

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 6323/2022

Tarun Vaishnav

----Petitioner

Versus

1. State of Rajasthan through PP
2. XXXXX

----Respondents

For Petitioner(s)	:	Mr. Gajendra Panwar
For Respondent(s)	:	Mr. Mool Singh Bhati, PP Mr. Ashok Patel

JUSTICE DINESH MEHTA

(In Camera Proceedings)

Order

13/10/2022

1. It is rather an unusual case where the FIR (being FIR No.260/2022) under provisions of Section 376 of Indian Penal Code and Sections 3 and 4 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act') has been registered by the Station House Officer, Devnagar, Jodhpur City West pursuant to the statement of a minor girl - respondent No.2, when she delivered a baby boy in a Government Hospital.
2. The case involves and deals with the personal relationship of a minor girl - respondent No.2 who shall be referred to as 'D'. The

registry is directed to redact or withhold particulars of respondent No.2 from all online record relating to this case.

3. Facts appertaining to the present case are that on the fateful day of 04.08.2022, when 'D' complained of severe stomachache and distress, her parents took her to Government Hospital and were shocked to learn that their daughter, still a minor and unmarried, was carrying matured pregnancy and was about to deliver.

4. As luck would have it, said 'D' gave birth to a baby boy though she herself was of tender age of 16 years (born on 06.04.2006). Coming to know of such fact, the Investigating Officer recorded her statement in which it was revealed that during currency of her love affair with the present petitioner, she voluntarily cohabited with the petitioner, due to which she got impregnated.

5. Such being the position, the Investigating Officer sprung into action and went on to register the aforementioned FIR against the petitioner under the provisions of Section 376 of the Indian Penal Code and Sections 3 and 4 of the POCSO Act.

6. Mr. Panwar, learned counsel for the petitioner submitted that the petitioner and the respondent No.2 are having an affair and in innocence, rather lack of understanding of the consequences, they indulged in physical relationship, due to which respondent No.2 became pregnant. Having highlighted that the act was consensual, he submitted that neither the prosecutrix nor her parents have any grievance or grudge against the petitioner.

7. While highlighting that the impugned FIR (No.260) has been registered by the police officer at his own accord, learned counsel submitted that the parents of 'D' and even 'D' herself have

entered into a compromise with the petitioner and approached this Court for seeking quashment of the FIR by invoking the Courts' powers under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code').

8. While pointing out that neither party wants the petitioner to be prosecuted/punished, learned counsel argued that continuation of the prosecution in the facts of the present case will serve no just purpose.

9. Considering the sensitivity of the issue and complexity of the problem, the petitioner, so also the prosecutrix - 'D' and their parents were asked to present themselves in the Court. Parents of both the boy and girl so also the petitioner and 'D' expressed their remorse and helplessness. The hapless parents of the girl expressed their concern about the situation that due to lack of maturity, or mistake, their minor and yet to be married daughter has delivered a baby boy.

10. They submitted that due to the society's pressure and stigma, they are not even in a position to keep their grandson with themselves and that innocent 2 months-old boy is housed in a nursery. They were emotional while stating that the innocent child is deprived of natural love, affection and feed from his mother, only because of the pendency of the impugned FIR.

11. Parents of petitioner so also 'D' who hail from different castes consented that as soon as the prosecutrix 'D' attains majority, they will solemnise her marriage with the petitioner.

12. The parents of both the girl and the boy beseeched that the subject FIR be quashed, because the prosecution for an unreflective, yet consensual act will be more detrimental to the rights and interests of 'D' and her son, who is just-born.

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 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.

16. It is to be noted that in almost similar circumstances, different High Courts have quashed the FIR/proceedings. The following are to mention a few:-

(i) Vijayalakshmi & Anr. Vs. State & Anr. (Crl.M.P. No.109/2021), decided on 27.01.2021 by Hon'ble High Court of Madras;

(ii) Kundan & Anr. Vs. State & Ors. (Crl.M.C. No.27/2022), decided on 21.02.2022 by Hon'ble High Court of Delhi;

(iii) Shri Skhemborland Suting & Anr. Vs. State of Meghalaya and Anr. (Crl. Petition No.63/2021),

decided on 23.03.2022 by Hon'ble High Court of Meghalaya.

17. Different High Courts have given different reasonings dealing with medical, psychological, social angles of the situation; analysing the statement of objects and reasons of the POCSO Act; considering practical realities including future of the newborn child involved.

18. This Court feels that it is a fit case to exercise its inherent powers under Section 482 of the Code for quashing the FIR to secure the ends of justice, because:-

- (i) an adolescent girl of tender age (16 years) has fallen in love with a boy of 22 years;
- (ii) both being immature, apparently driven by momentary emotions have fallen prey to lust, surpassing social, moral and legal limits;
- (iii) the complainant is the police and the girl or her family are neither aggrieved party nor complainant;
- (iv) the girl has been consistent in her stand that she consented to the physical relationship. Not only in her statements under Section 161 and Section 164 of the Code but also before this Court, the girl unequivocally accepted that she had consented to the act;
- (v) their fornication though may be without legal and moral sanction, has resulted in child birth;
- (vi) parents of both – the girl and the boy having forgiven their respective children for their felony, intend to tie them in nuptial knot, when the prosecutrix attains marriageable age;

(vii) if the prosecution continues, the petitioner is sure to face conviction, as the girl is minor. The conviction will result in 10 years of incarceration which would bring more agony and misery to the girl and her newly born son, rather than securing justice;

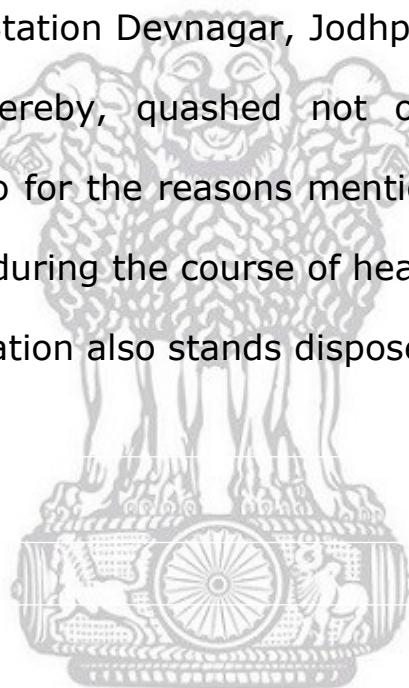
(viii) and also because, the basic ingredient of retributive theory of punishment -“avenge for the person wronged” is completely absent.

19. Faced with such situation and upon appraisal of the overall circumstances, as an exceptional case, this Court is persuaded to allow the petition, as prayed. The impugned FIR No.0260/2022 registered at Police Station Devnagar, Jodhpur City (West) against the petitioner, is hereby, quashed not only on the basis of compromise, but also for the reasons mentioned hereinabove and what has transpired during the course of hearing.

20. The stay application also stands disposed of.

(DINESH MEHTA),J

107-Arvind/-



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