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Muniraju vs State of Karnataka

Muniraju vs State of Karnataka

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Court : Karnataka

Decided On : Mar-07-2025

Judge : M.Nagaprasanna

Appeal No. : WP/28856/2024

Appellant : Muniraju

Respondent : State of Karnataka

Judgement :

Reserved on : 16.01.2025

Pronounced on : 07.03.2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF MARCH, 2025 BEFORE THE HON'BLE MR JUSTICE M.NAGAPRASANNA WRIT PETITION NO. 28856 OF 2024 (GM - RES) BETWEEN: MUNIRAJU, S/O LATE NARAYANAPPA, AGED ABOUT 27 YEARS, RESIDING AT BANDAHATTI VILLAGE, MASTHI HOBALI, MALUR TALUK, KOLAR, KARNATAKA - 563 130. PETITIONER (BY SRI ROHAN VEERANNA TIGADI, ADVOCATE) AND:

1. STATE OF KARNATAKA, REPRESENTED BY SUB-INSPECTOR OF POLICE, MASTI POLICE STATION, KOLAR - 563 130.

2. SUKANYA N., W/O MUNIRAJU B.N., AGED 18 YEARS RESIDING AT BANDAHATTI VILLAGE MASTI HOBALI, MALUR TALUK KOLAR, KARNATAKA - 563 130.

3. BYRAREDDY

CDPO MALUR, MALUR TALUK, KOLAR, KARNATAKA - 563 130. RESPONDENTS (BY SRI JAGADEESHA B. N., SPL. SPP FOR R1; SRI RAMESH H.N., ADVOCATE FOR R2) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE INDIAN CONSTITUTION R/W SEC 528 OF BHARATIYA

NAGARIK SURAKSHA SANHITA, PRAYING TO QUASH THE ORDER

DATED 17.09.2024 PASSED BY THE LEARNED ADDITIONAL DISTRICT AND SESSIONS JUDGE, FSTC-1 AT KOLAR IN CRIME NO. 218 OF 2023 (ANNEXURE-A) TAKING COGNIZANCE FOR THE OFFENCES UNDER SECTIONS 376(3) INDIAN PENAL CODE, SECTION 6 OF THE POCSO ACT 2012 AND SECTION 9 OF THE

PROHIBITION OF CHILD MARRIAGE ACT; QUASH THE ORDER

DATED 27.09.2024 AND FURTHER PROCEEDINGS PENDING ON THE FILE OF LEARNED ADDITIONAL DISTRICT AND SESSIONS JUDGE, FSTC-1 AT KOLAR IN SPL. C. (POCSO) 142 OF 2024 (ANNEXURE-A) FOR OFFENCES UNDER SECTION 376(3) IPC SECTION 6 OF THE POCSO ACT AND SECTION 9 OF THE PROHIBITION OF CHILD MARRIAGE ACT; QUASH THE CHARGE-SHEET DATED 26.07.2024 IN CRIME NO. 218 OF 2023 (ANNEXURE-B) PENDING ON THE FILE OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, FSTC-1 AT KOLAR. AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.01.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:- CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioner-accused is before this Court calling in question the proceedings in Spl.Case(POCSO)142 of 2024 registered for offences punishable under Sections 376(3) of the IPC, Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Section 9 of the Prohibition of Child Marriage Act.

2. Heard Sri Rohan Veeranna Tigadi, learned counsel

appearing for petitioner and Sri Jagadeesha B N., learned Additional State Public Prosecutor appearing for respondent No.1 and Sri Ramesh H N, learned counsel appearing for respondent No.2.

3. Facts in brief, germane, are as follows:

It is the case of the prosecution that the petitioner gets married to the victim on 14-05-2023. At the time of marriage, it transpires that the petitioner was 26 years and the 2nd respondent was 17 years. The marriage was performed by the parents of the petitioner, as the 2nd respondent was an orphan. After marriage, the 2nd respondent becomes pregnant and goes to get herself checked, it is then reported to the Child Development Project Officer, Malur on 29-12-2023, as the 2nd respondent was pregnant and she was 17 years and 8 months as on the said date. Therefore, it becomes an offence under the POCSO Act.

4. The police take the petitioner into custody. On 23-02-2024

the 2nd respondent delivers a baby girl. The prosecution then file their charge sheet against the petitioner for the aforesaid offences. The concerned Court takes cognizance of the offences and registers SPl.C.(POCSO) for the afore-quoted offences. The present case is preferred by the petitioner on the score that the proceedings should be quashed on two circumstances, that the chance of

conviction in the case at hand is absolutely nil and the husband and the wife along with the child are living happily, as the child is close to one year old.

5. The learned counsel appearing for the petitioner would

contend that in such circumstances proceedings have been quashed by this Court and other High Courts on account of marriage between the prosecutrix and the accused. He would submit that the proceedings should be quashed and the couple should be left to live happily with the child, failing which, the child and the mother would be left in the lurch, as the petitioner is the only breadwinner in the family.

