

**Serial No. 03**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

Crl. Petn. No. 16 of 2022

Date of Decision: 30.08.2022

Shri. Jeffrey Diengdoh & Anr.

Vs.

State of Meghalaya & 3 Ors.

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Mr. N. Syngkon, Adv.

For the Respondent(s)

: Mr. H. Kharmih, Addl. PP with  
Mr. S. Sengupta, Addl. PP (For R 1-3)  
Mr. E. Nongbri, Adv. (For R 4)

**ORDER**

1. Heard Mr. N. Syngkon, learned counsel for the petitioners who has submitted that an FIR dated 10.06.2018 was lodged before the Officer-in-Charge, Mawlai Police Station by the respondent No. 4 herein informing the police that her minor daughter aged about 16 years had gone missing since 04.06.2018 and is suspected to be in the company of one Josh Diengdoh of Mawlai Phudmuri, Block-B.

2. On receipt of the said FIR, Mawlai P.S Case No. 47(06) of 2018 under Section 364 was registered and investigation launched. In course of investigation, the accused/petitioner No. 1 was arrested and was subsequently

released on bail. On completion of the investigation, the Investigating Officer (I/O) has filed the charge sheet against the petitioner No. 1 with the opinion that a case under Section 366 A IPC read with section 5(1)/6 of the POCSO Act, 2012 was found well established against the accused/petitioner No. 1. The case is now pending before the learned Special Judge (POCSO) Shillong being Special POSCO Case No. 40 of 2020.

3. The petitioner No. 1 who is the alleged perpetrator and the petitioner No. 2 who is the alleged victim have jointly filed this petition before this Court, invoking the inherent jurisdiction of the High Court under Section 482 Cr.P.C with a prayer to set aside and quash the FIR dated 10.06.2018 and the subsequent criminal proceedings against the petitioner No. 1 in Special POSCO Case No. 40 of 2020.

4. Mr. Syngkon has further submitted that this is a case where the alleged victim and the accused are in a love relationship and from the statement of the victim recorded under Section 164 Cr.P.C it is evident that there was already an intention on their part to elope and to stay together as husband and wife and as such on 04.06.2018 after being scolded by her mother the petitioner No. 2 called up the petitioner No. 1 and together they went to his relative's place at Bhoi Rymbong and stayed there without informing her relatives. It was only on 13.06.2018 that her mother/respondent No. 4 and other relatives came to fetch her from Bhoi Rymbong.

5. She was, thereafter, taken to the hospital for medical check-up while the petitioner No. 1 was arrested by the police. However, the petitioner No. 2 has reiterated that she is now staying together with the petitioner No. 1 as husband and wife and her physical relationship with him was with her consent.

6. As stated above, the petitioners have now approached this Court with the aforementioned prayer stating that their relationship is that of husband and wife and prosecuting the petitioner No. 1 for having physical or sexual relationship with his wife is not the objective of the Protection of Children from Sexual Offences (POCSO) Act as at the time when the FIR was filed, the petitioner No. 2 is only one day short of her 18<sup>th</sup> birthday, the birth certificate indicating this fact was also produced by the petitioners before this Court through Annexure-II of this petition.

7. Mr. Syngkon has also submitted that many High Courts, considering the peculiar facts and circumstances of cases of this kind has taken a lenient view and for the welfare and dignity of the parties involved has chosen to terminate the criminal proceedings initiated, more often than not, against the male partner. The case of ***“Vijayalakshmi & Anr. v. State Rep. By. Inspector of Police, All Women Police Station, Erode”*** *Crl. O.P No. 232 of 2021 at para 11 and 18* of the same have been cited by the learned counsel for the petitioners in this regard. Another case, being the case of ***Shri. Teiborlang Kurkalang & Anr. v. State of Meghalaya (Crl. Petn. No. 62 of 2021)***, reference to order dated 23.03.2022 was

also cited by the learned counsel for the petitioners in support of the petitioners' case.

8. It is prayed that this Court in view of the precedent set may be pleased to allow this petition and to set aside and quash the said FIR dated 10.06.2018 and the consequent proceedings in Special POSCO Case No. 40 of 2020.

9. Mr. E. Nongbri, learned counsel for respondent No. 4 has submitted that the respondent No. 4 was the complainant who had filed the said FIR dated 10.06.2018. However, under the present circumstances, the relationship between the petitioner No. 1 and petitioner No. 2 as husband and wife being duly acknowledged by this respondent and her family members, continuation of the criminal proceedings against the petitioner No. 1 would not serve the purpose it was originally meant for. This respondent, therefore, has no objection to the prayer of the petitioners in this regard.

10. Mr. H. Kharmih, learned Addl. PP has submitted that since the complainant and the accused as well as the victim have come to an amicable settlement and cordial relationship, the objective of the POCSO Act perhaps would not be applicable in such a situation. This Court, therefore, may exercise its discretion by passing necessary orders in this regard.

11. On the submission and prayer made by the petitioners and the supporting stand taken by the respondents herein, especially respondent No. 4 and also the fact that at the time of the occurrence of the alleged offence, the

petitioner No. 2 was almost 18 years, short by only a week or so, therefore psychologically and mentally, she is considered to be matured enough to decide for herself as far as marital relationship is concerned. Having empathically stated that she is now cohabiting together with the petitioner No. 1/accused as husband and wife, to cut short this relationship at this juncture would not serve the course of justice. It is here that exercising powers under Section 482 Cr.PC to ensure ends of justice becomes apparent as far as this Court is concerned.

12. Notwithstanding the fact that a proper criminal proceeding cannot be cut short without very strong and compelling circumstances which strikes at the very root of personal liberty, particularly that of the accused, the peculiar facts and circumstances has to bear testimony to move the hand of the court especially in exercise of its inherent powers.

13. As regard the facts of a case vis-à-vis the provisions of the POCSO Act the conduct of the parties has to be considered. The reference to para 11 and 18 of the Vijayalakshmi case (supra) is appropriate under the circumstances. The reproduction of the said paragraphs would further clarify this point which is done so herein:

*“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."*

14. In view of the observations made above, this Court is convinced that the petitioners have made out a case for quashing of the said FIR dated 10.06.2018 and the consequent proceedings in Special POSCO Case No. 40 of 2020 which is done so in these proceedings.
15. Petition disposed of. No costs.

**Judge**

Meghalaya  
30.08.2022  
"Tiprilynti-PS"