.

11. Similarly, in case of ***Narinder Singh v. State of Punjab*** (2014) 6 SCC 466, the Supreme Court, after taking note of its earlier decision in case of ***Gian Singh v. State of Punjab*** (2012) 10 SCC 303, had laid down the following principles which would guide High Courts in adjudicating cases relating to quashing of criminal proceedings on the basis of settlement:

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:



29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure: (i) ends of justice, or (ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. **Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society.** Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.” quashed merely on the basis of compromise between the victim and the offender.

12. In **Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors., 2024 INSC 846**, Criminal Appeal No. 3403/2023, the Hon’ble Apex Court



while setting aside a quashing of FIR order based on settlement for offences under POCSO Act, held as under :

*“25.Thus, in unambiguous terms this Court held that before exercising the power under Section 482, Cr.P.C. the **High Court must have due regard to the nature and gravity of the crime besides observing and holding that heinous and serious offences could not be quashed even though a victim or victim’s family and the offender had settled the dispute.**”*

13. In *State of M.P. v. Madanlal* (2015) 7 SCC 681, the Apex Court had expressed that:

“We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of.”

14. If the Respondent no. 2 has made a false allegation, then such complainant should be dealt with in accordance with law.

15. An order quashing the prosecution in such circumstances would almost inevitably be perceived as judicial endorsement of the notion that underage marriages can be insulated from legal consequences merely because the parties later present themselves as a settled family. Courts cannot overlook the real possibility that what appears to be apparent consent by a 13-year-old may in fact be the result of familial pressure or entrenched community expectations. Snuffing out the prosecution at the threshold would risk conveying the message that child marriages and sexual relationships with minors can be retrospectively legitimized by arranging a ceremony and continuing cohabitation. Such an approach would run squarely contrary to the



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legislative intent underlying both the POCSO Act and child marriage laws, which are designed to deter early marriage and prevent sexual exploitation of children.

16. In view of the aforesaid circumstances it would not be appropriate to continue the present FIR No. 122/2020, dated 07.02.2020, registered at P.S Khayala, Delhi under sections 363/366/376 IPC & Section 6 POCSO Act and all the other consequential proceeding emanating therefrom.

17. In the interest of justice, the Court cannot create an exception to the statute solely on the basis that the victim characterizes the relationship as consensual. This is a case where equitable considerations evoke sympathy, yet the supremacy of the law must prevail over such considerations.

18. The petition stands dismissed along with pending application(s).

19. It is clarified that any observations made in the present order are for the purpose of deciding the present petition and shall not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

RAVINDER DUDEJA, J

DECEMBER 12, 2025

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