

ITEM NO.38

COURT NO.1

CORRECTED
SECTION PIL-WS U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Criminal) No(s). 253/2022

RAMJI LAL BAIRWA & ANR.

Petitioner(s)

VERSUS

STATE OF RAJASTHAN & ANR.

Respondent(s)

(FOR ADMISSION and IA No.89863/2022-EXEMPTION FROM FILING O.T.)

Date : 30-09-2022 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALAFor Petitioner(s) Mr. Chetan Bairwa, Adv.
Ms. Kiran Bairwa, Adv.
Mr. Vikas Jain, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

This petition filed under Article 32 of the Constitution of India has highlighted the following factual aspects:

a. In an incident which occurred on 06.01.2022, an FIR was lodged by the father of a minor girl ("the victim" for short) against a school teacher who had committed the offence of outraging the modesty of the victim.

b. The concerned accused, though named the FIR was never arrested.

c. A compromise was allegedly executed by the family

members of the victim and the accused on the other hand, which became the basis for filing a petition under Section 482 of the Code of Criminal Procedure by the accused.

d. Going by the compromise which was presented before the Court, the High Court allowed the petition filed by the accused and quashed the proceedings.

e. The order passed by the High Court observed that there was opposition on part of the Public Prosecutor. However, the High Court relied upon the decision of this Court in *Gian Singh vs. State of Punjab* [2012 (10) SCC 303] in support of its conclusion that even in non-compoundable offences, the process of Court can be invoked to have the proceedings quashed on the basis of a compromise entered into between the parties.

This petition submits that an offence which is otherwise punishable under Section 354 of the IPC and under the provisions of the POCSO Act and which by very nature is against the society and non-compoundable was thus quashed by the High Court. It is further submitted that State of Rajasthan, the Guardian of the interests of the persons living in the State has chosen not to appeal against the said decision of the High Court.

In these circumstances, the instant petition under Article 32 of the Constitution has been filed.

Apart from the issues touching the merits of the matter and whether the power under Section 482 of the Cr.P.C. was rightly exercised, the matter may also raise issues concerning the locus of the present petitioner to maintain and seek the relief as prayed.

Since the original accused is not made party to the instant proceedings, the original accused as well as the father of the victim whose details are available at page 24 be made parties to the instant proceedings.

Issue notice, returnable on 31.10.2022.

Considering the importance of issues involved in the matter, we request Mr. R. Basant, learned Senior Advocate of this Court to assist the Court as Amicus Curiae which request Mr. Basant has graciously accepted.

Let a copy of the paper book be given to Mr. Basant. Mr. Basant may have the assistance of any advocate-on-record of his choice.

List on 31.10.2022.

(INDU MARWAH)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)