6. Per-contra, the learned Additional State Public Prosecutor

Sri B N Jagadeesh would vehemently refute the submission to contend that it is a matter of trial for the petitioner to come out clean. There cannot be quashment of the proceedings, either on a compromise or on looking at the statement of the victim in a proceeding under Section 482 of the Cr.P.C.

7. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

8. The afore-narrated facts are not in dispute, as also, the dates and events are also not in dispute. This Court, on 03-12-

2024, while entertaining the petition has passed a detailed order

staying further proceedings. The order reads as follows: The petitioner in the case at hand is the one who is accused of the offences punishable under Section 6 of the POCSO Act, Section 9 of the Prohibition of Child Marriage Act and Sections 376(3) of the IPC. The allegation against the petitioner is that, he has married the 2nd respondent/victim, when she was yet to complete 18 years of age. After the marriage, the victim becomes pregnant; goes to the hospital for a general checkup; the doctor gets to know that the age of the victim at that point in time is 17 years and 8 months and she has got in marriage to the petitioner before completion of 18 years. This results in an information being transmitted to the competent authority and registration of a crime in Crime No.218/2023, for the

offences as found in the proceedings. It is the case of the prosecution that the parents have forced the girl to get married to the petitioner. Therefore, it is the parents who are responsible in the case at hand for driving the petitioner and the victim to get married and then become offenders of the POCSO Act.

> The learned counsel for the petitioner submits that from the wedlock, a child is born, today if the petitioner is convicted of the offences, the child and the mother would be left in the lurch. All for the acts of the parents of forcing the girl child for marriage at an underage. It is rather surprising as to how the parents are left of the hook for the offences under the Child Marriage Restraint Act, 1929.

But for now, looking at the circumstance that the newborn is now one year old and the petitioner is the only breadwinner of the family, I deem it appropriate to stay all further proceedings. Therefore, there shall be an interim order of stay of all further proceedings in Spl.C.(POCSO) No.142/2024 (Crime No.218 of 2023), pending before the Additional District and Sessions Judge, FTSC-1, Kolar, qua the petitioner, till the next date of hearing.

List the matter on 10-01-2025 for further hearing. The issue now that would emerge is, whether this Court could quash the proceedings on account of marriage of the petitioner and the victim and the child born from the wedlock. It is not in dispute that the petitioner and the prosecutrix are married and a child is born from the wedlock. The birth certificate and the DNA report both are placed before the Court, which depict the petitioner and the victim to be the biological parents of the child. It is in this light the law in this regard is to be noticed.

9. The learned Additional State Public Prosecutor has placed

heavy reliance upon two of the latest judgments of the Apex Court, one in the case of RIGHT TO PRIVACY OF ADOLESCENTS1 wherein the Apex Court had taken suo motu cognizance of the

judgment of acquittal of the Calcutta High Court, wherein the High

Court had acquitted the accused for the offences punishable under Section 376 of IPC and Section 6 of the POCSO Act. The Court, while reversing the order of acquittal and convicting the accused holds that, in the facts and circumstances of the case, even if the accused and the victim come out with a settlement, the High Court under Section 482 of the Cr.P.C., cannot quash the prosecution. The Apex Court holds as follows: 2024 SCC OnLine SC 2055 1. Criminal Appeal no. 1451 of 2024 has been preferred by the State of West Bengal, aggrieved by the

judgment and order dated 18th October 2023, passed by a

Division Bench of the High Court of Judicature at Calcutta. The learned Special Judge appointed under the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act), Baruipur, South 24 Parganas, convicted the accused for the offences punishable under Section 6 of the POCSO Act and Sections 363 and 366 of the Penal Code, 1860 (for short, the IPC). For the offence punishable under Section 6 of the POCSO Act, the accused was sentenced to undergo rigorous imprisonment for twenty years and pay a fine of Rs. 10,000/-. He was sentenced to rigorous imprisonment for four and five years, respectively, for the offences punishable under Sections 363 and 366 of the IPC. Though the learned Special Judge under the POCSO Act concluded that the accused was guilty of the offences punishable under clause (n) of sub-section (2) and subsection (3) of Section 376 of the IPC, in view of the sentence imposed for the offence punishable under Section 6 of the POCSO Act, no separate punishment was imposed.

3. By the impugned judgment, the High Court held

that the offences punishable under Sections 363 and 366 of the IPC were not made out, and therefore, the High Court acquitted the accused for the said two offences. Considering the factual scenario that the High Court noticed, it purported to exercise its jurisdiction under Article 226 of

the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973 (for short, the Cr. P.C.) to set aside the conviction of the accused for the offences punishable under Section 6 of the POCSO Act and subsections 2(n) and

(3) of Section 376 of the IPC. The High Court noted that the mother of the victim had disowned her and therefore, the victim was continuously residing with the accused along with their minor child.

