

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

S.B. Criminal Miscellaneous (Petition) No. 7901/2023

Avdesh Kumar :

----Accused/Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor
Respondent
2. Dayaram Dhobi

Complainant-Respondent

3. Victim

----Victim-Respondent

For Petitioner(s) : Mr. Tribhuvan Narayan Singh
For Respondent(s) : Mr. Riyasat Ali, P.P.
Mr. Rajendra Singh Tanwar



सही-प्रतिलिपि
प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय पीठ,
जयपुर

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

Judgment / Order

05/01/2024

This criminal miscellaneous petition under Section 482 CrPC has been filed for quashing the FIR No.0637 dated 22.11.2020 registered at Police Station Shipra Path, District Jaipur City (South) as also the proceeding in Sessions Case No.10/2021: State of Rajasthan versus Avdesh Kumar pending in the Court of learned Special Judge (POCSO), No.1, Jaipur Metropolitan I, Jaipur (for brevity "the learned trial Court") under the provisions of

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Indian Penal Code, The Protection of Children from Sexual Offences Act, 2012 (for short "the Act of 2012") as also The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015) (hereinafter referred to as "the Act of 1989").

The relevant facts in brief are that the respondent No.2/complainant-father of the victim/respondent No.3 lodged an FIR as aforesaid against the petitioner alleging therein that his minor daughter was subjected to rape by the petitioner under the false promise of marriage. The police after investigation filed charge-sheet against the petitioner whereupon, the learned trial Court framed charges against him under Sections 376, 376(2)(n) IPC, Sections 3/4, 5(J)(ii)/6, 5(L)/6 of the Act of 2012 and Section(s) 3(2)(v) of the Act of 1989. During the course of trial, the petitioner and the respondent No.3 solemnized marriage on 17.10.2022 and also have a girl child aged about three years from their relationship.

Learned counsel for the petitioner submits that the parties are living as husband and wife happily and if the criminal proceeding is allowed to continue, it may entail great prejudice to their happy married life with a three year old girl child. He, therefore, prays that the criminal miscellaneous petition be allowed and the FIR in question as also the aforesaid criminal proceeding pending against him be quashed and set aside. He, in support of his submission, relies upon a judgment dated 13.10.2022 passed by a Coordinate Bench of this Court in case of **Tarun Vaishnav versus State of Rajasthan & Anr.: SB Criminal Miscellaneous Petition No.6323/2022** which has



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been upheld by the Hon'ble Supreme Court of India while dismissing the Special Leave to Appeal (Crl.) No(s). 1890/2023 preferred thereagainst vide order dated 03.03.2023.

Learned Public Prosecutor opposed the prayer.

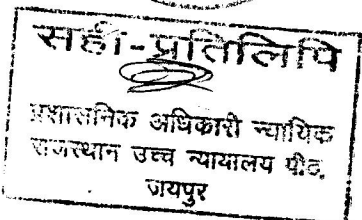
Learned counsel for the respondents No.2 & 3, acknowledging the factum of marriage between the petitioner and the respondent No.3 and they having a three year old girl child from their relationship, would submit that he has no objection if the criminal miscellaneous petition is allowed and the FIR as also the pending proceeding is quashed.

Heard. Considered.

This Court in the case of **Tarun Vaishnav** (supra) involving identical controversy, quashed the FIR lodged against the petitioner observing as under:-

"13. This Court is not oblivious of the legal position that in cases concerning sexual act with a minor, consent, if any, has no legal sanctity and it cannot be used as a defence. Needless to mention that this Court cannot and does not accord any approval or sanction to the sexual act of petitioner with the prosecutrix but then, it is a hard reality that their love affair has traversed beyond the legal and moral bounds, consequence whereof has begotten a child.

