IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMMO No. : 648 of 2023

Reserved on : 05.10.2023

Decided on : 04.11.2023

Ranjeet Kumar ...Petitioner

Versus

State of Himachal Pradesh and others ...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1] *Yes.*

For the petitioner: Mr. Arun Sehgal, Advocate.

For the respondents: Mr. Mohinder Zharaick and Mr. H.S. Rawat, Additional Advocates General, with Ms. Leena Guleria and Ms. Avni Kochhar Mehta, Deputy Advocates General, for respondents No. 1 to 3.

Virender Singh, Judge.

Petitioner-Ranjeet Kumar has filed the present petition, under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC'), with a prayer to quash FIR No. 39 of 2020, dated 8th March, 2020,

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

registered under Sections 363, 376, 212, 120-B of the Indian Penal Code (hereinafter referred to as the 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act'), with Police Station Indora, District Kangra, H.P., as well as, the proceedings resultant thereto, bearing No. 108/2020, pending adjudication in the Court of learned Additional District and Sessions Judge, Fast Track POCSO Court, Kangra at Dharamshala, H.P. (hereinafter referred to as 'the trial Court').

2. The petitioner has sought the relief of quashing the FIR, as well as, the proceedings resultant thereto, on the ground that after the registration of the FIR, the police concluded the investigation and he was released on bail on 21st September, 2020, by this Court. On the completion of the investigation, the police filed the report, under Section 173 (2) CrPC, in which, the cognizance has been taken by the learned trial Court and the case is now fixed for recording the prosecution evidence.

3. It is the further case of the petitioner that he, the child victim (respondent No. 4) and respondents No. 5

and 6 (parents of the child victim) are residents of the same village. As per him, the parents of the child victim also came to know about the fact that the child victim is in love with the petitioner since childhood, when, the child victim has made the statement, under Section 164 CrPC, in which, she has expressed her intention to solemnize marriage with the petitioner.

4. Thereafter, the family members of the petitioner, as well as, the child victim sat together and came to the conclusion that both the families have no objection for their marriage. Petitioner was also interested to solemnize marriage with the child victim. Consequently, the petitioner and child victim have solemnized marriage on 9th March, 2023. Now, they are residing together as husband and wife in the matrimonial home. On 17th April, 2023, a compromise has been effected between the petitioner and respondents No. 4, 5 and 6, mentioning all these facts.

5. On the basis of the compromise, according to the petitioner, now, respondent No. 4 (child victim) and

respondents No. 5 and 6 (parents of the child victim), are not interested to pursue the matter.

6. On the basis of the fact that the matter has now amicably been settled and the petitioner has solemnized marriage with the child victim, a prayer has been made to allow the petition, granting the relief, as claimed in the petition.

7. On the basis of the factual position, as mentioned in the petition, read with the fact that the child victim and her parents have entered into a compromise with the petitioner, it has vehemently been argued by the learned counsel appearing for the petitioner, that no useful purpose would be served by keeping the proceedings alive, as, the chances of conviction of the petitioner, in this case, are very bleak, since, the persons, who had put the criminal machinery into motion, have now compromised the matter with the petitioner and their chances to depose against him are not so bright.

8. It has also been argued by the learned counsel appearing for the petitioner that the child victim and the petitioner are residing happily in the matrimonial home

and the powers of this Court, under Section 482 CrPC, should be exercised, in their favour, in order to save their matrimonial life.

9. To buttress his contentions, the learned counsel appearing for the petitioner, has relied upon the decisions of this Court, rendered by the Co-ordinate Benches of this Court in **Sahil versus State of Himachal Pradesh through Secretary (Home) to the Government of Himachal Pradesh,** reported in **2022 (2) Him.L.R. (HC) 739,** and **Criminal Misc. Petition (Main) u/s 482 CrPC No. 549 of 2021,** titled as **Sakshi and others versus State of H.P. and others,** decided on 8th November, 2021.

10. Alongwith the petition, the copy of compromise deed has also been annexed as Annexure P-4. In the compromise, it has specifically been mentioned that the petitioner and the child victim have solemnized marriage, with the consent of the parents and the parties do not want to proceed further, with the criminal trial.

11. The petitioner is seeking quashing of the FIR, as well as, the proceedings resultant thereto, mainly, on the

ground that the matter has been compromised and he has solemnized marriage with the child victim.