EXERCISE OF PLENARY POWERS TO QUASH THE ORDER

OF CONVICTION

20. Now, coming to the conviction of the offences

punishable under Section 6 of the POCSO Act and Section 376(2)(n) of the IPC, the Division Bench proceeds on the footing that the said offences have been established. However, the Court purported to exercise its plenary powers under Section 482 of the Cr. P.C. coupled with Article 226 of the Constitution of India to set aside the conviction of the accused. In short, as we can see from the last few paragraphs of the impugned judgment, the High Court was swayed away by the following aspects:

(a) There was a non-exploitative consensual sexual relationship between the two consenting adolescents;

(b) The ground reality was that after the birth of the child, the accused is taking care of the victim and the infant/small child;

(c) The victim has no support from her parents, and

(d) A humane view is required to be taken to do complete justice.

21. On a plain reading of sixthly in Section 375 read

with Section 376(2)(n) of the IPC, notwithstanding the consensual sexual relationship, the offence punishable under clause (n) of sub-section (2) of Section 376 of the IPC, was made out. One of the objectives of the POSCO Act is to effectively address sexual exploitation and sexual abuse of children, as both offences are very heinous. To give effect to the United Nations Convention on the Rights of Children ratified by India on 11th December 1992, the POCSO Act has been enacted. As noted earlier, in the facts of the case, the accused was not an

adolescent, but his age was about twenty-five years on the date of the commission of the offence, and the victim was only fourteen years old. When such offences of rape and aggravated penetrative sexual assault are committed, by exercising its jurisdiction under Article 226 of the Constitution of India and/or Section 482 of the Cr. P.C., the High Court cannot acquit an accused whose guilt has been proved.

22. Perhaps the consideration of sympathy and the so-called welfare of the victim and her child prevailed on the Judges of the High Court. The Court was influenced by the

fact that the victim's parents did not support her, and therefore, by sending the accused to jail, she and her child would be miserable as the accused and his family were taking care of them.

23. There are various decisions of this Court holding that the High Court can exercise jurisdiction

under Section 482 of the Cr. P.C. to quash a prosecution on the grounds of settlement or by consent. One such judgment is in the case of Gian Singh v. State of Punjab1. Paragraph 58 of the said decision reads thus: 58. Where the High Court quashes a criminal

proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the 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 wrongdoing that seriously endangers and threatens the well-being of the 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 the 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 the Prevention of Corruption Act or the offences

committed by public servants while working in that capacity, the settlement between the offender and the 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 the victim and the offender and the 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 FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood

of the 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. (emphasis added) 23.1 Therefore, in view of the settled position of law, in the facts of the case, even if the accused and the victim (who has now attained majority) were to come out with a settlement, the High Court could not have quashed the prosecution. HELPLESS POSITION OF THE VICTIM

24. The situation in which the victim was placed after

the commission of the offence needs a bit of elaboration. As noted earlier, the victim left her house on 20th May 2018, and her mother filed a complaint on 29th May 2018. On 1st June 2018, PW-5 (ASI Gopal Chandra Saha) brought the victim from the house of the accused to the police station. After her medical examination was conducted, she was sent for safe custody at Alor Disha Child Line at Champahati. PW2, mother of the victim, without giving any particulars stated that she got her daughter back from Narendrapur Sanlaap home. She claimed in the cross-examination that the victim remained in her house for one year and, later on, went back to the house of the accused. She admitted that she never went to the home of the accused, not even to see her grandchild. The victim's parents completely abandoned her, at least from the year 2019.

25. Ms. Madhavi Divan, the learned amicus

curiae, rightly emphasized that no opportunity was made available to a girl of fourteen or fifteen years of age to make an informed choice to decide whether to stay with the accused. She did not get any support from her parents and the State machinery when she required it the most. As held by us hereafter, the State machinery failed to act according to the law to take care of the victim. The situation in which she was placed at that time was such that she had no

opportunity to make an informed choice about her future. She had no option but to seek shelter where it was provided to her i.e. in the house of the accused. In any event, it is doubtful whether she could have made an informed choice at the age of fourteen or fifteen. THE FAILURE OF THE STATE

26. The question before us is whether the State

was under an obligation to take care of the victim of an offence under the POCSO Act, who was fourteen years old. Apart from the State's constitutional obligations, the statutes have enough provisions to address this situation. Though the existing law of the land could have taken adequate care of the poor victim in this case, the machinery created by the law failed. These conclusions need more elaboration.

,,, ,,, ,,, 33.2 Section 46, read with Rule 25, is one of the most

critical provisions that needs to be effectively implemented. Thus, the JJ Act has adequate provisions to ensure the care, protection, treatment, and rehabilitation of the victim of an offence under the POCSO Act. The ultimate object is to integrate the child in need of care and protection into society to lead a dignified and meaningful life.

