

[Karnataka High Court Quashes POCSO Case Against Muslim Man For Impregnating Minor Wife](#)

2022 LiveLaw (Kar) 436

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
BEFORE THE HON'BLE MR. JUSTICE K. NATARAJAN**

10TH DAY OF OCTOBER, 2022

CRIMINAL PETITION NO.5917 OF 2022

MOHAMMAD WASEEM AHAMAD versus STATE

Petitioners by Sri. Muzaffar ahmed, advocate

Respondents by Sri. B.J. Rohith, HCGP for R1 Sri. S. Yogendra, Advocate for R2s)

ORDER

Learned High Court Government Pleader accepts notice for respondent State.

2. This petition is filed by accused Nos.1 to 4 under Section 482 of Cr.P.C for quashing criminal proceedings in Crime No.19/2019 registered by Chandra Layout police station pending on the file of Additional City Civil and Sessions Judge, Bengaluru in Special C.C. No.1667/2022 for the offences punishable under sections 376, 376(2)(N) of IPC, Sections 5(L), 6 and 17 of POCSO Act and Section 9 and 11 of Child Marriage Restraint Act.

3. Heard learned counsel for the petitioners and learned High Court Government Pleader for respondent State and learned counsel for respondent No.2.

4. The case of prosecution is that *suo moto* complaint was registered by Chandra Layout police on 18.01.2022. It is alleged in the complaint that they received information from BGS Global hospital that the victim girl came to hospital for medical check up. She was pregnant and she was also minor, aged about 17 years 2 months. After receipt of information, the police registered *suo moto* case against accused No.1-husband of the victim, accused No.2-father-in-law of the victim, accused No.3-mother of the victim and accused No.4mother-in-law of the victim. The police investigated the matter and filed charge sheet. Now the matter is pending before the Sessions Judge. It is stated that petitioner No.1 is said to have married the victim on 10.10.2021 and she became pregnant. When she became pregnant, she went to hospital and she was medically examined, wherein it was found that she was minor aged about 17 years and 2 months and accordingly, charge sheet came to be filed.

5. During pendency of this petition, learned counsel for the parties have filed I.A.No.1/2022 under Section 320(2)(8) read with section 482 of Cr.P.C. seeking permission to compound the offence.

6. Learned counsel for the petitioners and learned counsel for respondent No.2 have contended that the petitioners and respondent No.2 are Mohammedans and as per Mohammedan law, if a girl is aged 15 years and after attaining puberty, they can perform marriage and accordingly, the marriage was performed. Now the victim has attained majority and delivered a child, which is two months old. Both the parties have settled down their issue and therefore, prayed for quashing the criminal proceedings. In respect of their contentions, a joint affidavit is filed by the petitioners and respondent No.2 before the Court.

7. Learned counsel for the petitioners has relied upon the judgment of the Punjab and Haryana High Court in case of MOHD. SAMIM VS. STATE OF HARYANA AND

OTHERS decided in W.P. No.532/2018 (O&M) on 26.09.2018 and also the judgment of the High Court of Delhi in case of FIJA AND ANOTHER VS. STATE GOVERNMENT OF NCT OF DELHI AND OTHERS in W.P. (Criminal) No.763/2022 decided on 17.08.2022 and also the judgment of Coordinate Bench of this Court in Criminal Petition No.4172/2022.

8. Having heard learned counsel for the parties, perused the records. The records reveal that petitioner No.1 is said to be the husband of the victim. The victim was aged about 17 year and 2 months at the time of her pregnancy, now she has attained majority and delivered a child. The marriage was said to be an arranged marriage performed by the parents of the victim as well as accused No.1. Accused Nos.2 and 4 are the in laws of the victim and accused No.3 is said to be the mother of the victim. The marriage was performed at Mysuru and it was performed according to the Mohammedan tradition and the marriage certificate was also issued by Masjid authorities. The High Court of Delhi in a similar situation in Fija's case, cited supra, has quashed the criminal proceedings considering the POCSO Act as well as IPC and Child Marriage Restraint Act. The Punjab and Haryana High Court in a similar case in case of Mohd. Samim, cited supra, has also quashed the proceedings. The Coordinate Bench of this Court in Criminal Petition No.4172/2022 has taken a similar view and quashed the criminal proceedings. The joint affidavit of both the parties shows that the parties have settled the issue in dispute.

9. Considering the facts and circumstances of the case, continuing to allow criminal proceedings is abuse of process of law and no purpose would be served if the victim turns hostile during trial and the question of conducting investigation against the petitioners by the investigation officer is a futile exercise. Therefore, I.A.No.1/2022 filed by the both parties has to be allowed and accordingly, it is allowed. Both the parties are permitted to settle the dispute and compound the offence.

10. Consequently, criminal petition is allowed. the criminal proceedings pending on the file of Additional City Civil and Sessions Judge, Bengaluru in Special C.C. No.1667/2022 for the offences punishable under sections 376, 376(2)(N) of IPC, Sections 5(L), 6 and 17 of POCSO Act and Section 9 and 11 of Child Marriage Restraint Act, against petitioners-accused Nos.1 to 4 is hereby quashed.

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