12. A three Judges' Bench of the Hon'ble Supreme Court, in case titled as **Gian Singh versus State of Punjab,** reported in **(2012) 10 Supreme Court Cases 303,** has discussed the powers of the Court, under Section 482 CrPC. It is apt to reproduce relevant portion of para 61 of the judgment, as under:

> *"61. ..... the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while*

working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

(self emphasis supplied)

13. The Hon'ble Supreme Court, in **Narinder Singh and others versus State of Punjab and another,** reported in **(2014) 6 Supreme Court Cases 466,** has elaborately discussed the powers of this Court, under Section 482 CrPC. In the said judgment, the Hon'ble Supreme Court

has also carved out the exceptions, in which, the powers, under Section 482 CrPC, cannot be exercised. The relevant portion of the judgment, is reproduced as under:

> *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:*
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> *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.*
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> *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 under Section 482 Cr.P.C the High Court is to form an opinion on either of the aforesaid two objectives.*
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> *29.3. Such a power is not 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 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, those criminal cases having overwhelmingly and pre-dominantly 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.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding

the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime".

(self emphasis supplied)

14. In the present case, the police has registered the case, under Section 4 of the POCSO Act, against the accused (petitioner).

15. The legislature, in its wisdom, has enacted the POCSO Act, with an object to reduce the child abuse and protection of the children from sexual offences.

16. The Hon'ble Supreme Court in a case, titled as **Alakh Alok Srivastava versus Union of India and others,** reported in **2018(7) SCALE 88,** has elaborately explained the scope and object of POCSO Act. Relevant paras 10 to 12, 19 and 20 of the judgment, are reproduced, as under:

> *"10.The POCSO Act has been legislated keeping in view the fundamental concept under Article 15 of the Constitution that empowers the State to make special provisions for children and also Article 39(f) which provides that the State shall in particular direct its policy towards securing that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. The Statement of Objects and Reasons of the Act indicate the focus for reduction of child abuse and protection of children from the offences of sexual assault, sexual harassment and pornography, etc. The relevant part of the Statement of Objects and Reasons of the POCSO Act is extracted below:-*
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> > *"3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on Child Abuse: India 2007' conducted by*

the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalized. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences Against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is, therefore, proposed to enact a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process incorporating child friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences."

11. In this context, it is apposite to reproduce the long Preamble of the POCSO Act. It is as follows:-

"An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

Whereas clause (3) of article 15 of the Constitution, inter alia, empowers the State to make special provisions for children;

And whereas, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State

parties in securing the best interests of the child;

And whereas it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

And whereas it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

And whereas the State parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent –

(a) the inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of children in prostitution or other unlawful sexual practices;

(c)The exploitative use of children in pornographic performances and materials;

And whereas sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed."

12. In Eera through Dr. Manjula Krippendorf v. State (NCT of Delhi) and another, one of us (Dipak Misra, J), dwelling upon the purpose of the Statement of Objects and Reasons and the Preamble of the POCSO Act, observed:-

> *"20. … the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault,*

harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the preamble, it is manifest that it recognizes the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well being are regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The statement of objects and reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing childfriendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POCSO Act".

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19. Speaking about the child, a three-Judge Bench in M.C.Mehta v. State of T.N. and others, (1996) 6 SCC 756, opined that:-

"... "child is the father of man". To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with

> *a mission, a man who matters so far as the society is concerned."*

20. In Supreme Court Women Lawyers Association 11 (SCWLA) v. Union of India and another, (2016) 3 SCC 680, this Court has observed:-

> *"In the case at hand, we are concerned with the rape committed on a girl child. As has been urged before us that such crimes are rampant for unfathomable reasons and it is the obligation of the law and law-makers to cultivate respect for the children and especially the girl children who are treated with such barbarity and savageness as indicated earlier. The learned Senior Counsel appearing for the petitioner has emphasised on the obtaining horrendous and repulsive situation."*

Alice Miller, a Swiss psychologist, speaking about child abuse has said:-

> *"Child abuse damages a person for life and that damage is in no way diminished by the ignorance of the perpetrator. It is only with the uncovering of the complete truth as it affects all those involved that a genuinely viable solution can be found to the dangers of child abuse."*