34. If sub-section (6) of Section 19 is

implemented in relation to the victims of the offences under the POCSO Act and thereafter, the CWC strictly implements the provisions of the JJ Act which we have referred to above, no victim will face the situation which the victim in this case had to face. The JJ Act is a complete code that makes provisions for the care,

protection, treatment, and development of children in need of care and protection. The JJ Act provides for making available their basic needs and protection. The Act takes care of all the needs of the victims under the POCSO Act who fall under the category of children in need of care and protection. The object is to

undertake the rehabilitation and social re-integration process of such victims based on individual care plans as provided under Section 39 of the JJ Act. Section 46 is a provision that requires the State Governments to frame rules to provide financial support to any child living in a child care institution upon completion of 18 years of age. The financial support has to be very exhaustive as the object of financial support is to facilitate a child's re-integration into mainstream society.

35. However, at the grassroot level, sub-section (6) of

Section 19 is not being implemented. Even if the information is provided to the CWC, the children in need of care and protection are not being produced before the CWC. Even if the information is given under sub-section (6) of Section 19 of the POCSO Act, the CWCs are not taking any action, though, under clause (xii) of Section 30, CWC has the duty to take suo motu congnizance of the cases and reach out to the children in need of care and protection who are not produced before the CWC. Under sub-section (6) of Section 19, the police are under a mandate to report the matter to the jurisdictional Special Court or the jurisdictional Sessions Court, in the event the Special Court has not been established. On getting information, it will be ideal if the Special Courts or the Sessions Courts forward the information to the jurisdictional CWC. It is very crucial that sub-section (6) of Section 19 is scrupulously implemented and the CWCs take immediate action to protect the victim.

Therefore, we are directing that a copy of this judgment

should be forwarded to the Secretaries of the Law Department of each State and Union Territories. The Law Secretaries must coordinate with the concerned departments and ensure that the benefits of these statutory provisions under the JJ Act are extended to the victims of the offences under the POCSO Act. The Secretaries will also ensure that the State Governments undertake the process of

framing rules as required by Section 110(1), including the rules provided under Section 46, to make the measures provided under the JJ Act more effective.

36. It is nobody's case that, in the present case, recourse was taken to the provisions starting from

sub-section (6) of Section 19 of the POCSO Act. As these statutory provisions were overlooked entirely, a situation was created which did not allow the victim to make an informed choice about her future. She did not get that opportunity even after attaining majority.

37. It is the responsibility of the State to take

care of helpless victims of such heinous offences. Time and again, we have held that the right to live a dignified life is an integral part of the fundamental right guaranteed under Article 21 of the Constitution of India. Article 21 encompasses the right to lead a healthy life. The minor child, who is the victim of the offences under the POCSO Act, is also deprived of the fundamental right to live a dignified and healthy life. The same is the case of the child born to the victim as a result of the offence. All the provisions of the JJ Act

regarding taking care of such children and rehabilitating them are consistent with Article 21 of the Constitution of India. Therefore, immediately after the knowledge of the commission of a heinous offence under the POCSO Act, the State, its agencies and instrumentalities must step in and render all possible aid to the victim children, which will enable them to lead a dignified life. The failure to do so will amount to a violation of the fundamental rights guaranteed to the victim children under Article 21. The police must strictly implement subsection (6) of Section 19 of the POCSO Act. If that is not done, the victim children are deprived of the benefits of the welfare measures under the JJ Act. Compliance with Section 19(6) is of vital importance. Non-compliance thereof will lead to a violation of Article 21.

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41. Now, the question is whether we can force the

child to take benefit of the support extended by the State Government. It may be argued that it is too late for the State to come out with this offer. Still, the Court must allow the victim to make an informed choice after being informed the details of the support that the State is willing to extend. We must do so as, at no stage, she was given such an option

and an opportunity to make an informed choice about her future. Now, the question is how to enable the victim to exercise her option. This must be left to very qualified professionals/experts to ascertain her views. This can be done by directing the State to constitute a team of two or three experts, including a clinical psychologist and a social scientist, who should meet the victim at a proper place and inform the victim about the offer of the State Government with all its material particulars. The state government can get assistance from expert bodies like the National Institute of Mental Health and Neurosciences (NIMHANS) or the Tata Institute of Social Sciences (TISS) to constitute the team. The experts will have to meet the child on multiple occasions. While doing so, the experts will have to carefully ascertain the kind of support, if any, the victim and her child are getting from the accused and his family members. For that purpose, the committee can seek the help of the local child welfare officer. We must leave it to the committee of experts to decide how it will do the exercise. The place, the time and the methods must be left to the Committee. The committee will have to perform its duties cautiously and sensitively. The committee must ensure that this exercise does not make the victim more insecure.

CONCLUSION

42. Thus, to conclude, we hold that the accused is guilty of

the offences punishable under sub-sections (2)(n) and (3) of Section 376 of the IPC and Section 6 of the POCSO Act. The issue regarding sentencing will be considered after the committee's report is received.

43. This extraordinary situation was created because

the State machinery did not follow the provisions of law starting from sub-section (6) of Section 19 of the POCSO Act. The importance of rehabilitation of the victims of offences under the POCSO Act, which is a mandatory requirement of law, is being overlooked by all stakeholders. Perhaps, at levels, there is a need for introspection and course correction. We include even the Judiciary in that.

