

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

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DATED THIS THE 28TH DAY OF OCTOBER 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION No.201199/2021

BETWEEN:

1. ANIL S/O VENKAPPA KUSHALKAR
2. SMT. SUREKHA W/O ANIL KUSHALKAR

... PETITIONERS

(BY SRI S.S.MAMADAPUR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH BASAVANA BAGEWADI
POLICE STATION, REPRESENTED BY
ITS STATE PUBLIC PROSECUTOR
ADVOCATE GENERAL'S OFFICE
HIGH COURT BUILDING
KALABURAGI-585101
2. RAMU S/O SHETTEPPA LAMANI

AGED ABOUT 52 YEARS
OCC: AGRICULTURE
R/O UPPALDINNI TANDA
TQ. BASAVANA BAGEWADI
DIST. VIJAYPUR-586101

... RESPONDENTS

**(BY SRI GURURAJ V. HASILKAR, HCGP FOR R1;
R2-SERVED)**

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CRIMINAL PROCEDURE CODE, PRAYING TO QUASH/SET ASIDE THE CRIMINAL PROCEEDINGS IN SPECIAL CASE POCSO NO.43/2019 PENDING ON THE FILE OF II-ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE, VIJAYPUR, IN CRIME NO.136/2019 OF BASAVAN BAGEWADI POLICE STATION FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366 AND 376 OF IPC AND SECTIONS 12, 5(L), 5(J)(II) AND 6 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

THIS PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

Heard the learned counsel appearing for the petitioners and the learned High Court Government Pleader appearing for the first respondent-State.

2. This petition is filed under Section 482 of Cr.P.C., seeking to quash the criminal proceedings in Special Case POCSO No.43/2019 pending on the file of II-Additional Sessions Judge/Special Judge, Vijayapur, for the offences punishable under Sections 366 and 376 of IPC and Sections 12, 5(L), 5(J)(II) and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO' Act).

3. Factual matrix of the case is that petitioner No.1/accused committed rape on the minor girl-petitioner No.2 herein in the guise of loving her. As a result, she became pregnant and thereafter, he kidnapped the victim and took her to Kolhapur. Hence, the complainant lodged complaint against accused/petitioner No.1. The police after conducting investigation has filed charge sheet for the above offences.

4. The learned counsel appearing for the petitioners submits that petitioner No.1/accused and petitioner No.2/victim have married and they have child.

He has also produced document viz., birth certificate of child born out of their cohabitation. Petitioner No.1 is in custody. The victim who has been examined before the Court has not supported the case of the prosecution and she has turned hostile. No purpose would be served in continuing the proceedings against the accused when the victim herself has turned hostile. Hence, he prays for quashing the proceedings initiated against the accused.

5. The learned counsel for the petitioners in support of his arguments has relied upon the judgment of this Court in the case of ***Vijaya Kumar vs. State by Madanayakanahally P.S., and another*** reported in ***2020(3) KCCR 2419***, wherein this Court held that though the offences are punishable under Section 376 of IPC and the provisions of POCSO Act, since the parties have settled the dispute and accused and victim are living together, the petition filed under Section 482 of Cr.P.C., needs to be allowed and the proceedings has to be quashed.

6. Per contra, the learned High Court Government Pleader appearing for the first respondent-State would submit that the offences committed by the accused are heinous offences and the charges levelled against the accused are serious in nature. The accused committed rape on victim/petitioner No.2 and as a result, she became pregnant. Thereafter, child was born to her. Since the offences committed by the accused are heinous offences, the Court cannot exercise power under Section 482 of Cr.P.C.

7. I have heard the learned counsel appearing for the petitioners and the learned High Court Government Pleader appearing for the first respondent-State and perused the material on record. Petitioner No.2 herein was minor at the time of incident. No doubt, the petition is filed by the accused and victim seeking to quash the proceedings and the defacto complainant is arrayed as respondent No.2. This Court while passing an order in the order referred to supra has taken note of the principles laid

down in the case of **Gian Singh vs. State of Punjab and another** reported in **(2012) 10 SCC 303** and came to conclusion that since the victim and the accused have married and they are having good family and the parties have compromised the matter, proceedings has to be quashed. But this consideration is against the principles laid down in the judgment in **Gian Singh's case** supra and the same cannot be a basis for exercising the discretion to invoke Section 482 of Cr.P.C. The Hon'ble Apex Court in **Gian Singh's case** has held that in serious offences like murder, rape, dacoity etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the proceedings cannot be quashed, even though the victim or victim's family and the offender have settled the dispute, since it will have serious impact on the society. This Court in **Vijaya Kumar's case** though referred to the judgment of the Hon'ble Apex Court in **Gian Singh's case**, but lost

sight of the principles laid down in the said judgment. Hence, this Court based on the order passed in **Vijaya Kumar's case** *supra*, cannot exercise power under Section 482 of Cr.P.C.

8. No doubt, the learned counsel for the petitioners submitted that the victim girl and the accused have filed this petition seeking relief of quashing the proceedings. When the accused has committed offence under Section 376 of IPC against a minor girl who is below the age of 18 years, even if the victim has given consent, the same is not considered as consent at all. Though the learned counsel for the petitioners submitted that the victim who was examined before the trial Court has deposed before the Court that she was aged 19 years at the time of incident, whether she was minor or major has to be adjudicated before the trial Court and this Court cannot appreciate the said fact. The matter requires to be tried before the trial Court. In a case of heinous offence of rape, even if the parties have settled the dispute, the

same cannot be accepted and the proceedings cannot be quashed since it will have serious impact on the society.

The Hon'ble Apex Court in **Gian Singh's case** supra has held that the power of the High Court in quashing a criminal proceeding or FIR or a complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal Court for compounding the offences under Section 320 of Cr.P.C., The power under Section 320 of Cr.P.C., may be exercised only where the parties have settled their dispute and the same also depends upon the facts of each case. It is also held that before exercising power under Section 482 of Cr.P.C., the High Court must have due regard to the nature and gravity of the crime and social impact. In the present case, the accused has committed offence of rape against a minor girl which attracts the provisions of IPC and also POCSO Act. The Hon'ble Apex Court has specifically held that in case of serious offence of rape, the Court cannot exercise power under Section 482 of Cr.P.C., and the same will have impact on the society. The Court has to look into the statute

and object in bringing the special enactment of POCSO Act and hence, considering the object and scope of special enactment of POCSO Act, exercising power under Section 482 of Cr.P.C., does not arise.

9. In view of the observations made above, I pass the following:

ORDER

The petition is dismissed.

The trial Court while appreciating the material on record shall not be influenced by the observations made by this Court while passing this order.

**Sd/-
JUDGE**

NB*