

Serial No. 05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 72 of 2022

Date of Decision: 01.02.2023

Shri Seiborlang Syiem & 2 Ors. Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Kumar, Adv.
For the Respondent(s) : Mr. R. Gurung, GA.

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

ORDER

1. Heard Mr. S. Kumar learned counsel for the petitioners who has submitted that admittedly the petitioner No.1 and petitioner No.3 were involved in a love relationship and in the process thereof, the couple got involved in a consensual sexual relationship resulting in the petitioner No.3 the alleged victim girl becoming pregnant.

2. As a matter of course, the petitioner No.3 visited the Tirot Sing Memorial Hospital, Mairang in the then West Khasi Hills District and after being examined by the Medical and Health Officer present in the hospital, she subsequently gave birth to a child on 06.11.2019. The petitioner No.3 was about 17 years old at that point of time which fact was reported to the Officer-In-Charge Mairang Police Station by the Medical and Health Officer of the said hospital. On receipt of the said information, a police Sub-Inspector lodged a formal FIR before the Officer-In-Charge Mairang Police Station implicating the petitioner No.1 as the one who has impregnated the petitioner No.3 who was a minor at that point of time.

3. As a matter of course, a criminal case was registered being Mairang PS Case No. 50(11)2019 under Section 3(a)/4 of the POCSO Act. In course of investigation, the Investigating Officer (I/O) submitted the charge sheet against the petitioner No.1 and the matter proceeded for trial before the court of the learned Special Judge, West Khasi Hills. As of date, about 6 prosecution witnesses have been examined including the petitioner No.3/alleged victim girl, her parents and siblings as well as the mother of the petitioner No.1/accused.

4. The learned counsel has further submitted that records would show that the statement of petitioner No.3 recorded under Section 164 Cr.PC as well as her deposition as PW 2 before the Trial Court would show that the petitioner No.3 has admitted to being in an intimate relationship with the petitioner No.1 as a result of which a child was born to them. She has also further deposed that the welfare of the child is taken care of by petitioner

No.1 and due to the pendency of the case, they could not stay together as husband and wife though there is every intention that they will get married and stay together soon after the disposal of the case.

5. Again, it is further submitted that from the deposition of the other witnesses who are near relatives of the petitioner No.3, it is seen that they have no objection to the relationship between the petitioner No.1 and petitioner No.3 and these witnesses also confirmed that the petitioner No.1 used to regularly visit the house of the petitioner No.3 and had financially provided for the welfare of the child.

6. The learned counsel has submitted that in the backdrop of these facts and circumstances, the petitioner No.1 along with the petitioner No.3 as also petitioner No.2 who is the father of Petitioner No.3 have now approached this Court with this instant petition under Section 482 Cr.PC seeking indulgence of this Court for exercise of its inherent powers to put an end to the proceedings against the petitioner No.1 and to allow the petitioner No.1 and petitioner No. 3 to be united as husband and wife and together to raise up their baby girl as in any normal family relationship.

7. To further support his argument the learned counsel has also submitted that a deed of compromise/settlement was executed on 30.01.2023 between the petitioner No. 2 as the first party and the petitioner No.3, now aged about 21 years as the second party and the petitioner No.1 aged about 23 years as the third party. The deed of compromise in essence has narrated the incident particularly the relationship between the second party and the third party and has also indicated that the relationship between

the parties concerned, is one of a romantic relationship and there is every intention for them to cohabit together as husband and wife and that this relationship was not objected to or opposed by family members of both parties and as such, the parties have indicated that they no longer wish to proceed with the criminal proceedings.

8. In support of his submission, the learned counsel has also cited a number of cases particularly the case of ***Vijayalakshmi & Anr. v. State Rep. By. Inspector of Police, All Women Police Station, Erode: Crl. O.P No. 232 of 2021, para 11 & 18*** which reads as follows:-

“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.”

9. The case of ***Ranjit Rajbanshi v. State of West Bengal and Ors:*** ***C.R.A. No 458 of 2018, High Court of Calcutta, at para 47, 48 & 49*** was also cited by the petitioner in this regard. The relevant paragraphs reads as under:-

“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, an 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 an 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.”