(Emphasis supplied) In yet another judgment, in RAMJI LAL BAIRWA V. STATE OF RAJASTHAN2, the Apex Court has held as follows:

25. Thus, in unambiguous terms this Court held

> that before exercising the power under Section 482, Cr. P.C. the High Court must have due regard to the nature and gravity of the crime besides observing and holding that heinous and serious offences could not be quashed even though a victim or victim's family and the offender had settled the dispute. This Court held that such offences are not private in nature and have a serious impact on the society. Having understood the position of law on the second question that it is the bounden duty of the court concerned to consider whether the compromise is just and fair besides being free from undue pressure we will proceed to consider the matter further. A bare perusal of the impugned order dated 04.02.2022 would reveal that the High Court has erred in not bestowing proper consideration the law laid down in Gian Singh's case (supra) while rendering the same. The impugned order would reveal that the allegations contained in the subject FIR was not at all even adverted to, before quashing the same. We have referred to the allegations which are of serious nature revealed from the FIR. The complaint in this case is annexed to the FIR produced in this proceeding as Annexure P-1. In the said complaint which led to the registration of the FIR reads thus:-

Hence my report may be lodged and action may be taken against the offender xxx as he is making pressure on me not to lodge report. (underline supplied)

(2024) SCC Olnline SC 3193

29. In the contextual situation, it is also relevant to refer to a Three Judge Bench decision of this Court

in State of M.P. v. Laxmi Narayan16. This Court held

> that whether an FIR is quashable or not would depend upon the facts and circumstances of each case and while considering that question, the Court has to apply its mind to (i) whether the crime is one against the society or against an individual alone, nature of the dispute, (ii) seriousness and how the crime was committed (iii) whether offence(s) is one under a special statute (iv) stage of proceedings and how the accused manged to compromise with the complainant.

32. In the decision relied on by the High Court to

> quash the proceedings viz., Gian Singh's case (supra) and the decision in Laxmi Narayan's case (supra) in unambiguous terms this Court held that the power under Section 482, Cr. P.C. could not be used to quash proceedings based on compromise if it is in respect of heinous offence which are not private in nature and have a serious impact on the society. When an incident of the aforesaid nature and gravity allegedly occurred in a higher secondary school, that too from a teacher, it cannot be simply described as an offence which is purely private in nature and have no serious impact on the society.

(Emphasis supplied) In the above mentioned case, on a compromise, the proceedings under the POCSO Act had been quashed, notwithstanding the fact that in the afore-quoted judgment the accused was the teacher of the victim. The Apex Court holds that in such extreme cases, the Court exercising jurisdiction under Section 482 of the Cr.P.C. should not quash the proceedings.

10. The issue in the case at hand is slightly different. In the

circumstances which shroud the present case, it becomes necessary to notice the law laid down by the Apex Court and that of different High Courts, permitting quashing of the proceedings on entering into a settlement. The Apex Court in the case of K. DHANDAPANI v. STATE BY INSPECTOR OF POLICE3 has held as follows:

> 7. In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle.

(Emphasis supplied) The Apex Court holds that the Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant, 2022 SCC OnLine SC 1056 who was accused No.1 and the prosecutrix on being informed that the custom in Tamilnadu was that marriage of a girl in their custom would be with the maternal uncle. In the said case the fact was that the first child was born when she was 15 years and the second child was born when she was 17 years of the age. In a later judgment, the High Court of Punjab and Haryana in the case of DEVENDER NATH v. STATE OF U.T. CHANDIGARH4 has held as follows:

> 12. Learned Amicus Curiae further submits that the proximity of age between the petitioner and respondent no. 2 must be given due consideration and a compassionate view be taken considering their young age. While teenage relationships are looked at with disdain by the society, the law must consider their consensual nature and the human tendency to seek companionship. In view of the same, following suggestions are made regarding quashing of such FIRs:

(a) Assessment of Voluntary Consent: It must be ensured that if the alleged sexual act is claimed to be consensual, it must emanate from a place of volition, untainted by coercion, duress or undue influence.

(b) Proximity in Age : Due regard must be given to the age differential between the parties so as to ascertain the nature of the relationship.

(c) Upholding the Best Interests of the Minors : The

welfare of the minors is the paramount 2024 SCC OnLine P & H 2034 consideration which includes their psychological well being and prospects of a dignified future.

(d) Acknowledgment of Socio-cultural Dynamics : An assessment of such situations must duly consider the socio-cultural context enveloping the relationship.

(e) Engagement with Parental or Guardian

Perspectives : The insights and apprehensions of parents or legal guardians or absence thereof must be judiciously considered to ensure the relationship does not go against the best interest of the minors.

(f) Implication of Criminal Proceedings : It must be contemplated that the perpetuation of criminal proceedings can incite potential stigma, social alienation and psychological afflictions on the minors.

(g) Mandate for Legal and Social Counseling : It is

incumbent upon the State to ensure that the minors have been afforded comprehensive legal and social counseling, facilitating informed decision-making and a nuanced understanding of legal contours and societal ramifications.

