2026:AHC:208995

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 36637 of 2026

Vishal Kumar Srivastava

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Kripa Shankar Tiwari
Counsel for Opposite Party(s)	:	G.A., Tahir Ali

Court No. - 73

HON'BLE DR. GAUTAM CHOWDHARY, J.

1. Heard learned counsel for the applicant, learned A.G.A. and perused the record.

2. The present application has been filed for quashing the proceedings of Special Trial No. 1011 of 2026 (State Vs. Vishal Kumar Srivastava) arising out of Case Crime No. 772 of 2014 under Sections 363, 366 I.P.C., and Section 3/4 of POCSO Act, Police Station Colonlelganj, District Prayagraj pending before learned Additional Sessions Judge/Special Judge, POCSO Act, District Prayagraj as well as to quash the charge sheet dated 14.06.2015 and also to quash the cognizance order dated 01.08.2026 passed in the aforesaid case.

3. Learned counsel for the applicant submits that the daughter of the opposite party no.2 has solemnised marriage out of her own free and consent and is residing with the applicant without any threat or coercion. Learned counsel for the applicant has contended that after lodging of the F.I.R., the applicant and the daughter of the opposite party no.2 challenged the F.I.R. before this Court, which came up for consideration on 28.01.2016 on which day, the victim and the applicant were present before this Court and that the victim had specifically stated that she had solemnised marriage with the applicant without any coerce or undue influence. He further submits considering the statement of the victim, the arrest of the petitioners in the petition, were stayed till submission of police report under Section 173 Cr.P.C. Learned counsel further argued that without conducting the fair and impartial investigation, the investigating officer submitted charge sheet dated on 14.06.2015 upon

which cognizance was taken after a lapse of more than 10 years i.e. on 01.08.2026. He next submits that the victim is residing as a legally wedded wife of the applicant at her matrimonial house without any complaint, peacefully. Learned counsel also argued that the marriage of the applicant with the victim has also been got registered and in this regard, photo copy of the certificate of registration of marriage, has been produced before this Court and is taken on record. He next submits that since the victim has solemnised marriage with the applicant out of her own volition, therefore, the proceedings against the applicant is bad in law and is liable to be quashed. Learned counsel for the applicant has placed reliance on a judgement of Meghalaya High Court in the case of **Shri. Olius Mawiong & Anr. Vs. State of Meghalaya & Anr.** in support of his contention.

4. Pertinent to the present case, relevant portion of the aforesaid judgement is reproduced hereinbelow:-

> 16. The POCSO Act speaks of penetrative sexual assault and aggravated penetrative sexual assault to indicate that an act of sexual penetration inflicted upon a minor will attract the punishment for the same under the relevant provisions of the said Act. However, in a case where other attending factors such as a case of consensual sex or sex within the bond of marriage albeit between persons who are still minors or one of whom is a minor, are not taken into account in the correct perspective, the course or cause of justice may not have been served, but only the letter of the law fulfilled.
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> 17. This is precisely the case here where a minor girl who is living with a man as husband and wife with the blessings of the family members, has to witness her husband being prosecuted under the POCSO Act only because of her age being under 18 years. In fact, in the present case, the age of the minor girl is said to be about 17 years and 7 months which is only about 5 months less than 18 years at the time of reportage of the alleged offence.
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> 18. Be that as it may, this Court is in agreement with the opinion expressed by some of the Hon'ble High Courts on this issue.
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> 19. The learned counsel for the petitioners referring to the case of **Teiborlang Kurkalang (supra)**, wherein in a similarly situated case, this Court has allowed the prayer made therein and has set aside the FIR and quashed the related proceedings before the Trial Court.
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> 20. The ratio in the case of Teiborlang Kurkalang was arrived at by following the precedent laid down in cases of similar nature, particularly the case of Ranjit Rajbanshi (supra) also

relied upon by the petitioners wherein at para 47, 48 and 49 of the same, the Hon'ble Calcutta High Court has opined as follows:

> "47. In the present case, the victim girl was admittedly 16 ½ years old and studied in Class XII at the relevant point of time. She was not naïve enough not to know the implication of sexual intercourse; rather, the victim admittedly had a physical relationship with the accused, who was also of a very young age, on several occasions prior to the incident. Although the consent of a minor is not a good consent in law, and cannot be taken into account as 'consent' as such, the expression 'penetration' as envisaged in the POCSO Act has to be taken to mean a positive, unilateral act on the part of the accused. Consensual participatory intercourse, in view of the passion involved, need not always make penetration, by itself, a unilateral positive act of the accused but might also be a union between two persons out of their own volition. In the latter case, the expression 'penetrates', in Section 3(a) of the POCSO Act might not always connote mere voluntary juxtaposition of the sexual organs of two persons of different genders. If the union is participatory in nature, there is no reason to indict only the male just because of the peculiar nature of anatomy of the sexual organs of different genders. The psyche of the parties and the maturity level of the victim are also relevant factors to be taken into consideration to decide whether the penetration was a unilateral and positive act on the part of the male. Hence, seen in proper perspective, the act alleged, even if proved, could not tantamount to penetration sufficient to attract Section 3 of the POCSO Act, keeping in view the admitted several prior occasions of physical union between the accused and the victim and the maturity of the victim.
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> 48. As such, it cannot be said that the accused was guilty of penetrative sexual assault, as such, since here the act of penetration, even if true, would have to be taken not as a unilateral act of the accused but a participatory moment of passion involving the participation of both the victim and the accused.
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> 49. Although the question of consent does not arise in case of a minor, in order to attract Section 376(1) of the IPC, it had to be established that the alleged offence was committed against the will of the victim. Read in conjunction, the provisions of Section 376 of the IPC and Section 3 of the POCSO Act ought to be construed on a similar footing and cannot incriminate the accused for a voluntary joint act of sexual union."

21. Similarly, in the case of **Vijayalakshmi (supra)**, the Hon'ble Madras High Court at para 11 and 18 has expressed as under:

> 11. …There can be no second thought as to the seriousness of offences under the POCSO Act and the object it seeks to achieve. However, it is also imperative for this Court to draw the thin line that demarcates the nature of acts that should not be made to fall within the scope of the Act, for such is the severity of the sentences provided under the Act, justifiably so, that if acted upon hastily or irresponsibly, it could lead to irreparable damage to the reputation and livelihood of youth whose actions would have been only innocuous. What came to be a law to protect and render justice to victims and survivors of child abuse, can, become a tool in the hands of certain sections of the society to abuse the process of law.
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> 18. ... Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act. An adolescent boy and girl who are in the grips of their hormones and biological changes and whose decision-making ability is yet to fully develop, should essentially receive the support and guidance of their parents and the society at large. These incidents should never be perceived from an adult's point of view and such an understanding will in fact lead to lack of empathy. An adolescent boy who is sent to prison in a case of this nature will be persecuted throughout his life. It is high time that the legislature takes into consideration cases of this nature involving adolescents involved in relationships and swiftly bring in necessary amendments under the Act. The legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act."

22. In the light of the above, this Court is convinced that the case of the petitioners has to be looked at pragmatically, taking the above observations into consideration to give relief to the parties. This will meet the ends of justice as is inherently found in this Court's exercise of the power under Section 482 Cr.P.C.

23. This petition is accordingly allowed. The FIR in Pynursla P.S. Case No 30 (5) of 2021 under Section 5 (j) (ii) (q)/6 of the POCSO Act, 2012 and the proceedings in Special POCSO Case No. 63 of 2021 are hereby set aside and quashed.

24. Petition disposed of. No costs."

5. Learned A.G.A. could not dispute the facts noted above.

6. Pursuant to the earlier order of this Court dated 27.05.2022, the victim is present before this Court, who is identified by her counsel. The victim has also stated before this Court that she has solemnised marriage with the applicant out of her own free will and consent and is living happily with the applicant. The statement of the victim recorded on a separate sheet, which has been kept as a part of the record.

7. Having heard learned counsel for the applicant and having perused the record, it transpires that the victim had gone with the applicant out of her own free will, love and affection and had solemnised marriage without any force or coercion. Their marriage has also been registered. At present, both the applicant and the victim are living happily as husband and wife. The victim has given statement before this Court that she has solemnised marriage with the applicant and is living happily with her husband at her matrimonial house.

8. Perusal of the aforesaid judgment clearly bring out the settled position in law.

9. Considering the facts in entirety, this Court is of the opinion, that no useful purpose may be served in proceeding against the applicant and thus the entire proceedings of the aforesaid case is liable to be quashed.

10. Accordingly, the proceedings of Special Trial No. 1011 of 2026 (State Vs. Vishal Kumar Srivastava) arising out of Case Crime No. 772 of 2014 under Sections 363, 366 I.P.C., and Section 3/4 of POCSO Act, Police Station Colonlelganj, District Prayagraj pending before learned Additional Sessions Judge/Special Judge, POCSO Act, District Prayagraj as well as charge sheet dated 14.06.2015 and also the cognizance order dated 01.08.2026 passed in the aforesaid case are quashed.

11. The application is accordingly, allowed.

(Dr. Gautam Chowdhary,J.)

October 5, 2026
S.Ali

Digitally signed by :-
SHAUKAT ALI
High Court of Judicature at Allahabad