

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

Cr. MMO No. 25 of 2023

Reserved On : 17.3.2023

Decided on : 31.3.2023

Jagdish Kumar

...Petitioner

Versus

State of H.P. & others

...Respondents

Coarm

Hon'ble Mr. Justice Virender Singh, Judge

¹Whether approved for reporting?

For the petitioners:

**Mr. Beli Ram Sharma,
Advocate.**

For the respondent:

**Mr. J.S. Guleria, Ms. Priyanka
Chauhan, Mr. Sumit Sharma,
Mr. Rohit Sharma and Ms.
Priyanka Chauhan, Deputy
Advocate Generals, for
respondent No. 1.**

**Mr. Bhim Raj Sharma,
Advocate, for respondents No. 2
and 3.**

Virender Singh, Judge

Petitioner Jagdish Kumar has filed the present petition, under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr. P.C.') read with Article 227 of

the Constitution of India.

2. By way of the present petition, the petitioner has sought quashing of FIR No. 88 of 2020, dated 18.6.2020, registered under Sections 363, 366-A and 376 of Indian Penal Code (hereinafter referred to as 'the IPC') and Sections 4 and 17 of Protection of Children from Sexual Offences Act (hereinafter referred to as 'the POCSO Act'), with Police Station Rampur, District Shimla and resultant proceedings thereto, pending in the Court of learned Additional Sessions Judge, Fast Track Special Court (Rape/POCSO) Kinnaur at Rampur, District Shimla, (hereinafter referred to as 'the trial Court'), in case titled as, 'State of H.P. versus Jagdish Kumar & another'.

3. According to the factual position, as mentioned in the petition, a case has been registered at Police Station, Rampur Bushahr, on the complaint of respondent No. 2, who is father of the child victim. The father of the child victim had lodged the said complaint on 19.6.2020, on the basis of which, the FIR in question has been registered and thereafter, criminal machinery swung into motion.

4. After completion of the investigation, the charge-sheet had been filed for the commission of offences, punishable under Sections 363, 366-A and 376 of IPC and Section 4 of POCSO Act, against accused Jagdish Kumar and under Sections 363 of IPC and Section 6 of the POCSO Act, against accused Bhim Sen.

5. The quashing of FIR, as stated above, as well as resultant proceedings thereto, has been sought on the ground that when respondent No. 3 (child victim) has attained the age of majority, she has married to the petitioner, i.e. on 28.10.2022, according to Hindu Rites and Customs. In this regard, the petitioner has also annexed the marriage certificate, Annexure P-3, with the petition. The marriage was also registered with the Registrar of Marriage, Rampur, District Shimla.

6. According to the petitioner, now, after solemnization of marriage, the petitioner and respondent No. 3 are residing happily with each other and they have decided to amicably settle the matter. Respondent No. 2 has also agreed to withdraw the case.

7. Alongwith the petition, a copy of statement of the child victim, recorded by the learned trial Court on 2.11.2020, as well as, the statements of the complainant and respondent No. 2 have been annexed.

8. On all these submissions, a prayer has been made to quash the FIR in question, as well as, the proceedings resultant thereto, pending before the learned trial Court.

9. On notice, the petition has been contested by respondent No. 1, in which, the factual position regarding registration of the FIR, as well as, submission of report, under Section 173 (2) Cr.P.C. has not been disputed.

10. Apart from this, it has been pleaded in the reply that the offences involved, in the present case, are heinous, serious and non-compoundable and the same are not against the individual, but, against the State, having far reaching effects upon the society.

11. To buttress their contention, respondent No. 1 has relied upon the decision of Hon'ble Supreme Court in Criminal Appeal No. 1723 of 2017, titled as, Parbatbhai Aahir

@ Parbatbhai Bhimsinhbhai Karmur and others versus State of Gujarat and another.

12. On the basis of all these submissions, a prayer has been made to dismiss the petition.

13. The petitioner is before this Court, in a petition, under Section 482 of Cr.P.C., for quashing of FIR, as well as, the proceedings resultant thereto, on the basis of the marriage of the petitioner with respondent No. 3, as well as, the compromise, which had allegedly taken place between the petitioner and respondent No.3. The petitioner has been named as accused in the said FIR, which has also been registered under Section 4 of POCSO Act. Respondent No. 3 is the child victim, whose date of birth has been mentioned in the report under Section 173(2) of Cr.P.C. as 23.10.2004. Meaning thereby, at that time, her age was 17 years and four months. She, thus, comes within the definition of child, as defined under Section 2(d) of the POCSO Act.