(h) Vigilance against Exploitation : No strait jacket

formula can be adopted for dealing with such cases therefore the Courts must remain vigilant to discern any indications of exploitation, abuse or disparity in the

relational dynamics ensuring the relationship is rooted in mutual respect and equality. OBSERVATIONS AND ANALYSIS:

14. Having heard learned counsel for the parties and

the learned Amicus Curiae and after perusing the record with their able assistance, it transpires that the marriage between petitioner and respondent no. 2 was solemnised on 12.09.2022, with the blessings of their families, when respondent no. 2 was a minor of the

age of 17.5 years. The couple had been blissfully residing together and were on the family way when respondent no. 2 went to the hospital for a check-up on 20.02.2023. No complaints were made by respondent no. 2 or her parents during the subsistence of the marriage or before that. The genesis of the instant FIR lies in the reporting of respondent no. 2's pregnancy by the doctors under Section 19 of the POCSO Act. While the intent behind the statutes criminalising sexual exploitation of women, especially children is noble in all senses of the term, it must be understood that application of such statutes cannot be divorced from the reality of the situation. The criminal proceedings have wreaked havoc on the lives of the instant petitioner and his wife. The couple also, unfortunately, lost their newborn child in the process of securing justice.

17. In the instant case, respondent no. 2 has

been happily married to the petitioner and has categorically stated that she neither moved any complaint nor desires further action against the petitioner. Respondent no. 2 has attained the age of majority and wants to continue with her matrimonial life. If the criminal proceedings against the petitioner allowed to continue, not only will it lead to unnecessary incarceration of the petitioner but also leave respondent no. 2 bereft of financial and emotional support. Therefore, this Court is of the considered view that justice can only be substantially realised if the FIR in the present case is quashed, in view of the compromise entered into between the parties.

18. In view of the above discussion, the present petition is allowed and FIR No. 13 dated 20.02.2023 registered under Section 376(2)(n) of the IPC and Section 6 of POCSO Act at Police Station Sarangpur, Chandigarh and its subsequent proceedings are quashed. However, before parting with this order, this Court appreciates the valuable and effective assistance rendered by Mr. Vaibhav Sharma, Advocate as amicus curiae.

(Emphasis supplied) The High Court observes that the marriage between the petitioner and the victim was solemnized on 12-09-2022 with the blessing of their respective families at which time, the victim was a minor aged 17.5 years. The couple had been blissfully residing together and were on the family way. When the victim goes to the hospital for check up at which point in time, the crime emerges. There were no complaints with the Police registered either that the daughter had gone missing or the accused had indulged in any sexual assault. Based upon this, permitting to lead a happy married life the High Court accepted the settlement and quashed the proceedings against the accused therein. It is apt here to refer to the judgment of the

High Court of Delhi in somewhat similar circumstance reported in

AMAR KUMAR v. STATE (GOVT. OF NCT OF DELHI)5. The facts

obtaining are found at paragraph 4 and they read as follows: 4. The present FIR bearing no. 0843/2020 under sections 376/506/34 IPC & section 4 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) at P.S. 2023 SCC OnLine Del 8452

> Samaipur Badli was got registered at the instance of respondent no. 2. It is reflecting that the petitioner no. 1 and respondent no. 2 after liking each other had developed intimacy. The respondent no. 2 came to know about her pregnancy with petitioner no. 1 and subsequently delivered a child. The respondent no. 2 was stated to be a minor at the time of registration of FIR on 21.12.2020. The statements of the respondent no. 2 were recorded under section 161 and section 164 Cr. P.C. wherein the

> respondent no. 2 primarily stated that she had a relationship with the petitioner no. 1 out of her own free will and subsequently came to know about her pregnancy with the petitioner no. 1 and thereafter they got married with each other. After conclusion of the investigation, the charge-sheet was filed and the trial is stated to be pending in the court of Ms. Richa Gusain Solanki, ASJ, North, Rohini Courts, Delhi.

(Emphasis supplied)

Answering the said facts, the High Court of Delhi holds as follows:

10. The Supreme Court regarding the quashing of FIR registered under section 376 IPC in Gian Singh v. State of Punjab, (2012) 10 SCC 303 laid down following principles:-

> 57. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences Under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the

offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes

like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil favour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in

affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

14. The High Court should quash criminal

proceedings where possibility of conviction is remote and bleak and continuation of criminal case is causing great oppression and prejudice to the accused and extreme injustice would be caused to him and to put an end to criminal case would be appropriate. The Supreme Court in State of Madhya Pradesh v. Laxmi Narayan besides reiterating principles laid down in Gian Singh case observed that while exercising the power under section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely,

whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc. The Supreme Court in Ramgopal v. State of Madhya Pradesh observed that the High Court after considering peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 of the Code in aid to prevent abuse of the process of any Court and/or to secure the ends of justice. It was further observed that the High Court

can quash non compoundable offences after considering nature of the offence and amicable settlement between the concerned parties. The High Court can evaluate the consequential effects of the offence and need to adopt a pragmatic approach to ensure that quashing does not paralyze the very object of the administration of criminal justice system. It was further observed that a restrictive construction of inherent powers under Section 482 of Cr. P.C. may lead to rigid or specious justice which may lead to grave injustice.

