

**Serial No. 01**  
**Supplementary**  
**List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

Crl.Petn. No. 22 of 2022

Date of Decision: 19.07.2022

Shri. Olius Mawiong & Anr. Vs. State of Meghalaya & Anr.

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Appellants



: Ms. R. Kharshiing, Adv.

Ms. C.B. Sawian, Adv.

For the Respondents

: Mr. S. S. Sengupta, Addl. PP.

Mr. H. Khamih, Addl. PP. for R 1.

Mr. A.M. Sangma, Adv. For R 2.

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| i)  | Whether approved for reporting in Law journals: | Yes/No |
| ii) | Whether approved for publication in press:      | Yes/No |

**JUDGMENT AND ORDER**

1. This is an application under Section 482 Cr.P.C preferred with a prayer before this Court to invoke its inherent power to set aside and quash the FIR dated 14.05.2021 filed before the Officer-in-Charge, Pynursla Police Station, East Khasi Hills District and duly registered as Pynursla P.S. Case No 30(5) of 2021 under Section 5 (j) (ii) (q)/6 of the POCSO Act, 2012 and which case after filing of the charge sheet by the Investigating Officer, was taken up by the learned Special

Judge,(POCSO), Shillong in Special POCSO Case No. 63 of 2021.

2. In the said FIR lodged by the respondent No. 2 herein, the complaint stated that her daughter who is about 17 years and 7 months had an affair with the petitioner herein since the year 2020 and with the consent of the family, they got married and stayed together as husband and wife. However, on 13.05.2021, the police of Pynursla Police Station came to her house and advised her to lodge an FIR against the petitioner herein on the basis of the information received from the Pynursla CHC that her minor daughter was tested to be pregnant from an underage marriage which is against the law and being so compelled, the respondent No. 2 lodged the said FIR against her wishes.

3. Following the usual formalities, the police registered a criminal case being Pynursla P.S. Case No. 30(5) of 2021 under Section 5 (j) (ii) (q)/6 of the POCSO Act, 2012 and as stated above, on completion of investigation and filing of charge sheet, the case was then taken up by the learned Special Judge (POCSO), Shillong being Special POCSO Case No. 63 of 2021.

4. Heard Ms. R. Kharshiing learned counsel for the petitioner and Mr. S. Sengupta learned Addl. PP for the State respondent No. 1 and Mr. A.M. Sangma, learned counsel for the respondent No. 2.

5. The case of the petitioner No. 1 is that he has a relationship with the petitioner No. 2/daughter of the Informant/respondent No. 2 since 01.12.2020 and out of this relationship, a bond is created resulting in his union with her as husband and wife. This relationship was also approved

by the family members of both the family. His wife on being pregnant, had visited the local CHC at Pynursla and on being confirmed that she is pregnant, the hospital authority informed the police about the matter. This led to the police to visit the house of the minor girl and on being persuaded, the respondent No. 2 had filed the said FIR (supra) against her will.

6. It was also the submission of the learned counsel that the petitioners being ignorant of the law in this regard had cohabited together as husband and wife and are happily living a complete family life with the petitioner No. 1 being the bread earner of the family and if the case against him proceeds further, great hardship will be faced by the family.

7. The statement of the petitioner No. 2 made under Section 161 and 164 Cr.P.C, respectively was also referred to by the learned counsel to say that here too, the petitioner No. 2 has categorically stated that she is now staying with the petitioner No. 1 as husband and wife in her mother's house with the consent of the families of both sides.

8. In the light of such a situation, it is submitted that proceeding with the case against the petitioner No. 1 would be futile, and ends of justice would not be met considering the peculiar facts and circumstances of the case.

