

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 28 of 2022

Date of Decision: 02.08.2022

Shri. Pyniarlang Kurkalang & Anr. Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. C.B. Sawian, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Mr. S. Sengupta, Addl. Sr. GA.

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| 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. On 13.07.2021 one WPSI T.M. Sangma of Madanrting P.S had filed an enquiry report to the Officer-in-Charge, Madanrting P.S. wherein, it was reported that on 31.03.2021, a telephonic information was received from Nazareth Hospital, Shillong indicating that one minor girl who is the petitioner No. 2 herein had come to the hospital for medical checkup as she was pregnant. The hospital on finding that the girl was under aged had

accordingly informed the police at the Madanrting P.S.

2. On enquiry, it was found that the said minor girl was 17 years and 9 months old as on 30.08.2020 and had accordingly, turned 18 years after 18 days of her pregnancy. The protagonist in this entire episode is said to be the petitioner No. 1.

3. According to the said WPSI T.M. Sangma, the minor girl as well as her mother who have been examined have clearly stated that they do not want to lodge any complaint against the petitioner No. 1 as the petitioner No. 1 and the petitioner No. 2 are staying together as husband and wife. This is also reflected in the statement of the petitioner No. 2 as the alleged victim recorded under Section 161 Cr.P.C.

4. On the basis of the said report, the police have registered a case being Madanrting P.S. Case No. 92(07) of 2021 under Section 5 (j) (ii)/6 POCSO Act, 2012. Eventually, the matter came up before the Court of the learned Special Judge, (POCSO), Shillong in Special POCSO Case No. 102 of 2021 on the charge sheet being filed by the I/O, prima facie being convinced that a case against the accused/petitioner No. 1 has been made out under Section 5 (j) (ii)/6 POCSO Act, 2012. The case is now at the stage of consideration of charge by the learned Special Judge, (POCSO), Shillong.

5. It is at this point of time that the petitioners have approached this

Court with an application under Section 482 Cr.P.C seeking quashment of the FIR dated 13.07.2021 and the subsequent proceedings in Special POCSO Case No. 102 of 2021.

6. Ms. C.B. Sawian, learned counsel for the petitioners has submitted that the records would reflect that the petitioner No. 1 and the petitioner No. 2 had a love affair, which eventually culminated in the relationship becoming permanent as husband and wife. In this process, the petitioner No. 2 has also become pregnant, for which she had to visit the hospital for her medical checkup, and the events thereafter would show that the authorities were informed and resultantly, the criminal proceedings were drawn up against the petitioner No. 1 under the relevant provisions of the POCSO Act.

7. However, the fact remains that the relationship between the petitioner No. 1 and 2 as husband and wife and the child being born to them is one which is based on love and harmony with the blessings of the family members and the petitioner No. 2 being supported by the petitioner No. 1 as far as the maintenance of the household is concerned.

8. To this extent, the proceedings in question would only cause undue hardship and complication in the family, and if the petitioner No. 1 is eventually convicted, then the petitioner No. 2 and her child will lose the support and leadership of the head of the family, which would jeopardize

their very existence.

9. In the context of the facts and circumstances of this case, the learned counsel has also submitted that under similar facts and circumstances, the Hon'ble High Court of Madras in the case of ***Vijayalakshmi & Ors v. State & Ors in Crl.O.P. No. 232 of 2021 and Crl.M.P. No. 109 of 2021*** has observed at paragraphs 11 and 18 respectively:

“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.”

10. The case of ***Ranjit Rajbanshi v. State of West Bengal & Ors (C.R.A. No. 458 of 2018: IA No. CRAN 2 of 2020)*** was also referred by the learned counsel for the petitioners making special mention of paragraphs 47, 48 & 49 of the same in which the Hon’ble Calcutta High Court dealing with the matter under the POCSO Act involving a minor girl of about 16 ½ years and her relationship with the accused therein, who was also of a very young age, had in the final analysis opined that the accused therein was not guilty of penetrative sexual assault.

11. The decision of this Court in some similarly situated cases, that is, in the case of Shri. ***Teiborlang Kurkalang & Anr. v. State of Meghalaya & Anr in Crl.Petn. No. 62 of 2021*** and also the case of ***Shri. Skhemborlang Suting & Anr v. State of Meghalaya & Anr in Crl.Petn. No. 63 of 2021*** as well as the case of ***Shri. Shembhalang Rynghang & Anr v. State of Meghalaya in Crl.Petn. No. 64 of 2021*** was also cited by the petitioners in this regard. It is therefore prayed that this petition may be allowed and the prayer made for quashing of the said FIR dated 13.07.2021 and the subsequent proceedings before the Court of the learned Special Judge, (POCSO), Shillong in Special POCSO Case No. 102 of 2021 be set aside and

quashed.