(Emphasis supplied) The High Court holds that when conviction is remote and bleak, continuation of criminal case would cause great oppression and prejudice and, therefore, to put an end to a criminal case, it would become appropriate to step in and quash the proceedings.

11. Further, the Delhi High Court in its recent judgment in the

case of MOEED AHAMAD v. STATE OF NCT OF DELHI6, considering the spectrum of the law, following the judgment of the coordinate bench therein, noticing the fact of marriage and birth of a child has held as follows: 6. This is a petition filed under Section 528 of BNSS (erstwhile Section 482 of Cr PC) seeking quashing of FIR No. consequential proceedings emanating therefrom. The said FIR was registered under Section 363 of IPC, and thereafter, the chargesheet has been filed under Sections POCSO Act.

7. He petitioners are present in Court and have been identified by their counsel, Mr Lewish Edward.

8. Respondent No. 2/complainant and respondent No. 3/prosecutrix are also present in Court and have been 2024 SCC OnLine Del 8119 identified by Investigating Officer, SI Nagendra Singh, PS - Mahendra Park.

9. The allegations in the FIR are made by the father of the

minor child that his daughter, who was aged about 16 years on the date of the incident, had been kidnapped by the petitioner No. 1. Subsequently, the charge-sheet was filed.

10. During the pendency of the proceedings, the parties

have arrived at a settlement dated 01.10.2024 wherein the complainant has settled the disputes and does not wish to prosecute the complaint/case. The prosecutrix and her father state that it was a case of love affair. On the date of the incident, the respondent No. 3/prosecutrix was 16 years old and the petitioner No. 1 was 19 years old, and thereafter, both of them got married in the year 2019 according to Muslim rites & customs and have two minor children born out of the wedlock.

11. The respondent No. 3/prosecutrix is 25 years old now and states that she is living happily with the petitioner No. 1.

12. Both the parties state that they have entered into the

aforesaid settlement out of their own free will, volition and without any threat, force, undue influence or coercion. It is stated by the respondent Nos. 2 and 3 that they have has no objection if the aforesaid FIR is quashed qua the petitioners.

13. Mr Sabharwal, learned APP vehemently opposes the quashing of the said FIR on the ground that the allegations are serious in nature being under Section 376 IPC.

14. A coordinate Bench of this Court has taken a view in the

judgment dated 25.03.2021 in CRL.M.C.1015/2021 titled

Vikash Kumar v. The State Relevant paragraphs read as under: 8. In the present case, the allegation in the FIR is that the prosecutrix and the accused were working in the same place and have become friends. They fell in love and were living together for two years. The accused went to his native place and the FIR was lodged alleging rape. The prosecutrix has married the accused with whom she was living for two years.

The prosecutrix in her affidavit has affirmed the statements made in the petition under Section 482 Cr. P.C. that the parties got married on 01.10.2020 according to Hindu Rites and Ceremonies. Their families have accepted the marriage and they have a child from the marriage. In the facts of the case, continuation of the proceedings would cause immense harm to the prosecutrix and the small child. This Court is aware that offences like rape cannot be quashed by exercising jurisdiction under Section 482 Cr. P.C. if a compromise has been reached, but, at the same time, this Court cannot ignore and overlook the welfare of the small child and the future of the prosecutrix.

10. Mr. Raja Ram Sharma, learned counsel appearing for the

petitioner has placed reliance on an order dated 07.09.2020 passed by this Court in Bitu Yadav @ Vikas Yadav v. State(NCT of Delhi), [CRL.M.C.1761/2020], wherein this Court has quashed the FIR where the prosecutrix and the accused were married. Paras 17, 18 and 19 of the said order, read as under:

> 17. In view of the submissions made by the respondent No. 2 before this Court, the respondent No. 2 is liable to be prosecuted. However, keeping in view the fact that the petitioner and respondent No. 2 are married and living happy married life, I hereby refrain from taking any legal action against the respondent No. 2. A similar view was taken by this court in the case of Danish Ali v. State in Crl.M.C.1727/2019.

18. Taking into account the aforesaid facts and the

fact that the petitioner and respondent No. 2 are in love affair since 2013 and they are married, this Court is inclined to quash FIR as no useful purpose would be

served in prosecuting petitioner any further.