17. Similarly, in a recent decision in **Criminal Appeal No. 1874 of 2022,** titled as **State of Maharashtra and another versus Dr. Maroti S/o Kashinath Pimpalkar,** decided on 2nd November, 2022, the Hon'ble Supreme Court has again discussed the object of POCSO Act. Relevant para 10 of the judgment is reproduced as under:

> *"10. Having made such a short survey on authorities on the exercise of power under Section 482 Cr.P.C. as above, we will now refer to the object and purposes of the POCSO Act. Article 15 of the Constitution, inter alia confers powers upon the State to make special provisions for children and Article 39 (f) provides not only that the State shall direct its policy towards securing that the children are given opportunities to develop in a healthy manner and in conditions of freedom and dignity but also to ensure that their childhood and youth are protected against exploitation and against moral and material abandonment. Recognising the constitutional obligation and keeping in view the fundamental concept under Article 15 of the Constitution and also realizing that sexual offences against children are not adequately addressed by the existing laws, POCSO Act was enacted. The provisions thereunder would reveal that it also aims to ensure that such offenders are not spared and should be properly booked."*

18. Now, the question, which arises for determination, before this Court is as to whether on the basis of the compromise/settlement, the prayer, so made, in the petition, can be accepted, that too, while exercising powers under Section 482 CrPC.

19. The Hon'ble Supreme Court in a case, titled as **State of Madhya Pradesh versus Madan Lal,** reported in **(2015) 7 Supreme Court Cases 681,** has elaborately discussed about the effect of compromise and deprecated the tendency to accept the compromise, in such matters.

Relevant Paras 18 and 19 of the judgment, are reproduced, 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.*
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> *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)*
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> > *"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 sullying 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."*

20. No doubt, the persons, who, at one point of time, had put the criminal machinery into motion, by levelling allegations against the petitioner, regarding the act, complained of against the accused (petitioner), have, now, entered into compromise with the petitioner.

21. Now, the question, which arises for determination, before this Court, is as to whether the said compromise can be considered to the advantage of the petitioner.

22. In this regard, it is apt to rely upon the decision of the Hon'ble Supreme Court in **Daxaben versus The State of Gujarat and others,** reported in **(2022) 11 SCALE 329.** In this case, the Hon'ble Supreme Court has

elaborately discussed the role of the complainant, in the cases, registered under the POCSO Act. Relevant paras 38 and 40 of the judgment, are reproduced, as under:

> *"38. However, before exercising its power under section 482 of the Cr.P.C. to quash an FIR, criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the offence. Heinous or serious crime, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim. Crimes like murder, rape, burglary, dacoity and even abatement to commit suicide are neither private nor civil in nature. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.*
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> *39. xxx xxx xxx*
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> *40. In Criminal Jurisprudence, the position of the complainant is only that of the informant. Once at FIR and/or criminal complaint is lodged and a criminal case is started by the State, it becomes a matter between the State and the accused. The State has a duty to ensure that law and order is maintained in society. It is for the State to prosecute offenders. In case of grave and serious non-compoundable offences which impact society, the informant and/or complainant only has the right of hearing, to the extent of ensuring that justice is done by conviction and punishment of the offender. An informant has no right in law to withdraw the complaint of a non-compoundable offence of a grave, serious and/or heinous nature, which impacts society."*
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> *(self emphasis supplied)*

23. In view of the above, the compromise of the child victim and her parents with the petitioner is inconsequential. Moreover, the role of the complainant comes to an end, after putting the criminal machinery into motion, by informing the police. In the serious offences, like the present one, crime is always against the State and the private party cannot compromise the matter.

24. In such type of heinous offences, the endeavour of the Court should be to determine the truth of the allegations, which have been levelled by the complainant, child victim, as well as, the witnesses, whose statements have been recorded by the police. Since the offences, as mentioned in the FIR in question, are against the society, as such, the proceedings should be continued enabling the Competent Court of Law to find the truth, on the basis of the evidence, so led during the trial. The accused may be acquitted, if the charges are not proved or may be convicted, if the learned trial Court comes to the conclusion that the evidence, so adduced, is confidence inspiring.

25. Accepting such settlement would also encourage the other criminals, involved in such type of heinous offences, to indulge in such type of activities and then, to enter into the compromise, with the complainant or the child victim, with the ulterior motive to defeat the object of the legislature for enacting this special statue, like POCSO Act, which has overriding effect over other laws, as, this act is in addition, not in derogation of any other law.

