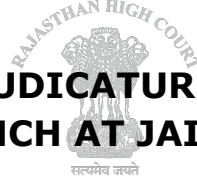




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 3992/2022

Victim, R/o

----Petitioner

Versus

1. State of Rajasthan, Through P.p.
2. Sunil Kumar Son of Shri Kundan Lal, Resident of Khanpur Mewan, Police Station Kishangarh Bas, Police District Bhiwadi, District Alwar (Raj).
3. Ravi Kumar Son of Shri Jagdish, Resident of Khanpur Mewan, Police Station Kishangarh Bas, Police District Bhiwadi, District Alwar (Raj).
4. Ravindra Son of Shri Ram Singh, Resident of Khanpur Mewan, Police Station Kishangarh Bas, Police District Bhiwadi, District Alwar (Raj).
5. Kundan Lal Son of Not Known, Resident of Khanpur Mewan, Police Station Kishangarh Bas, Police District Bhiwadi, District Alwar (Raj).

----Respondents

For Petitioner(s) : Mr. Santosh Kumar Jain
For Respondent(s) : Mr. Jitendra Singh Rathore-PP
Mr. Anirudh Singh

JUSTICE ANOOP KUMAR DHAND
Order

11/05/2026

Reportable

1. The instant misc. petition is listed before this Court in pursuance of the directions issued by the Hon'ble Apex Court in the case of **Vijay Kumar and Ors. Vs. State of Rajasthan** (Petition for Special Leave to Appeal (Crl.) No. 773/2026, decided on 15.01.2026), wherein the Hon'ble Apex Court observed that in various matters, interim orders have been passed in criminal revision petitions and petitions filed





under Section 482 Cr.P.C., as a result of which trial relating to serious offences such as murder, rape, dacoity, dowry death, etc., could not proceed and remained stalled/held up due to the passage of considerable time.

2. Directions have been issued to this Court and other High Courts to take up such like matters which are pending since long, on priority and decide the same expeditiously without deferring the hearings to subsequent dates.

3. By way of filing the instant criminal misc. petition, a challenge has been led to the impugned order dated 12.11.2021, passed by the Court of Special Judge, Protection of Children from Sexual Offences Act, 2012 and Commission for Protection of Child Rights Act, 2005, No. 4, Alwar wherein the Final Report (Negative) submitted by the Police in FIR No. 261/2021 registered for the offences punishable under Sections 323, 376D IPC and Section 5/6 of the POCSO Act (Amendment), 2012, 2019 (for short 'the Act of 2012') has been accepted by the Trial Court holding that the complainant-petitioner (hereinafter referred as the petitioner) does not want any further proceedings in the present matter.

4. Learned counsel for the petitioner submits that the petitioner is a minor girl with whom the alleged offence of rape/sexual assault was committed by certain known persons, who are named in the FIR as well as in the statements of the petitioner recorded under Section 164 Cr.P.C. before the Court of Juvenile Magistrate, Kishangarh Bas, Alwar wherein she has levelled categorically and specifically allegations of rape against these accused persons. Counsel submits that the





matter was not investigated in a fair and impartial manner and the Police submitted the Final Report (Negative) in the aforesaid FIR lodged by the petitioner. Counsel submits that the petitioner was lodged in the Children's Home i.e. Government Savitri Bai Phule Kanya Chhatrawas, Ambedkar Nagar, Alwar and a notice was sent to her against the aforesaid Final Report (Negative). Counsel submits that on the basis of the consent given by the petitioner, wherein she indicated that she does not want any proceedings to continue against the accused persons, the Final Report (Negative) was accepted by the Court below. Counsel submits that consent of the petitioner, who is a minor, is no consent in the eyes of law, hence, under these circumstances, the proceedings should not have been closed against the accused persons. Counsel submits that the learned Magistrate was duty bound to look into the allegations which were levelled against the accused persons in the FIR as well as in the statements of the petitioner recorded under Section 164 Cr.P.C. but instead of doing so, the learned Magistrate has accepted the FR without giving any plausible reasons. Hence, interference of this Court is warranted.

5. Per contra, learned Public Prosecutor opposes the arguments raised by counsel for the petitioner but he is not in a position to controvert the submissions made by counsel for the petitioner.

6. Heard and considered the submissions made at Bar and perused the material available on record.



7. Perusal of the record indicates that the alleged incident of rape/sexual assault was committed with the petitioner by the accused persons on 29.05.2021 and thereafter, she lodged an FIR against the accused persons with the Police Station Kishangarh Bas, District Alwar for the offences punishable under Sections 323, 376D IPC and Section 5/6 of the Act, of 2012. During the course of investigation, her statements under Section 164 Cr.P.C. were recorded before the Court of Juvenile Magistrate, Kishangarh Bas wherein also she has levelled allegations against the accused persons of having committed the alleged offence of rape upon her.