19. For the reasons afore-recorded, FIR No. 384/2020

dated 31.07.2020, for the offence punishable under Sections 376/506 IPC, registered at PS-Dwarka North, Delhi and consequent proceedings emanating therefrom are quashed. (emphasis added) (emphasis supplied)

15. Further, a Coordinate bench of this Court in CRL. M.C. 4168/2022 titled as Sonu @ Sunil v. State of NCT of Delhi vide judgment dated 26.04.2024 observed as under:-

> 26. Of late, however, the Courts are faced with petitions where children, who are about to attain the age of majority, in ignorance of the statutory prohibitions and restrictions and consequences, in the name of love, commit acts which would otherwise amount to offence under the provisions of the Child Marriage Act, POCSO Act, and the IPC. Though, being minor, their consent is immaterial, however, factually it is there. This situation makes the Courts face with two consequences, either to go strictly by the mandate of the statute and convict the boy and impose punishment on him, which is rather severe in these statutes, or to exercise its power under Section 482 of the Cr. P.C. to protect the otherwise innocent children/adult by quashing the criminal proceedings. The Courts when faced with such a dilemma, has been adopting the route of exercising its power under Section 482 of the Cr. P.C., to quash such criminal proceedings where it finds that the girl was nearing the age of majority; had gone with the boy of her own free will (though it may be immaterial in law); is happily living with the boy, either in matrimony or otherwise, after attaining the age of majority; and in some circumstances where such relationship has also resulted in children being born. The Court, in such circumstances, is persuaded to save the lives of such an accused, rather than to make him undergo trial and eventual punishment, which would not only ruin innocent lives of the parties to such a relationship, but may be, also of the children that are born therefrom. In

this regard, apart from the judgments that have been cited by the learned Amicus, I may also refer to the judgment of the Supreme Court in Kapil Gupta v. State of NCT of Delhi, 2022 SCC OnLine SC 1030, wherein the Supreme Court, while quashing an FIR and

consequential proceedings where the accused had been charged with offence under Section 376 of the IPC, observed as under:- 13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also

relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.

27. Reference should also be had to the judgments of this Court in Rahul Verma v. State, 2013 SCC OnLine Del 469 and Vijay Kumar v. The State Govt. of NCT of Delhi (judgment dated 22.05.2023 in Crl.M.C.

16. In offences under Section 376 of IPC or under

POCSO Act, the Court must be circumspect while quashing the FIR as these are offences against society, even when a compromise has been reached. But at the same time, the Court cannot overlook that both the parties i.e. respondent No. 3/prosecutrix and petitioner No. 1 are married and have children born

> from the wedlock. In the present case, the respondent No. 3 who is present in Court has herself made the statement that she wants to put a quietus to the matter without any undue influence, threat, pressure or coercion and out of her own free will. Further, there is no criminal intent involved in the act and it is not a case where there was a forceful physical relationship with the minor child on the date of incident. The minor child was in love with the petitioner and thereafter they both got married and two children are stated to be born from the wedlock. (Emphasis supplied)

12. In view of the judgments as afore-quoted quashing the

proceedings against the accused accepting the settlement arrived at between the parties, I deem it appropriate to notice the affidavit filed by the 2nd respondent/victim in the case at hand. It reads as follows:

> 1) I state that I am the 2nd Respondent in the present case. I state that the present petition has been filed by my husband Muniraju seeking quashing of order dated the Learned Additional District and Sessions Judge, FSTC-1 at Kolar in Crime No.218 of 2023 for offences under Section 376(3) IPC and Section 6 of the POCSO Act 2012 and Section 9 of the Prohibition of Child Marriage Act.

2) I state that I was born on 01/06/2006. I married Petitioner Muniraju on 14/05/2023 out of my own free will. I state that, on 23/02/2024, a daughter named Niveditha was born to me and Petitioner. Both my parents have passed away. 3) I state that I attained majority on 01/06/2004 and continue to remain happily married to the Petitioner. I state that the Petitioner takes very good care of we and our daughter. I state that the Petitioner is the sole breadwinner of the family.

4) I state that continuance of criminal proceedings will cause great inconvenience and injustice to me and my family members. I state that future of our daughter will also be in serious jeopardy if my husband is prosecuted in the above-mentioned criminal proceedings. I state that I am swearing this affidavit out of my own free will. There is no fraud, coercion, misrepresentation and inducement for filing the present affidavit before the Hon'ble Court.

WHEREFORE, it is most humbly and respectfully prayed that this Hon'ble Court may be pleased to take this affidavit on record and quash the proceedings against my husband.

In the affidavit afore-quoted, the victim clearly admits that she is leading a happy life with the petitioner along with their child and she has no objection to close the proceedings. In view of the same, I deem it appropriate to accept the affidavit filed by the 2nd respondent-victim/wife and close the proceedings against the petitioner/husband, the sole accused.

13. For the aforesaid reasons, the following:

ORDER

(i) Writ Petition is allowed.

(ii) Proceedings in Spl.C.(POCSO) 142 of 2024 pending on the file of Additional District and Sessions Judge, FTSC- 1, Kolar stands quashed qua the petitioner.

(iii) It is made clear that the proceedings against the

petitioner is quashed solely on the affidavit of the wife. In the event he would leave the wife in the lurch, unless for justifiable reasons, these proceedings would get revived. Sd/- _____ JUSTICE M.NAGAPRASANNA BKP CT-ASC

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