

Serial No. 09
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 31 of 2022

Date of Decision: 16.08.2022

Shri. Adelbert Marbaniang & Anr. Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. S. A. Pandit, Adv.

For the Respondent(s) : Mr. K. P. Bhattacharjee, GA

i) Whether approved for reporting in
Law journals etc.: Yes/No

ii) Whether approved for publication
in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. This is an application filed under Section 482 CrPC with a prayer to set aside and quash the FIR registered as Laban P. S Case No 102(11) of 2021 under Section 5(j)(ii)/6 of the POCSO Act, 2012 and the consequent proceedings in Special POCSO Case No. 28 of 2022 pending before the learned Special Judge (POCSO) at Shillong.

2. Heard Ms. S. A. Pandit, learned counsel for the petitioners who has submitted that the petitioner No. 1 and the petitioner No. 2 have known each

other since the month of January, 2021 and have developed mutual love for each other. They have also got into a physical relationship in course of their acquaintance.

3. In the month of April, 2021, the petitioner No 2 realised that she is pregnant and she accordingly informed the petitioner No 1. Thereafter, the petitioner No. 1 came and started living together with the petitioner No. 2 and since then they cohabited as husband and wife.

4. On 21.11.2021, the petitioner No. 2 felt some pregnancy contractions and was taken to the Ganesh Das Hospital, Shillong by the petitioner No. 1 for medical check-up. At the hospital, she has given her age as 17 years. On the basis of this information, the hospital staff accordingly informed the police. The petitioner No. 2 however, was subsequently admitted to Robert Hospital, Shillong where she gave birth to a baby girl on 23.11.2021.

5. In the meantime, the police on receipt of the said information from Ganesh Das Hospital, has treated the same as an FIR and caused registration of Laban P. S Case No. 102(11) of 2021 under Section 5(j)(ii)/6 of the POCSO Act, 2012.

6. On investigation being conducted, the Investigating Officer have eventually filed the charge sheet on 23.01.2022 implicating the petitioner No. 1 as the accused who is to face trial before the competent court, a regular case was registered as Special POCSO Case No. 28 of 2022 and the matter was taken

up by the learned Special Judge (POCSO), Shillong.

7. The petitioner No. 1 was never arrested during the period of investigation as the petitioner No. 2 in her statement before the police have stated that she is in a relationship with the petitioner No. 1 and that they are now staying together after she gave birth to a baby girl on 23-11-2021 and if the petitioner No. 1 is arrested, then there will be no one to look after the family.

8. The petitioner No. 1 has been summoned to enter appearance before the Trial Court and the matter is at the stage of consideration of charges.

9. Being highly aggrieved by the proceedings initiated against the petitioner No. 1 before the court of the learned Special Judge (POCSO), Shillong, the petitioners as stated above have approached this Court with a prayer to set aside the FIR and the related POCSO case wherein the petitioner No. 1 has been named as the accused.

10. Heard Ms. S. A. Pandit, learned counsel for the petitioners who has submitted that admittedly the petitioner No. 2 was about 17 years of age when she cohabitated with the petitioner No. 1 and at the time when she gave birth to her child she was also above 17 years but less than 18 years of age. However, the fact that the relationship between the alleged victim and the accused has been established to be that of husband and wife, the sexual relationship between the two is one of consensual and not forced and in fact, cannot be considered to be a case of sexual assault.

11. The fact that the petitioner No. 2 has by now attained the age of majority on 25-05-2022 and, as such, can be considered to be legally living together with petitioner No. 1 as husband and wife is also one of the contentions raised by the learned counsel for the petitioners.

12. The union between the petitioners herein as husband and wife have also been blessed by the family members of both sides, therefore, continuation of the said proceedings would not be for ends of justice. It is prayed that this petition would be allowed and that the related FIR and criminal case against the petitioner No. 1 be set aside and quashed.

13. Mr. K. P. Bhattacharjee, learned GA for the State-respondent has not made any strong objection to the prayer of the petitioners herein, but has only submitted that since the case before the Trial Court against the petitioner No. 1 is at the stage of consideration of charges, it may not be prudent for this Court to curtail the proceedings at this juncture.

14. Upon hearing the learned counsels this Court has given due consideration to the submission made and has also produced the petition in hand.

15. Facts as indicated above need not be mentioned again, suffice it to say that the prayer of the petitioners has to be considered while looking into the related provisions of the POCSO Act. However, on an overall assessment of the fact situation, this Court is of the view that an exercise of power under

Section 482 CrPC to ensure that real and actual justice is done cannot be curtailed by the strict interpretation or application of the related provisions of law.

16. This Court in the case of Skhemborlang Suting & Anr. v. State of Meghalaya & Anr. at para 7 has observed as follows:-

“7. Though, the POCSO Act has been rightly enacted to safeguard children from sexual exploitation, but in the peculiar facts and circumstances of the case of the petitioners herein, the rigors of the said Act may not be applied to their case and the converse would only result in the breakdown of a happy family relationship and the possible consequence of the wife having to take care of a baby with no support, physically or financially from her husband who may be languishing in jail.”

17. The observation of the Hon’ble Calcutta High Court at para 47, 48 and 49 in the case of Ranjit Rajbanshi v. State of West Bengal & Ors. C.R.A No. 458 of 2018, has also been found relevant by this Court when it was observed 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, 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 7 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.”

18. As has been observed above, this Court for securing ends of justice would not be found wanting if under the peculiar facts and circumstances and if there is no drastic impact on the societal balance, the case of the parties be required to be looked at sympathetically.

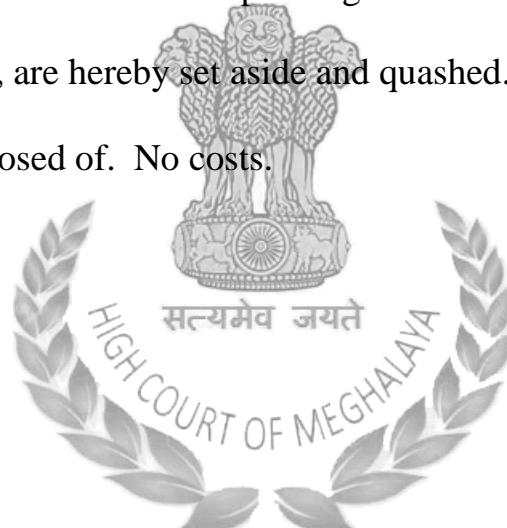
19. The present position being that the petitioners, particularly the petitioner No. 2 being of legal marriageable age and said to be living a married

life with petitioner No. 1 along with their new born child, continuation of the criminal proceedings against the petitioner No. 1 would indeed serve no purpose for all concerned.

20. Accordingly, the prayer of the petitioners herein finds merit with this Court and the same is allowed.

21. The FIR registered as Laban P. S Case No. 102(11) of 2021 under Section 5(j)(ii)/6 of the POCSO Act, 2012 and the consequent proceedings in Special POCSO Case No. 28 of 2022 pending before the learned Special Judge (POCSO) at Shillong, are hereby set aside and quashed.

22. Petition disposed of. No costs.



Judge

Meghalaya
01.08.2022
"Biswarup-PS"