

Manjunatha vs State of Karnataka

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Court : Karnataka

Decided On : Jul-10-2024

Judge : M.Nagaprasanna

Appeal No. : CRL.P/4658/2024

Appellant : Manjunatha

Respondent : State of Karnataka

Judgement :

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2024 R BEFORE THE HON'BLE MR JUSTICE M.NAGAPRASANNA CRIMINAL PETITION NO. 4658 OF 2024 BETWEEN: MANJUNATHA S/O SOMA NAYAKA AGED ABOUT 23 YEARS R/AT DOOR NO.75, YANDAHALLI (V) VARUNA HOBLI, MYSURU TALUK MYSORE DISTRICT KARNATAKA - 570 009. PETITIONER (BY SRI. ROHITH S. V., ADVOCATE FOR SRI. M.SHARASS CHANDRA, ADVOCATE) AND:

1. STATE OF KARNATAKA UDAYAGIRI P. S., Digitally signed by NAGAVENI REPRESENTED BY SPP Location: HIGH HIGH COURT OF

2. MEENAKSHI

W/O LATE KUMARA AGED ABOUT 38 YEARS R/AT D NO. 50, 2ND CROSS SOUTH BLOCK, BESIDE JABBARHALL SHANTHI NAGARA, MYSURU CITY KARNATAKA - 570 006. RESPONDENTS (BY SRI. THEJESH P., HCGP FOR R1; -2- SRI. NAGARAJU H. R., ADVOCATE FOR R2) THIS CRL.P IS FILED U/S.482 OF THE CR.P.C PRAYING

TO QUASH THE PROCEEDINGS IN SPL.C.NO.242/2023 OF RESPONDENT NO.1 UDAYAGIRI POLICE AT MYSURU FOR THE OFFENCE P/U/S 376(2)(n) AND 506 OF IPC AND SEC. 5(L), 5(J)(II) AND 6 OF POCSO ACT, WHICH IS PENDING ON THE FILE OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC1, MYSURU BY ALLOWING THE PETITION AND THE PETITIONER AND THE RESPONDENTS TO COMPOUND THE OFFENCES.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner/accused is before this Court seeking quashment of proceedings in Special Case No.242 of 2023 registered for offences punishable under Sections 376(2)(n), 506 of the IPC and Sections 5(L), 5(J)(II), 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).

2. Heard Sri Rohith S.V., learned counsel appearing for petitioner, Sri Thejesh, learned High Court Government Pleader for respondent No.1 and Sri Nagaraju H.R., learned counsel appearing for respondent No.2. -3-

3. Facts in brief germane are as follows:

A complaint comes to be registered by the 2nd respondent, the mother of the victim alleging that the petitioner and her daughter were in love as they were students of the same institution Shree Kantheshwara School. It is further alleged

that the petitioner used to meet the complainants daughter and threaten or harass her if she would not come out with the petitioner. It transpires that the petitioner used to take the victim on his bike to an isolated place and commit sexual assault on her. The complaint comes to be registered on the aforesaid circumstance on 15-02-2023, which becomes a crime in Crime No.14 of 2023 for the afore- quoted offences. The police, after investigation, file a charge sheet against the petitioner maintaining the afore-quoted offences. The petitioner when the crime was registered on 15-02-2023 was taken into custody and remains in custody. What happens is, due to the act of the petitioner, the victim becomes pregnant and gives birth to a child. The father continues to be in prison. The petitioner/accused has therefore -4- presented the subject petition seeking closure of the proceedings on account of a compromise.

4. The learned counsel appearing for the petitioner would

contend that the petitioner and the victim were in love. As at the relevant point in time, the petitioner was 21 years and the victim was 16 years and 9 months old, the parent of the victim i.e., the complainant was not willing to give the daughter in marriage and registers a crime. By then, the victim had become pregnant. Now the family members of both the petitioner and the victim have come forward to get the victim married to the petitioner. Learned counsel for Petitioner would submit that the petitioner is also willing to marry the victim, as they were always in love with each other.

5. Per contra, the learned High Court Government Pleader

would vehemently refute the submissions to contend that the petitioner has indulged in acts which would clearly become offences under the POCSO Act. Even if the victim would turn hostile, the petitioner should come out clean after a full blown trial. Cases concerning POCSO cannot be permitted to be -5- quashed on account of a compromise between the parties, as they are offences against the State, heinous and punishable with imprisonment beyond 10 years.

6. The learned counsel appearing for the 2nd

respondent/complainant would submit that the parties would want to settle the dispute and get the accused and the victim married. He would seek closure of the proceedings toeing the lines of the learned counsel appearing for the petitioner.

