



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

S.B. Criminal Misc(Pet.) No. 6586/2021

Anop Singh

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent



For Petitioner(s) : Mr. Hari Singh Rajpurohit  
For Respondent(s) : Mr. Gaurav Singh, PP

**JUSTICE DINESH MEHTA**

**Order**

**Reportable**

**26/04/2022**

1. By way of the present misc. petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), the petitioner has challenged the proceedings of case No.293/2020 pending before the Judicial Magistrate, Osian, Jodhpur (hereinafter referred to as the "trial Court") pursuant to FIR No.0116 dated 27.05.2020, registered at Police Station Osian, District Jodhpur(Rural). सत्यमेव जयते

2. The petitioner is being tried in furtherance of an FIR that was registered against him for the purported offence under Sections 11 and 15 of the Prohibition of Child Marriage Act, 2006 (hereinafter referred to as "the Act of 2006").

2. Learned counsel for the petitioner read out the contents of FIR and entire charge-sheet and pointed out that even according to the complainant and the Investigating Officer, the petitioner had



simply organised engagement ceremony of his son. No marriage had taken place.

3. He pointed out that there is a clear indication of serving a notice to the petitioner enjoining upon him not to contract his son's marriage.

4. Learned counsel argued that since marriage had not taken place, neither the FIR could be registered for the offences under Sections 11 and 15 of the Act of 2006 nor could the Court take cognizance and frame charges against the petitioner.

5. Highlighting petitioner's plight, learned counsel informed that the petitioner was arrested and remained behind bars for more than 48 hours before he could be enlarged on bail; as a result he has not only been placed under suspension, but even forced to face departmental enquiry.

6. Mr. Gaurav Singh, learned Public Prosecutor was not in a position to establish from the record that the petitioner's son had contracted marriage on 25.02.2020. He however argued that organising engagement ceremony amounts to promoting child marriage and thus petitioner is being rightly tried for the offences under the Act of 2006.

6. Sections 11 and 15 of the Act of 2006, read thus:-

*"11. Punishment for promoting or permitting solemnisation of child marriages.—*

*(1) Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to*

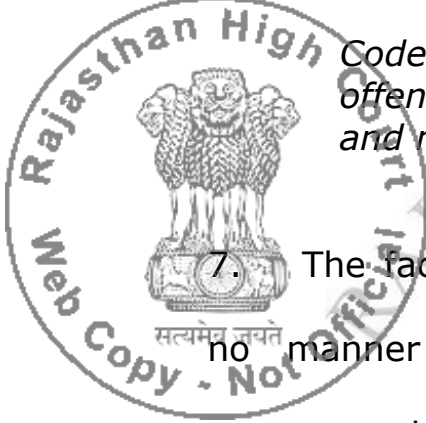


*fine which may extend up to one lakh rupees: Provided that no woman shall be punishable with imprisonment.*

*(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised."*

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"15. Offences to be cognizable and non-bailable.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be cognizable and non-bailable."



7. The factual matrix and material available on record, leaves no manner of doubt that on 25.02.2020, a function for engagement of petitioner's son was going on, when the Investigating Officer approached the place. Even in the FIR which was lodged by none other than the District Legal Service Authority, there is clear assertion of engagement ceremony being solemnized and a notice being issued to the petitioner warning him not to hold marriage of his son.

8. A perusal of Section 11 of the Act of 2006, makes it abundantly clear that organising marriage is a *sine qua non* to constitute an offence under the Act of 2006. Engagement of a child in any case does not amount to an offence under Section 11 of the Act of 2006.

10. Admittedly, on the fateful day of 25.02.2020, petitioner's son was getting engaged which cannot be confused with or construed to be a marriage, falling foul to the provisions of the Act of 2006.

11. The complainant and the Investigating Officer knowing it fully well that the function was for engagement have lodged/registered FIR treating the act of arranging engagement



ceremony to be an act 'promoting child marriage', completely ignoring the fact that 'contracting child marriage' is a foundational prerequisite.

12. It is rather unfortunate that the petitioner had to remain behind bars for 3 to 4 days. Consequently, he had been placed under suspension by his employer and he is facing departmental enquiry for an act which by itself does not constitute an offence by any stretch of imagination.

13. It is a fit case where this Court should exercise its inherent power under Section 482 of the Code not only because the proceedings are fundamentally void but also in order to eschew abuse of the process of Court and to save the petitioner from unnecessary harassment and drastic consequences.

14. The present misc. petition is thus, allowed. The proceedings of CRO No.293/2020, pending before the Judicial Magistrate, Osian, Jodhpur pursuant to FIR No.0116 dated 27.05.2020, are hereby quashed.

15. The stay petition also stands disposed of accordingly.

16. A copy of this order be sent to the Secretary, District Legal Service Authority, Jodhpur.

**(DINESH MEHTA),J**

7-pooja/-