14. The legislature, in its wisdom, has enacted the POCSO Act, with an object to reduce the child abuse and protection of children from sexual offences,

15. The Hon'ble Apex Court in a case, titled as ***Alakh Alok Srivastava versus Union of India and others*** **2018(7) SCALE 88** has elaborately explained the scope and object of POCSO Act. Relevant paras 10 to 12, 19 and 20 of the judgment are reproduced as under:-

“10. The POCSO Act has been legislated keeping in view the fundamental concept under Article 15 of the Constitution that empowers the State to make special provisions for children and also Article 39(f) which provides that the State shall in particular direct its policy towards securing that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. The Statement of Objects and Reasons of the Act indicate the focus for reduction of child abuse and protection of children from the offences of sexual assault, sexual harassment and pornography, etc. The relevant part of the Statement of Objects and Reasons of the POCSO Act is extracted below:

“3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against

children. This is corroborated by the ‘Study on Child Abuse: India 2007’ conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalized. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences Against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is, therefore, proposed to enact a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process incorporating child friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.”

11. In this context, it is apposite to reproduce the long Preamble of the POCSO Act. It is as follows:

“An Act to protect children from offences of

sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

Whereas clause (3) of article 15 of the Constitution, inter alia, empowers the State to make special provisions for children;

And whereas, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

And whereas it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

And whereas it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

And whereas the State parties to the Convention

on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent –

(a) the inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials;

And whereas sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.”

12. In **Eera through Dr. Manjula Krippendorf v. State (NCT of Delhi) and another¹**, one of us (Dipak Misra, J), dwelling upon the purpose of the Statement of Objects and Reasons and the Preamble of the POCSO Act, observed:

“20. ... the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the preamble, it is manifest that it recognizes the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well being are

regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The statement of objects and reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing childfriendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POCSO Act”.

19. Speaking about the child, a threeJudge Bench in **M.C. Mehta v. State of T.N. and others²** opined that:

“... “child is the father of man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education,

acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.”

20. In Supreme Court Women Lawyers Association (SCWLA) v. Union of India and another, this Court has observed:

“In the case at hand, we are concerned with the rape committed on a girl child. As has been urged before us that such crimes are rampant for unfathomable reasons and it is the obligation of the law and lawmakers to cultivate respect for the children and especially the girl children who are treated with such barbarity and savageness as indicated earlier. The learned Senior Counsel appearing for the petitioner has emphasised on the obtaining horrendous and repulsive situation.”

Alice Miller, a Swiss psychologist, speaking about child abuse has said:

“Child abuse damages a person for life and that damage is in no way diminished by the ignorance of the perpetrator. It is only with the uncovering of the complete truth as it affects all those involved that a genuinely viable solution can be found to the dangers of child abuse.”

16. Similarly, in a recent decision in Criminal Appeal No.1874 of 2022, titled as **State of Maharashtra and another versus Dr. Maroti S/o Kashinath Pimpalkar**, decided on 2nd November, 2022, the Hon'ble Apex Court has again discussed the object of POCSO Act. Relevant para 10 of the judgment is reproduced as under:-

“10. Having made such a short survey on authorities on the exercise of power under Section 482 Cr.P.C. as above, we will now refer to the object and purposes of the POCSO Act. Article 15 of the Constitution, inter alia confers powers upon the State to make special provisions for children and Article 39 (f) provides not only that the State shall direct its policy towards securing that the children are given opportunities to develop in a healthy manner and in conditions of freedom and dignity but also to ensure that their childhood and youth are protected against exploitation and against moral and material abandonment. Recognising the constitutional obligation and keeping in view the fundamental concept under Article 15 of the Constitution and also realizing that sexual offences against children are not adequately addressed by the existing laws, POCSO Act was enacted. The provisions thereunder would reveal that it also aims to ensure that such offenders are not spared and should be properly booked.”

17. If, the facts and circumstances of the present case, are considered in the light of the above decisions, then, there is no hesitation for this Court to hold that in case, the alleged settlement, which has been arrived at between the parties, is accepted, then, this would defeat the object and spirit behind the legislation of POCSO.