14. This Court cannot be a silent spectator to or turn its back on the distressed family. If the impugned FIR is not quashed, the petitioner will have to face incarceration for at least 10 years. The mistake or blunder which otherwise constitutes an offence has been committed due



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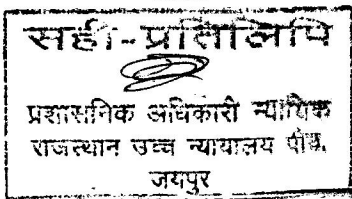
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to immature act and uncontrolled emotions of two persons, out of whom, one is still a minor.

15. The petitioner's prosecution and conviction will lead to pain and tears in the eyes of the family members of both the parties and future of two families, and above all, an innocent child will be at stake, whereas, if the impugned FIR is quashed, it would serve the ends of justice."

In the case of **Dalveer Singh vs. State of Rajasthan and Ors. (03.01.2019-RAJHC): MANU/RH/1830/2019**, while dealing with an identical issue, a co-ordinate Bench of this court has held that:-

"10. Looking to aforementioned precedent law and other precedent law cited, this court is of the view that once the respondent No. 2 has clearly put the compromise on record and has prayed before this Court also that she is willing and voluntary married with the petitioner on 19.11.2018 and both are residing as husband and wife happily it shall not be appropriate to not to exercise jurisdiction of section 482 Cr.P.C., therefore, while relying upon the aforesaid judgment and peculiar facts and circumstances of the case, this Court deems it to be a fit case for invoking its power under Section 482 Cr.P.C. even when the offences alleged are as grave as Sections 450, 354-D, 384, 376 IPC and Sections 3/4, 11/12 POCSO Act. The Hon'ble Apex Court has time and again held that if the compromise is arrived between the parties in initial phase of the trial proceedings then the High Court should quash the proceedings. It is a peculiar case where the continuance of the proceedings of trial



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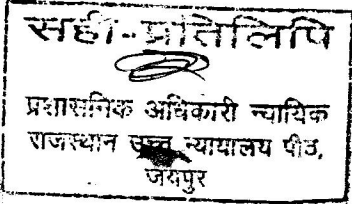
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would hamper the marriage of the petitioner and the respondent No. 2."

Further, in the case of **Juber Ali and Ors. vs. State of Rajasthan and Ors. (06.10.2023-RAJHC): MANU/RH/1518/2023**, this court has held as under:-

"9. Keeping in view the observations made by the Hon'ble Supreme Court in the cases of Gian Singh and Prashant Bhartiya (supra) as well as in the case of this court in Dhabba Nath (supra), this Court is of the opinion that it is a fit case, wherein the criminal proceedings pending against the petitioners can be quashed while exercising powers under Section 482 Cr.P.C.

10. Accordingly, this criminal misc. petition is allowed and the FIR No. 160/2023 registered at Police Station Pratap Nagar Sadar, Distt. Jodhpur City West and the entire criminal proceedings pursuant thereto for offence under Sections 506, 376(2), 376(2) (n), 376-D of IPC and Sections 3, 4 of POCSO Act qua the petitioners are hereby quashed."



From the material available on record, it is established that the petitioner and the respondent No.3 have solemnized marriage and are living a happy married life with a three year old girl child born out of their relationship. The parties are present in the Court and this court has also verified the aforesaid. The girl has expressed that she is living happily with the petitioner and does not want to prosecute the matter further.

Taking into consideration the totality of circumstances and the law laid down by this Court in the cases of **Tarun Vaishnav** (supra) which has been upheld by the Hon'ble Supreme Court of

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India, **Dalveer Singh (supra) & Juber Ali & Ors. (Supra)**, this Court deems it just and proper to allow this criminal miscellaneous petition.

Resultantly, this criminal miscellaneous petition is allowed. The FIR No.0637 dated 22.11.2020 registered at Police Station Shipra Path, District Jaipur City (South) as also the criminal proceeding in Sessions Case No.10/2021: State of Rajasthan versus Avdhesh Kumar pending in the Court of learned Special Judge (POCSO), No.1, Jaipur Metropolitan I, Jaipur are quashed and set aside.

(MAHENDAR KUMAR GOYAL),J

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