8. It appears that the Investigating Officer has recorded the statements of some other witnesses and on the basis of the statements of such other witnesses, the Police came to the conclusion that in fact no such incident has occurred and the victim has lodged a false FIR against the accused persons. Hence, the Police submitted the Final Report (Negative) before the Trial Court, who in turn summoned the petitioner. Thereafter, the petitioner submitted 'no objection' in case the FR is accepted. This fact is not in dispute that at the time of commission of the alleged offence and at the time of submission of Final Report (Negative), the petitioner was minor. It is settled proposition of law that consent of minor is no consent in the eyes of law, hence, under these circumstances, the course adopted by the learned Special Judge, POCSO cases of summoning the minor petitioner was not proper and instead of summoning the victim, the learned Judge could have summoned her parents/ guardian to submit





their objections against the Final Report (Negative) submitted by the Police in the FIR lodged by the minor petitioner.

9. Thus, it is clear that where the prosecutrix (victim) is a minor below 18 years of age, then her consent would be immaterial. When an offence is made out against the accused irrespective of the fact that whether the prosecutrix was a consenting party or not, then certainly, the prosecution cannot be quashed merely on the ground that at a later stage the prosecutrix has agreed not to continue with the proceedings against the accused persons. Once the consent of the minor prosecutrix is immaterial for registration of offence, then such consent shall still remain immaterial for all practical purposes at all the stages. Merely because, the minor prosecutrix has later on agreed not to continue with the proceedings against the accused persons, the same would not be sufficient to quash the proceedings. Since the Act of 2012 is a Special Act, therefore, in view of the provisions of Sections 375 Sixthly of IPC, the consent of the prosecutrix is immaterial. Thus, this Court is of the considered opinion that the prosecution of the accused persons for the alleged offence punishable under Sections 5/6 of the Act of 2012 cannot be quashed merely on the ground that the prosecutrix has at a later stage agreed not to continue with the proceedings against the accused persons.

10. It is eloquent that a minor lacks the legal capacity and maturity to evaluate the consequences of a case of withdrawal. She cannot independently agree for closure of the criminal procedure against the accused persons. In case, any statement of closure is made by her, it ought to have been





closely scrutinized by the Court and the victim must be provided with competent and adequate legal assistance through the District Legal Services Authority (DLSA) to represent her best interest before the Court.

11. If any closure report is submitted by the Investigating Agency, contrary to the statements of the minor rape victim under Section 164 Cr.P.C., the concerned Judge is expected to see the entire closure report so also evidence available on the record and then pass appropriate orders. The closure report should be accepted only on the technical count that the minor victim of rape does not want to continue the proceedings against the accused and closure report should not be accepted merely on the basis of 'No Objection' of the minor victim.

12. Rape is a crime against the body of a woman. The honour of a woman cannot be put to stake by compromise or settlement. The Hon'ble Supreme Court in the case of **State of MP v. Madanlal**, reported in **2015 (7) SCC 681** has held in para 18 and 19 of the judgment which read as under:-

"18. The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it





would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error.

19. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the élan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. It has to be kept in mind, as has been held in *Shyam Narain v. State* (NCT of Delhi) [(2013) 7 SCC 77: (2013) 3 SCC (Cri) 1] that: (SCC pp. 88-89, para 27)

“27. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilised norm i.e. ‘physical morality’. In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men.”

13. The law recognizes that the minors are vulnerable and they lack the capacity to understand the consequences of their





decisions. The minors may not fully understand the implications of their immature decisions and its repercussions.

14. It is also well settled proposition of law that minor victims/children are not aware about the niceties of law. At this stage, they are not aware about the consequences of their consent which is given during the proceedings of the Court. Further, it is the right of every minor child to get assistance of the legal practitioner, as per Section 40 of the Act of 2012, but in the instant case, before passing the order impugned by which the FR has been accepted, legal assistance was not provided to the petitioner by the Court below in order to apprise her about the consequences of her consent. Hence, under these circumstances, in the considered opinion of this Court, the impugned order passed by the Court below is not sustainable in the eyes of law and the same is liable to be and is hereby quashed and set aside.

15. The matter is remitted to the Court of Special Judge, POCSO Case No. 4, Alwar for passing appropriate orders, after summoning the parents/guardian of the minor victim. In case, they submit any protest petition, then after following the due procedure under the law, the learned Judge should pass appropriate orders strictly in accordance with law, on the basis of the evidence and material available on record. The Trial Court is directed to provide legal assistance to the petitioner and her parents/guardian through the DLSA, in case they are not represented by any lawyer.





16. Accordingly, the present criminal misc. petition stand disposed of. Stay application and all pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

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