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

8. The afore-narrated facts are not in dispute. In the

light of the petitioner coming forward to get married to the victim and the families also realizing that marriage would be the only solution, in the light of a child being born from the act of the petitioner with the victim, this Court on 13-06-2024 had passed the following order: The petitioner is before this Court calling in question proceedings in Special case No.242 of 2023 -6- pending before the Additional District & Sessions Judge and FTSC-1 at Mysore, arising out of crime in Crime No.14 of 2023 registered for offences punishable under Section 376 (2)(n) of the IPC and Sections 5(L), 5(J)(II)& 6 of the Protection of Children from Sexual Offences Act, 2012 (the Act for short).

2. Heard Sri M. Sharass Chandra, learned counsel for the petitioner and the learned High Court Government Pleader for respondent No.1.

3. Facts, in brief, germane are as follows:- A complaint comes to be registered by one Smt.

Meenakshi, mother of the victim that her daughter and the petitioner are in love with each other while studying in Shree Kanteshwara School and it was the further case that the petitioner and her daughter used to meet often and on one fine day, the petitioner goes to the school in the bike, takes the complainants daughter to an isolated place and commits sexual assault on her. She was at that point in time 16 years and 9 months old. The said incident

happened on 15-02-2023. The police conduct investigation and file a charge sheet against the accused/petitioner and the matter is now pending in Special Case No. 242 of 2023.

4. The petitioner/accused has been in judicial

custody from the next day of registration of the complaint i.e., 16-02-2023. From the sexual act of the petitioner, the victim bares a child. The present petition though is preferred seeking annulment of entire proceedings, it is the submission of the learned counsel appearing for both the petitioner and the respondents that the petitioner and the victim were in love, but the parents had come in between them. At the point in time due to sexual act, child is born and the child is now a year old. The parties are seeking closure of these proceedings on account of desire of the petitioner to get married to the victim as the victim and her child are not left in lurch. Now the families are also wanting to get the two married. Therefore, this petition is preferred in the nature of compounding of the offence on account of such compromise. At the time when the petitioner was taken into custody or even a month ago, the victim had not yet completed 18 years.

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5. The victim is now aged 18 years and, therefore,

the marriage is what is seen as the necessary solution by the members of the families in the peculiar facts of the case. This Court directed production of a report of DNA that was conducted at the time of birth of the child. The report of the DNA is placed before this Court. The report depicts that the petitioner is the biological father and the victim is the biological mother of the child. Therefore, the child is born from the sexual act between the two is not in dispute.

6. In the peculiar circumstances, as the mother has

to bring up the child at this tender age, looking at the fate of the mother and the child who are in dire straits, I deem it appropriate to redeem the grievance of the families by permitting the petitioner to get married to the victim, who is now more than 18 years old and for the purpose of the said marriage, I deem it appropriate to grant the petitioner interim bail in exercise of jurisdiction under Section 482 of the Cr.P.C. enabling the petitioner to come out and get married to the victim. This course is taken, owing to the peculiarity obtaining in the facts and circumstances

of the case at hand, as the mother has to bring up the child. The new born life does not know as to what has happened. It should not suffer the ignominy of any kind in future. Therefore, to protect the interest of the child and also responsibility of the mother in bringing up the child, this direction is found necessary to be issued.

7. For the aforesaid reasons, while keeping the petition pending, I deem it appropriate to pass the following order:

ORDER

a. The petitioner shall be released on grant of interim bail which will be operational from 17-06-2024 upto 03-07-2024. b. The petitioner shall return to the goal on the evening of 3rd July, 2024. c. The Certificate of evidence of marriage shall be placed before the Court on the next date of hearing. -8- d. The petitioner shall mark his attendance once in a week before the jurisdictional Police Station. e. It is made clear that any deviation of the purpose for which the interim bail is granted, would be taken seriously.

8. List the matter on 4th July, 2024, in the fresh

matters list. The victim, at the time when the order was passed was 18 years. Pursuant to the order, the petitioner was released on grant of interim bail, as interim bail was granted to marry the victim. The marriage of the petitioner with the victim has been solemnized on 21-06-2024, the same is registered before the Marriage Officer, in terms of the Hindu Marriage Act, 1955, on 25-06-2024. After the marriage was performed, in terms of the order of the Court, the petitioner-accused has returned to the goal. He is presently in judicial custody.

9. As observed in the order dated 13-06-2024, the DNA

test of the child was sought and made available, which is dated 15-07-2023. It would depict that the petitioner and the victim are the biological parents of the child. Therefore, the circumstances that have emerged are, out of the act of the -9- petitioner with the victim, there is a new life born. The DNA test is indicative of the

fact that the petitioner and the victim are the biological parents of the new born. The petitioner, on the grant of interim bail, has now married the victim and they vouch to live happily. The issue now would be, whether in the

facts and circumstances of the case, the proceedings could be

quashed against the petitioner, on account of the aforesaid compromise.

