

Serial No. 04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 19 of 2023

Date of Decision: 26.04.2023

Shri Apjen B. Marak & Anr. Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Shri A.S. Siddiqui, Sr. Adv. with Ms. A. Kharmyndai
For the Respondent(s)	:	Mr. S. Sengupta, Addl. PP (R-1) Ms. Tenzing Yangkyi, Adv. (R-2)

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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JUDGMENT & ORDER

1. Heard Mr. A.S. Siddiqui, learned Sr. Counsel appearing on behalf of the petitioners who has submitted that the petitioner No.1 and Petitioner No. 2 have been living together as husband and wife according to local customs and culture prevailing among the Garo Schedule Tribe.

2. However, due to some misunderstanding between the parties in the month of January 2020, the respondent No.2 who is the father of the petitioner No.2 has lodged an FIR dated 24.01.2020 before the Officer In-charge Women Police Tura, West Garo Hills and the same was registered as Tura Women PS Case No. 04(01)2020 under Section 506 IPC r/w Section 5(j)(ii)(1)/6 of the POCSO Act.

3. The learned Sr. Counsel has submitted that inspite of the case being registered, the petitioners are staying together and was blessed with a child who, unfortunately died a week after its birth.

4. The criminal case in its usual course continued with the filing of the charge sheet against the petitioner No.1 and the matter was taken cognizance of by the learned Special Judge (POCSO) in Spl. POCSO Case No. 2 of 2022. The case is at the stage of evidence.

5. The learned Sr. counsel has further submitted that the pendency of the said criminal case has caused an atmosphere of unease and tension between the parties involved for which on the initiative of the Maharis (Clan Members), a meeting was held on 14.02.2023 and the parties have decided to settle the matter amicably outside court with the respondent No.2 agreeing not to pursue the case against the petitioner No.1 anymore.

6. In this connection, a written agreement was also drawn up on 14.02.2023, the English translated copy being annexed as Annexure-II-A, which basically indicates that the respondent No.2 is not willing to continue with the case.

7. It is also the submission of the learned Sr. counsel that since the Sections involved are non-compoundable, therefore, prayer was made before the Trial Court to approach this Court for necessary orders. Hence this petition.

8. Finally, the learned Sr. counsel has submitted that since the parties have amicably settled the matter, therefore for the sake of peace and family unity, this petition may be allowed and the criminal proceedings against petitioner No.1 be quashed.

9. Ms. Tenzing Yangkyi, learned counsel for the respondent No. 2 has submitted that there is no objection to the prayer made by the petitioners herein.

10. Per contra, Mr. S. Sengupta, learned Addl. PP has submitted that the case diary has been produced before this Court and from the contents thereof, it is revealed that the case of the parties is not as simple as it was portrayed inasmuch as, the petitioner No.2 has categorically stated that she was assaulted and raped by the petitioner No.1 in the month of April, 2019, when she was on her way to school and was waylaid by the petitioner No.1 who took her on his bike to his residence and there committed sexual assault on her. This assault continued for a number of times and the victim was threatened not to reveal the same to anyone. It was only after she became pregnant and was noticed by her family members that she revealed the truth to them, upon which the respondent No.2 being her father had lodged the said FIR and she was accordingly sent for medical examination.

11. In view of the evidence on record, the learned Addl. PP has submitted that this is not a fit case for this Court to intervene in exercise of its powers under Section 482 Cr.PC to quash the said criminal proceedings in Spl. POCSO Case No. 2 of 2022.

12. This Court on consideration of the submission made by the parties and on perusal of the petition in hand as well as the case diary, would notice that the fact that the petitioner No.1 and petitioner No.2 had been involved sexually is an admitted fact. However, in course of the proceedings before the learned Special Court, the petitioners have decided to amicably settle the matter on the ground that they are now staying together as husband and wife and accordingly have now approached this Court seeking exercise of its inherent power under Section 482 Cr.PC.

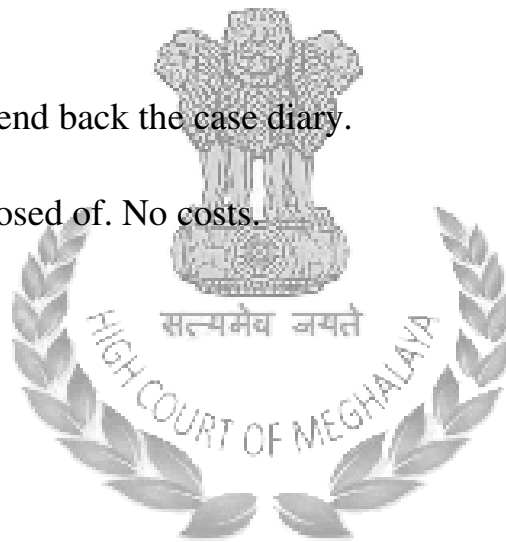
13. From the contents of the FIR and the statement of the survivor as well as from the body of evidence recorded in the case diary, what can be seen is that at the time when the sexual assault took place, the survivor was 13 years old. Her narration of the incident does not in any way show that the sexual relationship or the sexual act between the two was consensual. Infact, the survivor had pointedly stated that she was forcibly assaulted and threatened by the petitioner No. 1 to the extent that she did not reveal the truth till her pregnancy became prominent. It is also seen from the record that the petitioner No.1, perhaps in a bit to escape the arms of the law had forced himself to stay with the survivor but, his true colours came out when he had also physically assaulted the survivor in course of their sojourn together.

14. In the light of what is evident on record, this Court is of the opinion that this is not a fit case for exercise of inherent power to scuttle the ongoing criminal proceeding inasmuch as, the petitioner No.1 having exhibited a criminal character, he has to be processed through the system to either prove his innocence or for his guilt to be found out and at this stage, this is certainly not a case for the Court to take a lenient view of the matter, the welfare of the survivor being the prime consideration.

15. In view of the above, this petition is hereby dismissed as devoid of merits.

16. Registry to send back the case diary.

17. Petition disposed of. No costs.



Judge

Meghalaya

26.04.2023

"N. Swer, Stenographer"