10. Another case cited by the petitioner is the case of **Shri Kwantar Khongsit and 2 Ors. v. State of Meghalaya & 2 Ors.** wherein this Court vide Judgment dated 10.08.2022 at para 13 has observed as follows: -

“13. Coming to the case in hand, this Court dealing with cases under similar or even identical facts and circumstances has maintained that in the event it is apparent that a young couple are in a relationship where love is the deciding factor even to the extent that it has culminated into a marriage relationship, it may be the case that in such a relationship even if the girl involved is legally a minor, if she has the capacity to procreate and her age is perhaps ranging from about 16 to 17 years and more but below 18 years, it would not shock the conscience of this Court if hypothetically speaking such a girl enters into a marriage relationship on her own free will, as oppose to a child of about 12 or 13 years voluntarily entering into a marriage relationship.”

11. In view of the above, the learned counsel for the petitioners has submitted that this Court may be pleased to consider the case of the parties and for ends of justice, the proceedings against the petitioner No.1 in Special (POCSO) Case No. 10 of 2021 pending before the court of the learned Special Judge (POCSO), Nongstoin may be quashed.

12. Mr. R. Gurung, learned GA appearing on behalf of the State respondent has candidly submitted that this Court in similar situated cases has granted relief to the parties and as such, discretion of this Court may be exercised in the present case.

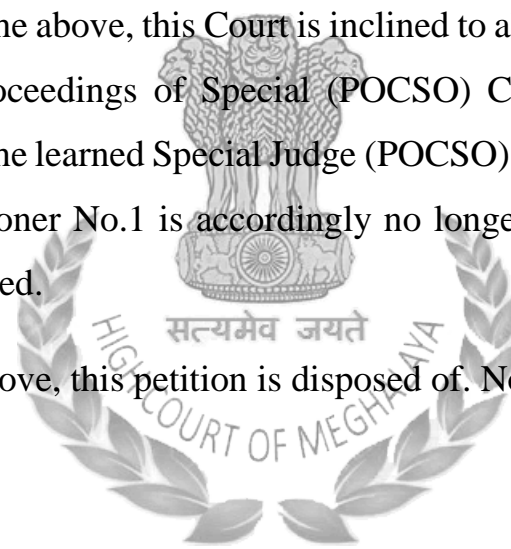
13. This Court while considering the case of the petitioners and on the basis of the contents of the petition as well as the submission of the learned counsel for the petitioner, would observe that this is one such case where a young couple about to cross their years of adolescence have got themselves involved in a romantic relationship and invariably, the relationship turned physical to the extent that through the process of sexual intercourse, pregnancy and eventual birth of a child has occurred.

14. As submitted by the petitioners, they are oblivious to the provisions of law particularly the law laid down under the POCSO Act which clearly prohibits any sexual relationship between two persons, one of whom is a child, that is, below 18 years of age. However, this aspect of the matter has been adequately dealt with by the Hon'ble High Court of Madras in the case of Vijayalakshmi (supra) as well as by the Hon'ble High Court of Calcutta in the case of Ranjit Rajbanshi (supra) which this Court respectfully agrees with.

15. In the context of the cited authorities and the facts and circumstance of the case in hand, this Court is of the opinion without doubt that there is no aspect of sexual assault as regard the relationship between the petitioner No.1 and the petitioner No.3 and that at present the petitioner No.3 being an adult by age has indicated that she has agreed to stay together with the petitioner No.1 as his wife and for the welfare of the child and as such, it would be a futile exercise for the proceedings to continue under the circumstances.

16. In view of the above, this Court is inclined to allow this petition and accordingly the proceedings of Special (POCSO) Case No. 10 of 2021 before the court of the learned Special Judge (POCSO), Nongstoin is hereby quashed. The petitioner No.1 is accordingly no longer liable as far as the said case is concerned.

17. With the above, this petition is disposed of. No costs.



Judge

Meghalaya

01.02.2023

"N.Swer, Stenographer"