

(2024) 12 SHI CK 0071

High Court Of Himachal Pradesh

Case No: Cr.MMO No.1298 Of 2024

❖X❖

APPELLANT

Vs

State Of Himachal Pradesh & Anr

RESPONDENT

Date of Decision: Dec. 31, 2024

Acts Referred:

- Constitution of India, 1950 - Article 15, 39(f)
- Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 528
- Indian Penal Code, 1860 - Section 354A, 363, 506
- Protection of Children from Sexual Offences Act, 2012 - Section 8, 33(7)

Hon'ble Judges: Virender Singh, J

Bench: Single Bench

Advocate: Suman Thakur, H.S. Rawat, Mohinder Zharaick

Final Decision: Dismissed

Judgement

Virender Singh, J

1. In order to comply with the mandate of Section 33(7) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the

POCSO ActTM), name of the complainant is withheld and he is hereinafter referred to, in the head note of the order, as XTM.

2. Petitioner has filed the present petition, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as

BNSSTM), for quashing of FIR No.44 of 2021, dated 23.07.2021, (hereinafter referred to as the FIR, in question), registered with Police Station

Sujanpur, District Hamirpur, H.P., under Sections 363, 354-A, 506 of the Indian Penal Code, (hereinafter referred to as the IPCTM) and Section

8 of POCSO Act, as well as, proceedings resultant thereto, which are stated to be pending, before the Court of learned Special Judge, Hamirpur,

District Hamirpur, H.P., in Sessions Trial No.62 of 2021, titled as "State Vs. Sarma Ram".

3. In the present case, it is the petitioner, who, at one point of time, had put the criminal machinery into motion, by lodging the FIR, in question, now,

has compromised the matter with respondent No.2.

4. The relief of quashing of FIR, in question, has been sought, on the ground that the betrothal ceremony of the daughter of the petitioner has been

fixed with some other person of their community and it is their pre-condition that there should not be any litigation or FIR, pending against the girl,

otherwise, they will not solemnize the marriage of their son with petitioner's daughter.

5. It is the case of the petitioner that he and respondent No.2 have amicably compromised the dispute, in order to safeguard the future of child victim,

as, respondent No.2 is also married and is from their community. In this regard, they have relied upon the compromise, Annexure P-2.

6. The compromise, according to the petitioner, has been entered upon, between him and respondent No.2, in order to save the future marital life of

the child victim.

7. The said compromise is also stated to be entered upon, between them, out of their free will, consent and without any pressure of anyone.

8. On the basis of above facts, a prayer has been made, by Ms. Suman Thakur, Advocate, to quash the FIR, in question, on the basis of the

compromise.

9. Copy of the FIR, in question, has also been annexed with the petition, which shows that the same has been registered, under Sections 363, 354A,

506 of IPC and Section 8 of the POCSO Act.

10. The first and foremost question, which arises for determination, before this Court, is whether the petition, under Section 528 of BNSS, can be filed,

by the complainant/child victim. The role of the complainant comes to an end, after putting the criminal machinery into motion. The crime is always

against the State.

11. The FIR, in question, is registered, under the special statute i.e. POCSO Act. The Legislature, in its wisdom, has enacted the special statute, i.e.

POCSO Act, by keeping in view the rising number of cases, being committed against the children. Once, it has been held that the offences are against the State, then, it is the duty of the State to prosecute the offender, before the competent Court of law.

12. Since, the crime is against the society, as such, any person can put the criminal machinery into motion. However, the arguments of learned counsel, appearing for the petitioner, do not hold water, when, she argued that the petitioner, being complainant, is having every locus standi to file the petition for quashing the FIR.

13. The positive duty has been casted upon a citizen to put the criminal machinery into motion. However, under the garb of the said concept, the petition for quashing the serious offence cannot be permitted to be entertained, on behalf of the victim or complainant.

14. As observed earlier, the Legislature, in its wisdom, has enacted the POCSO Act, with an object to reduce the child abuse and protection of the children from sexual offences. The object of the Act has elaborately been discussed by the Honâ€™ble Supreme Court in Alakh Alok Srivastava versus Union of India and others, reported in 2018(7) SCALE 88. Relevant paras 10 to 12, 19 and 20 of the judgment, are reproduced, as under:

â€œ10. 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:-

â€œ3. 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 another*, 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 –.

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19. Speaking about the child, a three-Judge Bench in *M.C.Mehta v. State of T.N. and others*, (1996) 6 SCC 756, 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.â€

20. In Supreme Court Women Lawyers Association 11 (SCWLA) v. Union of India and another, (2016) 3 SCC 680, this Court has observed:-

â€œIn 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 law-makers 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.â€

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

â€œChild 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.â€

15. Similar view has again been taken by the Honâ€™ble Supreme Court in â€˜State of Maharashtra and Another versus Dr. Maroti S/o

Kashinath Pimpalkarâ€™, reported in (2023) 4 SCC 298. Relevant paragraph 10 of the said judgment is reproduced, as under:-

â€œ10. 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.â€

16. The Honâ€™ble Supreme Court in Daxaben versus The State of Gujarat and others, reported in (2022) 11 SCALE 329, has elaborately discussed the role of the complainant in the cases, registered, under the POCSO Act. Relevant paragraphs 38 and 40 of the said judgment are reproduced, as under:-

â€œ38. However, before exercising its power under section 482 of the Cr.P.C. to quash an FIR, criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the offence. Heinous or serious crime, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim. Crimes like murder, rape, burglary, dacoity and even abatement to commit suicide are neither private nor civil in nature. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.

