

Serial No. 3
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 12 of 2022

Date of Decision: 30.05.2022

Shri Lurshai Lyngdoh Mawlong & Anr Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. S. Pandey, Adv. with Mr. N.M. Kharshemlang, Adv.
For the Respondent(s)	:	Ms. Z. E. Nongkynrih, GA. (R-1) Mr. A. Joshi, Adv. (R-2)

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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. Heard Mr. S. Pandey, learned counsel for the petitioners who has submitted that on 05.08.2019, the respondent No.2 as the informant has filed an FIR before the Officer-In-Charge Laitumkhrah P.S, Shillong with a missing person's complaint that her minor daughter aged about 15 years was missing from home since 04.08.2019 from 9:00 am. The prime suspect in the matter is the petitioner No.1 herein, since on an earlier occasion i.e. 16.06.2019, the said suspect had taken her said minor daughter/petitioner No.2 to his residence at Laitkor and it is only when the respondent No.2 went to pick her up on the same day that she was able to bring her home.

2. On receipt of the said FIR, the police registered a criminal case being Laitumkhrah PS Case No. 134(8)2019 under Section 365 IPC, accordingly, on 05.08.2019 the petitioner was arrested in connection with the said case. In due course he was subsequently enlarged on bail, however, the investigation proceeded.

3. On completion of the investigation, the Investigating Officer filed the final form/final report under Section 173 Cr.PC and has also given his opinion that in view of the investigation conducted, a prima facie case under Section 365 IPC read with Section 3/4 POCSO Act, 2012 is found well established against the accused person/petitioner No.1 and he is sent to face trial before the competent court. The matter was then taken up by the learned Special Judge (POCSO), Shillong in Special (POCSO) Case No. 10 of 2020. It is also submitted that charges have been framed against the petitioner No.1 herein and the matter is pending for recording of evidence of the prosecution's witnesses.

4. The learned counsel for the petitioners has further submitted that the fact of the matter is that the petitioner No.1 and petitioner No.2 are in a relationship as boyfriend and girlfriend at that relevant point of time and it is also admitted that the petitioner No.2 had come to the residence of petitioner No.1 on 04.08.2019, but since petitioner No.1 was not at home, she had waited for him and in the process when the petitioner No. 1 returned home he found the petitioner No.2 waiting for him, it was about 10:30 pm by then. The petitioner No.1 however had informed the father of the petitioner No.2 intimating him about his daughter's whereabouts and soon after that he proceeded to drop the petitioner No. 2 at her residence at Malki on a scooter. On reaching near her residence, the petitioner No.2 saw her parents waiting for her outside her house and in a state of panic as soon as she got off the scooter, she did not enter the house and ran away from the scene.

5. The petitioner No.1 had in the meantime returned home and only came to know later that the petitioner No.2 after getting off near her residence had proceeded on foot towards the petitioner No.1's residence at Laitkor and reached there at around 3:00 am where she spends the night at the petitioner No.1's residence.

6. It is further submitted that it is not a case of kidnapping or abduction but that the petitioner No.2 on her own had left her house and had come to the residence of the petitioner No.1. Infact, in her statement under Section 164 Cr.PC, the petitioner No.2 had clearly stated that she had gone to the house of petitioner No.1 on her own since they are in a relationship as boyfriend and girlfriend and on coming to know that the informant who is her mother had lodged the FIR and on her father informing the same to the petitioner No.1 over the phone, she along with petitioner No.1 went to the police station on their own. However, from the police station they were taken separately for medical examination and soon after that she lost touch with the petitioner No.1 and she herself was placed in a hostel at Mawlai. She came to know that petitioner No.1 was sent to jail.

7. The learned counsel has again submitted that the petitioner No.2 in her statement under Section 164 Cr.PC has clearly stated that she is in her relationship with the petitioner No.1 and that she is still in love with him. The situation at present is that on the petitioner No.2 attaining the age of majority, she is now presently living together with petitioner No.1 as husband and wife and are residing at Malki, Shillong where out of their co-habitation, one child was born to them on 17.08.2021.

8. Again, it is submitted that as far as the issue of kidnapping and abduction is concerned, no case can be made out as the petitioner No.2 who is the alleged abducted is very much present in her residence and as such, no charges on this count can be made out against the petitioner No.1.

9. On the charges under Section 3/4 of the POCSO Act, the learned counsel has submitted that the petitioner No.1 is not aware of the provisions of law as regard the POCSO Act and has willingly co-habited together as husband and wife with the petitioner No.2 as per customary practices prevalent in this area where marriages without formal registration are also acknowledged by the society at large as valid and as such, the fact that the couple are happily living together now with a child to cement their relationship, the continuation of the proceedings before the court would have a negative effect and impact on the young family.

10. In this regard, the case of ***Vijayalakshmi & Anr. v. State*** represented by the Inspector of Police, All Women Police Station, Erode: Crl. O.P No. 232 of 2021 as well as the case of ***Shri Skhemborlang Suting & Anr. v State of Meghalaya***: order dated 23.03.2022 in Crl. Petn. No. 63 of 2021 passed by the High Court of Meghalaya was cited by the petitioners in support of their case.

11. It is therefore prayed that this petition may be allowed and the proceedings in Special (POCSO) Case No. 10 of 2020 pending before the court of the Learned Special Judge, (POCSO), Shillong be quashed.

12. Mr. A. Joshi learned counsel for the respondent No.2 has submitted that there is no objection to the prayer made in this petition by the respondent No.2 and that necessary orders may be passed by this Court in this regard.