12. Mr. N.D. Chullai, learned AAG appearing on behalf of the State respondents has submitted that this Court in similarly situated case has passed relevant orders to the extent that on the prayer of the petitioners, the proceedings before the Special Court (POCSO), Shillong have been quashed on the ground that the parties are married, even though the girl may be of a minor age, but in view of the customary practice prevalent in this part of the country where under aged marriage is not frowned upon, this Court may pass necessary orders in this regard.

13. It is further submitted that in view of the strict provision of law, this Court may direct the concerned authorities, particularly the Chief Secretary, Government of Meghalaya and the Member Secretary, Meghalaya State Legal Services Authority to conduct awareness programme, educating the people about the dangers of under aged marriage.

14. Due consideration has been given to the submission of the parties, facts need not be reiterated, however suffice it to say that this is a case where the alleged victim and the accused have come together in a joint application to make a prayer before this Court for quashing of a proceeding under the POCSO Act, which is directed principally against the accused/petitioner No. 1 herein. The undisputed fact is that the petitioners were in a love relationship

which has culminated into marriage and is now with a child born to them. The union is not a clandestine one since it has a blessings of the family members including the parents of the petitioner No. 2. To upset this situation would perhaps be a travesty of justice, but to maintain it would also attract the relevant provision of law including the provisions under the POCSO Act.

15. Be that as it may, Courts looking into the peculiar facts and circumstances of a case have leaned towards a more lenient approach, allowing the relationship to continue instead of breaking the fledgling family unit.

16. As is evident from the authorities cited by the learned counsel for the petitioners, wherein in the case of Vijayalakshmi (supra) at paragraphs 11 and 18 reproduced as above, the Hon'ble High Court of Madras looking into the objective of the POCSO Act and applying the same to the fact situation has observed that it is high time that the legislature takes into consideration cases of this nature involving adolescents involved in relationships and that necessary amendments under the Act has to be made, keeping pace with the changing societal needs.

17. In the case of Ranjit Rajbanshi (supra) at paragraphs 47, 48 & 49 of the same, the Hon'ble Calcutta High Court while dealing with the technical aspect of the POCSO Act, particularly Section 3 (a) has observed that an

accused cannot be said to be guilty of penetrative sexual assault if the act is a participatory moment of passion involving the participation of both the victim and the accused. This Court agreeing with the above proposition has also on similar lines allowed the prayer of the petitioners in the case of Shri. Teiborlang Kurkalang (supra) and Shri. Skhemborlang Suting (supra) as well as Shri. Shembhalang Rynghang (supra) which were cited by the learned counsel for the petitioners.

18. In fact in a recent case, that is, ***Olius Mawiong & Anr v. State of Meghalaya & Anr in Crl.Petn. No. 22 of 2022*** involving a relationship and the consequent relationship between a minor girl of about 17 years old and a boy of about 21 years old, who had physical contact which eventually resulted in the girl being pregnant and on being examined at the hospital, the incident being duly reported to the police, an FIR was made to be lodged by the mother of the alleged victim girl who has done the same reluctantly and following the due process, a case was registered against the boy under the POCSO Act. On an application for quashing of the related FIR and proceedings before the Special Court (POCSO), this Court has allowed the same. Being identical and similar to the facts and circumstances in this case, there is no reason why this Court should not allow the prayer made in this petition.

19. Accordingly, on being convinced, this Court hereby allows this petition and the prayer for quashing of the FIR dated 13.07.2021 and the subsequent proceedings before the Court of the learned Special Judge, (POCSO), Shillong in Special POCSO Case No. 102 of 2021 is hereby set aside and quashed.

20. With the above, this petition is accordingly disposed of.

21. Before parting with this case as was expressed by the learned AAG, the Chief Secretary, Government of Meghalaya as well as the Member Secretary, Meghalaya State Legal Services Authority are hereby requested to conduct an extensive awareness programme to highlight the aspects of the danger of under aged marriage or cohabitation to avoid unnecessary conflict with the relevant provisions of law.

22. Registry is directed to issue copy of this order upon the Chief Secretary, Government of Meghalaya as well as the Member Secretary, Meghalaya State Legal Services Authority for due consideration.

23. Return back the Lower Court case record.

Judge

Meghalaya
02.08.2022
"D. Nary, PS"