26. The present proceedings are under Section 482 CrPC and the powers under Section 482 CrPC should be exercised in rarest of the rare cases and not, on the basis of the alleged compromise in heinous offences.

27. In a case, titled as **State of Madhya Pradesh versus Laxmi Narayan and others,** reported in **(2019) 5 SCC 688,** the Hon'ble Supreme Court has again cautioned the Courts not to exercise the powers, under Section 482 CrPC, in serious offences, like, the present one. Relevant para 15.2 of the judgment is reproduced as under:

> *"15.2. Such power is not to be exercised in those prosecutions which involved 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."*
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> *(self emphasis supplied)*

28. The Hon'ble Supreme Court, in **Laxmi Narayan's case (supra),** while discussing the conflict between the two decisions of the Hon'ble Supreme Court, in **Narinder Singh's case (supra)** and **State of Rajasthan versus Shambhu Kewat,** reported in **(2014) 4 Supreme Court Cases 149,** has held as under:

> *"13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:*
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> *i) xxx xxx xxx*
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> *ii) such power is not to be exercised in those prosecutions which involved 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."*

29. In view of the above decisions, there is no dispute with regard to the fact that the offences, under the POCSO Act are serious in nature and these are the crimes, which are not against an individual, but, against the society at large.

30. So far as the decision of the Co-ordinate Bench of this Court in **Sahil's case (supra)** is concerned, it appears that the decisions of the Hon'ble Supreme Court in

Alakh Alok Srivastava's case, Dr. Maroti's case, Madan Lal's case, Daxaben's case (supra) have not been brought to the notice of the Court.

31. As regards **Sakshi's case (supra),** the Co-ordinate Bench of this Court has quashed the FIR, keeping in view the peculiar facts and circumstances of the case. Even otherwise, in the said case also, the decisions rendered by the Hon'ble Supreme Court, in the cases, referred to hereinabove, have not been considered.

32. This Court in **CrMMO No. 22 of 2023,** titled as **Santosh Kumar & another versus State of H.P. & another,** decided on 31st March, 2023, relying upon the decisions of the Hon'ble Supreme Court, has rejected almost similar prayer to quash the FIR under POCSO Act.

33. In view of the decisions of the Hon'ble Supreme Court, as referred to above, this Court finds it difficult to concur with the view taken by the Co-ordinate Bench of this Court in **Sahil's** and **Sakshi's cases (supra).**

34. In such situation, when, this Court finds it difficult to concur with the view taken by the Co-ordinate Bench of this Court in **Sahil's** and **Sakshi's cases (supra),**

hence, in order to maintain the judicial decorum, the matter is required to be referred to Hon'ble the Chief Justice, for referring the same to the larger Bench.

35. While holding so, this Court is being guided by the decision of the Hon'ble Supreme Court, in case, titled as **Central Board of Dawoodi Bohra Community and another versus State of Maharashtra and another,** reported in **(2005) 2 Supreme Court Cases 673.** Relevant para-12 of the said judgment, is reproduced, as under:

> *"12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:*
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> > *(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.*
> >
> > *(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench*

consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in Union of India v. Raghubir Singh [(1989) 2 SCC 754] and Union of India v. Hansoli Devi [(2002) 7 SCC 273] ."

36. The similar view has again been taken by the Hon'ble Supreme Court in case, titled as **Official Liquidator versus Dayanand and others,** reported in **(2008) 10 Supreme Court Cases 1.** Relevant paras-78 and 79 of the judgment, are reproduced, as under:

"78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid

down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia v. Administrator General of W.B. [AIR 1960 SC 936 : (1960) 3 SCR 578] this Court observed: (AIR p. 941, para 19)

> *"19. … If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court."*
>
> *(emphasis added)*

79. In Lala Shri Bhagwan v. Ram Chand [AIR 1965 SC 1767] Gajendragadkar, C.J. observed: (AIR p. 1773, para 18)

> *"18. … It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions*

> *of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself."*

37. Since, the Hon'ble Supreme Court has deprecated the practice of quashing the FIR, on the basis of compromise, in heinous offences, like the present one, as such, this matter be placed before Hon'ble the Chief Justice, for referring the same, to the larger Bench.

Ordered accordingly.

(Virender Singh)
Judge

November 04, 2023
(rajni)