9. In this regard, the learned counsel for the petitioners has referred to the case of *Vijayalakshmi & Anr. v. State Rep. By The Inspector of Police, All Women Police Station, Erode: Crl. O.P No. 232 of 2021*, para 11 & 18 and in the case of *Ranjit Rajbanshi v. State of West Bengal & Ors: C.R.A. No 458 of 2018, Calcutta High Court*, at para 47, 48 & 49 as

well as the case of *Shri. Teiborlang Kurkalang & Anr v. State of Meghalaya & Anr in Crl. Petn. No 62 of 2021* wherein this Court in similar circumstances has allowed the prayer of the petitioner therein and has quashed the criminal proceedings of the relevant case before the Court of the learned Special Judge (POCSO).

10. The learned counsel for the respondent No. 2 in his submission has stressed on the fact that even in the FIR, the respondent No. 2 has clearly stated that she does not wish to file the FIR, except that it has been impressed upon her that it is a mandatory procedure of law of which she is unaware.

11. It is further submitted that the petitioners herein are now both staying as husband and wife with the consent of both families and as such, disrupting this peaceful family life by proceeding with the case against the petitioner No. 1 would only cause more harm than good.

12. The learned Addl. P.P. in his submission has left the matter to the discretion of the Court under the circumstances and has not really opposed the prayer of the petitioners made in this petition.

13. The submission of the parties have been duly noted. This is a peculiar case where because of the requirement of law, particularly Section 19 of the POCSO Act, 2012, where it is made mandatory for anyone who has knowledge that an offence under the Act has been committed, shall inter alia, report the matter to the police and what follows would be for the police to investigate and to take necessary action in accordance with law. The fact that the petitioner No. 2 went to the CHC for medical examination

and on being determined that she was pregnant, apparently being a minor under 18 years, the matter was reported to the police.

14. The respondent No. 2 although reluctant to lodge the FIR was also compelled to do so by the police on being informed of the said provision of law, has practically refused to accept the fact that the act of the petitioner No. 1 does constitute an offence under the relevant provisions of the POCSO Act, 2012. Hence the case before the learned Special Judge, POCSO.

15. However, notwithstanding the rigors of the law under the provisions of the POCSO Act, certain practical aspects of a case has to be considered.

16. The POCSO Act speaks of penetrative sexual assault and aggravated penetrative sexual assault to indicate that an act of sexual penetration inflicted upon a minor will attract the punishment for the same under the relevant provisions of the said Act. However, in a case where other attending factors such as a case of consensual sex or sex within the bond of marriage albeit between persons who are still minors or one of whom is a minor, are not taken into account in the correct perspective, the course or cause of justice may not have been served, but only the letter of the law fulfilled.

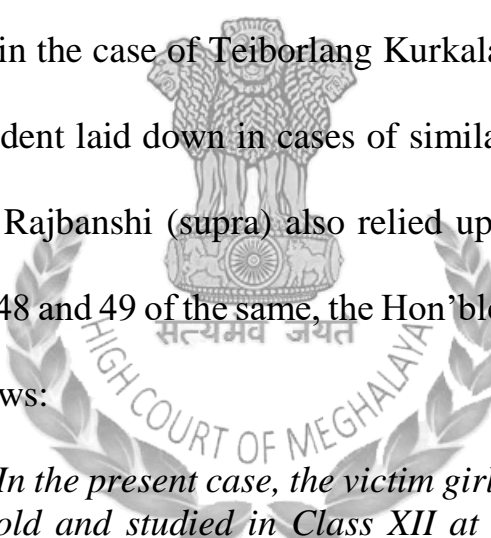
17. This is precisely the case here where a minor girl who is living with a man as husband and wife with the blessings of the family members, has to witness her husband being prosecuted under the POCSO Act only because of her age being under 18 years. In fact, in the present case, the

age of the minor girl is said to be about 17 years and 7 months which is only about 5 months less than 18 years at the time of reportage of the alleged offence.

18. Be that as it may, this Court is in agreement with the opinion expressed by some of the Hon'ble High Courts on this issue.

19. The learned counsel for the petitioners referring to the case of Teiborlang Kurkalang (supra), wherein in a similarly situated case, this Court has allowed the prayer made therein and has set aside the FIR and quashed the related proceedings before the Trial Court.