13. Ms. Z.E. Nongkynrih, learned GA has also submitted that the State would have no objection to the prayer of the petitioners in this case.

14. On consideration of the submissions made, the facts and circumstances of this case is not an isolated one but instances have been brought to the notice of this Court where young people in course of their social interaction happens to fall in love and as the saying goes “*one thing led to another*” which more often than not culminated in a physical relationship which is consensual in

nature. However, unbeknownst to them the provisions of the Protection of Children from Sexual Offences Act would catch up with their activities as legally having sexual intercourse with a child, that is a person being below 18 years of age is prohibited by law and the alleged perpetrator would naturally be booked under the law and prosecuted accordingly.

15. The case of *Vijayalakshmi* (supra) cited by the petitioner which was also cited by this Court in the case of *Skhemborlang Suting* (supra) would demonstrate the fact that this aspect of the matter was also noticed by a number of courts in this country. At paragraph 12 and 18 of the *Vijayalakshmi* case, the Hon'ble Madras High Court has observed as follows: -

“12. As rightly recognized by the Learned Single Judge of this Court in Sabari's Case (cited supra), incidences where teenagers and young adults fall victim to offences under the POCSO Act being slapped against them without understanding the implication of the severity of the enactment is an issue that brings much concern to the conscience of this Court. A reading of the Statement of Objects and Reasons of the POCSO Act would show that the Act was brought into force to protect children from offences of sexual assault, sexual harassment and pornography, pursuant to Article 15 of the Constitution of India, 1950 and the Convention on the Rights of the Child. However, a large array of cases filed under the POCSO Act seems to be those arising on the basis of complaints registered by the families of adolescents and teenagers who are involved in romantic relationships with each other. The scheme of the Act clearly shows that it did not intend to bring within its scope or ambit, cases of the nature where adolescents or teenagers involved in romantic relationships are concerned.

18. In the present case, the 2nd Petitioner who was in a relationship with the 2nd Respondent who is also in his early twenties, has clearly stated that she was the one who insisted that the 2nd Respondent take her away from her home and marry her, due to the pressure exerted by her parents. The 2nd Respondent, who was placed in a very precarious situation decided to concede to the demand of the 2nd Petitioner. Thereafter, they eloped from their respective homes, got married and consummated the marriage. Incidents of this nature keep occurring regularly even now in villages and towns and occasionally in cities. After the parents or family lodge a complaint, the police register FIRs for offences of kidnapping and various offences under the POCSO Act. Several criminal cases booked under the POCSO Act fall under this category. As a consequence of such a FIR being registered, invariably

the boy gets arrested and thereafter, his youthful life comes to a grinding halt. The provisions of the POCSO Act, as it stands today, will surely make the acts of the boy an offence due to its stringent nature. An adolescent boy caught in a situation like this will surely have no defense if the criminal case is taken to its logical end. 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."

16. Again, at para 19 of the *Skhemborlang Suting's* case, this Court has noted the particulars of the case of ***Kundal & Anr. v. State & Ors***, wherein the Hon'ble High Court of Delhi vide order dated 21.02.2022 in Crl. M.C. 27/2022 in a case similar to the facts and circumstances of this case where, the alleged victim girl therein had gone missing and was found in the company of the accused and that she had stated that she is married to the said accused with a child out of the said wedlock born to them, the parents of both parties having accepted the marriage, an application under Section 482 Cr.PC for quashing of the proceedings related thereto was allowed by the High Court.

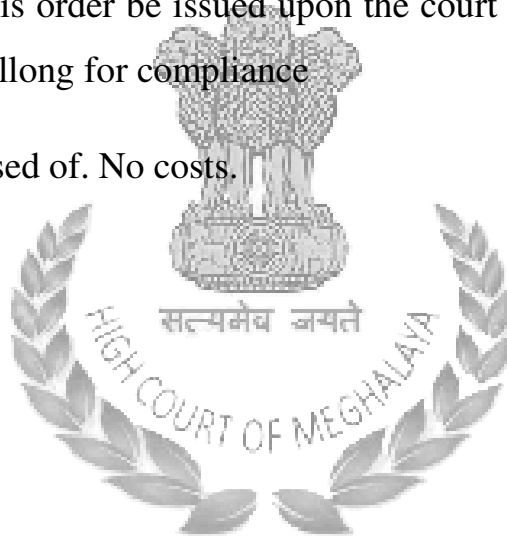
17. Another aspect of the matter which weigh with this Court is the social and public interest factor. The Hon'ble Supreme Court in a catena of decisions has held that offences which offends public sensibilities and conscience even if the parties involved come to a compromise or settlement, the same would not be allowed. However, if it involves only private parties or individuals then the above dicta may not necessarily apply. In the case in hand, it is a question of two individuals having decided to stay together as husband and wife and the union as a family unit would definitely not be looked with disdain by

society at large irrespective of the fact that the technical aspect of law would say otherwise. However, as observed above, precedents being found in judgments by the various High Courts centered around the subject matter discussed, this Court would find it appropriate to agree with the said precedents cited.

18. In view of the above observations, this Court is inclined to allow this petition. Accordingly, this petition is allowed and consequently the proceedings of Special (POCSO) Case No. 10 of 2020 pending before the court of the learned Special Judge (POCSO), Shillong is hereby set aside and quashed. The bail bond executed by the petitioner No.1 stands discharged.

19. Let copy of this order be issued upon the court of the learned Special Judge (POCSO), Shillong for compliance

20. Petition disposed of. No costs.



Judge

Meghalaya

30.05.2022

"N.Swer, Stenographer"