18. The alleged compromise between the petitioner and respondent No.3, is inconsequential, as the role and position of the complainant, in such cases, has elaborately been discussed by the Hon'ble Apex Court, in a case titled as ***Daxaben versus the State of Gujarat and others reported as (2022) 11 SCALE 329.*** Para 40 of the judgment is reproduced as under:-

“40. In Criminal jurisprudence, the position of the complainant is only that of the informant. Once an FIR and/or criminal complaint is lodged and a criminal case is started by the State. It becomes a matter between the State and the accused. The State has a duty to ensure that law and order is maintained in society. It is for the State to prosecute offenders. In case of grave and serious non-compoundable offences which impact society, the informant and/or complainant only has the right of hearing, to the extent of ensuring that justice is

done by conviction and punishment of the offender. An informant has no right in law to withdraw the complaint of a non-compoundable offence of a grave, serious and/or heinous nature, which impacts society”.

19. In view of the above decision, the role of the complainant comes to an end after putting the criminal machinery into motion by informing the police. Such heinous offences are always against State and the private party cannot compromise the matter. Crime never dies and crime is always against the State, hence, no benefit could be derived by the petitioner, in the present case, on the basis of the alleged compromise arrived at between the petitioner and respondent No.3.

20. In such type of heinous offences, the endeavour of the Court should be to determine the truth of the allegations, which have been levelled by the complainant, child victim as well as the witnesses, whose statements have been recorded by the police. Since the offences, as mentioned in the FIR in question, are against the society, as such, the proceedings should be continued enabling the Court of competent jurisdiction to find out the truth on the basis of the evidence,

so led during the trial. The accused may be acquitted, if the charges are not proved or may be convicted, if the learned trial Court finds the evidence so adduced, is confidence inspiring.

21. Accepting such settlement would also encourage the other criminals, involved in such type of heinous offences, to indulge in such type of activities, to enter into the compromise with the complainant or the child victim with the ulterior motive to defeat the object of the legislature for enacting this special statute, like POCSO, which has overriding effect over other laws, as this act is in addition, not in derogation of any other law.

22. The present proceedings are under Section 482 Cr.P.C., and the powers under Section 482 Cr.P.C., should be exercised in rarest of the rare cases and not, on the basis of the alleged compromise in heinous offences.

23. The Hon'ble Apex Court in the case, titled as ***State of Haryana versus Bhajan Lal and others*** reported as ***(1992) Suppl.1, SCC 335***, has elaborately discussed the powers of the Courts under Section 482 of Cr.P.C. Para 103 of

the judgment is reproduced as under:-

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

24. The Hon'ble Apex Court in a case, titled as **Gian Singh versus State of Punjab** reported as **(2012) 10 SCC 303** has discussed the powers of the Court under Section 482 Cr.P.C., in comparison to the provisions of Section 320 Cr.P.C., and the difference between the two provisions has also been elaborately discussed. Relevant Para of the said judgment is reproduced as under:-

“58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands

that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under [IPC](#) or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it

is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.”

25. The quashing of the FIR, in non-compoundable cases, has been discussed by the Hon’ble Apex Court in a case titled as ***Narinder Singh and others versus State of Punjab and another, reported as (2014) 6 Supreme Court Cases 466***, after considering all the earlier decisions. Relevant para 29 of the judgment is reproduced as under:-

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the

High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or*
- (ii) to prevent abuse of the process of any Court.*

While exercising the power under Section 482 Cr.P.C. the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender”.

26. In a decision titled as **State of Madhya Pradesh**

versus Laxmi Narayan and others, reported as (2019) 5

SCC 688, three Judges' Bench of Hon'ble Apex Court has discussed the scope of the Court to quash the proceedings, under Section 482 of Cr.P.C. in heinous offences. Relevant para-15 of the judgment is reproduced as under:-

“15.1. That the power conferred under Section 482 of the Code of quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;”

27. Since the legislature, in its wisdom, has enacted the special statute to protect the interest of the children, as such, the factum of marriage between the petitioner and respondent No. 3, will not help the case of the petitioner to get the present FIR quashed.

28. So far as the arguments qua the fact that the child victim has turned hostile is concerned, the said fact will be considered by the learned trial Court, as the testimony of hostile witness, does not efface from the record and it has to be considered by the learned trial Court, where the portion, which supports the case of the prosecution could be taken into consideration or not.

29. The hostility of the witness is a fact which will be considered by the learned trial Court and not by this Court. Respondent No. 3, when appeared in the witness box as PW-2, no doubt, has not supported the case of the prosecution, but, this fact also will not help the petitioner to get relief in the present petition, as all these facts will be considered by the learned trial Court.

30. Considering all these facts, there is no occasion

for this Court to quash the FIR, as prayed for in this case.

31. In view of above, the present petition is dismissed,
so also the pending application(s), if any.

(Virender Singh)
Judge

March 31, 2023
(*Kalpana*)