20. The ratio in the case of Teiborlang Kurkalang was arrived at by following the precedent laid down in cases of similar nature, particularly the case of Ranjit Rajbanshi (supra) also relied upon by the petitioners wherein at para 47, 48 and 49 of the same, the Hon'ble Calcutta High Court has opined as follows:



*“47. In the present case, the victim girl was admittedly 16 ½ years old and studied in Class XII at the relevant point of time. She was not naïve enough not to know the implication of sexual intercourse; rather, the victim admittedly had a physical relationship with the accused, who was also of a very young age, on several occasions prior to the incident. Although the consent of a minor is not a good consent in law, and cannot be taken into account as 'consent' as such, the expression 'penetration' as envisaged in the POCSO Act has to be taken to mean a positive, unilateral act on the part of the accused. Consensual participatory intercourse, in view of the passion involved, need not always make penetration, by itself, a unilateral positive act of the accused but might also be a union between two persons out of their own volition. In the latter case, the expression 'penetrates', in Section 3(a) of the POCSO Act might not always connote mere voluntary juxtaposition of the sexual organs of two persons of different genders. If the union is participatory in nature, there is no reason to indict only the male just because of the peculiar*

*nature of anatomy of the sexual organs of different genders. The psyche of the parties and the maturity level of the victim are also relevant factors to be taken into consideration to decide whether the penetration was a unilateral and positive act on the part of the male. Hence, seen in proper perspective, the act alleged, even if proved, could not tantamount to penetration sufficient to attract Section 3 of the POCSO Act, keeping in view the admitted several prior occasions of physical union between the accused and the victim and the maturity of the victim.*

48. *As such, it cannot be said that the accused was guilty of penetrative sexual assault, as such, since here the act of penetration, even if true, would have to be taken not as a unilateral act of the accused but a participatory moment of passion involving the participation of both the victim and the accused.*

49. *Although the question of consent does not arise in case of a minor, in order to attract Section 376(1) of the IPC, it had to be established that the alleged offence was committed against the will of the victim. Read in conjunction, the provisions of Section 376 of the IPC and Section 3 of the POCSO Act ought to be construed on a similar footing and cannot incriminate the accused for a voluntary joint act of sexual union.”*

21. Similarly, in the case of Vijayalakshmi (supra), the Hon'ble Madras High Court at para 11 and 18 has expressed as under:

11. *...There can be no second thought as to the seriousness of offences under the POCSO Act and the object it seeks to achieve. However, it is also imperative for this Court to draw the thin line that demarcates the nature of acts that should not be made to fall within the scope of the Act, for such is the severity of the sentences provided under the Act, justifiably so, that if acted upon hastily or irresponsibly, it could lead to irreparable damage to the reputation and livelihood of youth whose actions would have been only innocuous. What came to be a law to protect and render justice to victims and survivors of child abuse, can, become a tool in the hands of certain sections of the society to abuse the process of law.*

18. *... Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act. An adolescent boy*

*and girl who are in the grips of their hormones and biological changes and whose decision-making ability is yet to fully develop, should essentially receive the support and guidance of their parents and the society at large. These incidents should never be perceived from an adult's point of view and such an understanding will in fact lead to lack of empathy. An adolescent boy who is sent to prison in a case of this nature will be persecuted throughout his life. It is high time that the legislature takes into consideration cases of this nature involving adolescents involved in relationships and swiftly bring in necessary amendments under the Act. The legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act.”*

22. In the light of the above, this Court is convinced that the case of the petitioners has to be looked at pragmatically, taking the above observations into consideration to give relief to the parties. This will meet the ends of justice as is inherently found in this Court's exercise of the power under Section 482 Cr.P.C.

23. This petition is accordingly allowed. The FIR in Pynursla P.S. Case No 30 (5) of 2021 under Section 5 (j) (ii) (q)/6 of the POCSO Act, 2012 and the proceedings in Special POCSO Case No. 63 of 2021 are hereby set aside and quashed.

24. Petition disposed of. No costs.

**Judge**

Meghalaya  
19.07.2022  
“D. Nary, PS”