10. It is necessary to notice the judgments rendered by

the Apex Court or other High Courts permitting closure of the proceedings on allegations under the POCSO Act. The Apex Court in the case of K. DHANDAPANI v. STATE BY INSPECTOR OF POLICE reported in 2022 SCC OnLine SC 1056 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) - 10 - The Apex Court holds that the Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant, 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. CHANDIGARH reported in 2024 SCC OnLine P & H 2034 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 - 11 - 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

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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 - 13 - 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) reported in 2023 SCC OnLine Del 8452. 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. 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 - 14 -

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 - 15 -

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-dominantly 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

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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. A co-ordinate Bench of this Court in MOHAMMAD WASEEM AHAMAD v. STATE in Criminal Petition No.5917 of 2022 decided on 10-10-2022 has considered this very issue of the victim being 17 years and 2 months when she became pregnant and noticing marriage - 17 - according to the custom, closed the issue accepting the settlement and compounded the offence.

11. The application filed in the case at hand seeking

closure of the proceedings reads as follows: APPLICATION UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE The above named Petitioner/Accused most respectfully submits as follows:-

1. It is submitted that the above named petitioner

filed an application to quash proceeding in Spl.C. No. 242/2023 of respondent No.1 Udayagiri Police at Mysore for punishable Under section 376(2)(n), 506 of IPC And U/s 5(L),5(J)(II),6) of Pocso Act 2012, which is pending on the file of Hon'ble Court of the Addl. District and Sessions Judge and FTSC-

1. This application may be read as part and parcel to avoid the repetition.

2. It is submitted that the petitioner is in Judicial

custody since 16.02.2023. when the case was registered the victim was minor and there was no accession for them to get married. Now the victim is major and having small child unable to maintain herself as well as the child. Since, the prosecutrix and the petitioner were loving each other and decided to get married, parents of the both petitioner and the

victim also accepted their relationship and whole heartedly ready to perform their marriage. Hence, the permission of this Hon'ble court is very much necessary to get the matter to compromise between them.

3. It is also submitted that the petitioner also ready to undertake that he will look after the victim girl and his child with all love affection. - 18 -

4. If this Humble court stay the proceeding no hardship will be caused to respondent on the other hand if the proceedings not stayed great prejudice and hardship would be caused to the petitioner.

WHEREFORE, it is prayed that this Hon'ble court be pleased to stay the Proceedings in Spl.C. No. 242/2023 of respondent No.1 Udayagiri Police at Mysore City which is pending on the file of Hon'ble Court of the Addl. District and Sessions Judge and FTSC-1 for offence punishable under section 376(2)(n), 506 of IPC And U/s 5(L),5(J)(II), 6) of Pocso Act 2012 against the Petitioners/Accused in the ends of Justice.

12. I have thought it fit to follow the afore-quoted

judgments, owing to peculiar facts of the case of the petitioner and the victim getting married and the child born from the alleged act. The new born would not be aware of the happenings narrated hereinabove. If the issue is not compounded and the petitioner is released, the mother and the child would be left in the lurch and their fate in dire straits. This Court has permitted the accused/petitioner to marry the victim on grant of interim bail. After marriage, the petitioner is back to the goal. If the proceedings are not quashed, it would undoubtedly result in grave jeopardy to the life of the mother and the child, who will have to face ignominy at the hands of the society. To stall any emergence of such an ignominious situation, I deem it appropriate to accept closure of the - 19 - proceedings and compounding of the offence, in the light of the fact that the victim would undoubtedly turn hostile and the conviction of the petitioner would become absolutely bleak. This Court cannot shut its eyes to ground realities and permit the process in the criminal trial to conclude, as it is the process that generates agony till the end, which will

completely mask the happiness of acquittal.

13. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is disposed.

(ii) Proceedings in Spl. Case No.242 of 2023 pending before the Additional District and Sessions Judge and FTSC-1, Mysuru, qua the petitioner, stands quashed.

(iii) Since the petitioner is in custody, the Registry is directed to communicate this order to the prison authorities for needful action and release of the petitioner. - 20 -

(iv) The petitioner leaving the child and the mother

in the lurch, after getting closure of the proceedings on account of marriage, may result in revival of the proceedings to be continued, in accordance with law. Consequently, I.A.No.1 of 2024 stands disposed. Sd/- JUDGE BKP List No.: 1 Sl No.: 140 CT:SS

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