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40. In Criminal Jurisprudence, the position of the complainant is only that of the informant. Once at 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.â€

(self-emphasis supplied)

17. Judging the facts and circumstances of the present case, in the light of the above decisions, this Court is of the view that the petitioner, being complainant/father of the child victim, has no locus standi to file the present petition, seeking the quashing of FIR, in question, mainly on the ground to save the honour of the family. In the name of honour of the family, the heinous offence, as committed, in the present case, cannot be quashed or

swept under the carpet.

18. The Hon^{ble} Supreme Court in Criminal Appeal No.3403 of 2023, titled as *Ramji Lal Bairwa & Anr. Vs. State of Rajasthan &*

Ors., Neutral Citation No.2024 (INSC) 846 ,has elaborately discussed the provisions of POCSO Act and has held that the quashing of the

proceedings, under Section 528 of the BNSS, in POCSO cases, on the basis of the settlement, is against the legislative intent, behind the enactment.

Relevant paragraphs 10 to 12 and 31 of the said judgment are reproduced, as under:-

“10. Before dealing with the contentions on behalf of the respondents and also the submissions of the learned amicus curiae and the counsel for the intervenor,

we think it only appropriate to refer to certain relevant aspects of the POCSO Act. As introduction to the POCSO Act, what actually actuated the Parliament to

enact *POCSO Act* has been stated thus:-

“Sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided with nor

are they adequately penalised. Such offences against children need to be defined explicitly and countered through adequate penalties as an effective deterrence.

This Act provides for protection of children from offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and

well-being of children.”

11. Contextually, it is worthy to refer to the statement of objects and reasons for the enactment of the POCSO Act. It reads as follows: -

“STATEMENT OF OBJECTS AND REASONS Article 15 of the Constitution, inter alia, confers upon the State powers to make special provision for children.

Further, article 39, inter alia, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their

childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties 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; and (c) the exploitative use of children in pornographic performances and materials.

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 penalised. 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.

5. The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.â€

12. The objects and reasons for the enactment of the POCSO Act, as extracted above, would undoubtedly show that quashment of proceeding initiated under

POCSO Act abruptly by invoking the power under Section 482, Cr. PC without permitting it to mature into a trial, except on extremely compelling reasons ex

facie malafidely initiated or initiated solely to settle the score etc., would go against the very intention of the legislature behind the enactment. As noted earlier, it

is the inadequacy of the existing laws to address certain issues relating sexual offences against the children that made the legislature to come up with the

aforesaid legislation with a view to protect and respect the privacy and confidentiality of children and to ensure their physical, emotional, intellectual and social

development. The POCSO Act also addressed the lack of provisions defining various offences against the children and also adequate penal provisions therefor. A

careful scanning of the various provisions under the POCSO Act would reveal that with a view to achieve the aforesaid objects and purposes various offences

against the children are specifically defined and provisions for adequate penalisation are also inserted in the Act. Obviously, rubbing the breast of a child would

constitute an offence of "sexual assault" under Section 7 of POCSO Act, punishable with imprisonment of either description for a term which shall not be

less than three years and may extend to five years and also fine. They would reveal that the commission of such offences against the children should be viewed as

heinous and serious. Needless to say, that commission of such offences cannot be taken lightly as offences of private nature and in fact, such offences are bound to

be taken as offences against the society. In the decision in Attorney General for India v. Satish and Anr. at paragraph 38, this Court held thus:-

"The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be

trivialised or held insignificant or peripheral so as to exclude such act from the purview of "sexual assault" under Section 7. As held by this Court in Balram

Kumawat v. Union of India, the law would have to be interpreted having regard to the subjectmatter of the offence and to the object of the law it seeks to achieve.

The purpose of the law cannot be to allow the offender to sneak out of the meshes of law."

31. In view of the very object and purpose of enacting the POCSO Act, we find no reason to disagree with the conclusions in paragraph 12 extracted above in the

given case. It is more so, when the extracted portion from the complaint that was annexed to the FIR and extracted hereinbefore would reveal that the accused

was making pressure on him not to lodge any report. Despite giving such statement in the complaint, within a couple of weeks, the accused managed to

compromise the case with the 4th respondent and his wife."

19. Being guided by the above decisions of the Hon'ble Supreme Court, this Court is of the view that the present petition cannot be accepted,

mainly on the following grounds:-

i. After putting the criminal machinery into motion, the role of the complainant comes to an end and the complainant or the child victim has no locus standi to file the

petition for quashing, that too, in the name of saving the honour of the family, as well as, the future consequences.

ii. The quashing is also against the legislative intent, since, the offence is against the society and if such type of cases are quashed, on the basis of the grounds, as

taken in the petition, it would encourage the other accused, who had committed such offence, to adopt the extra constitutional means to settle the matter i.e.

influencing the witness by fiduciary relationship, using the money power or threatening the victim/complainant and to settle the matter in the name of honour of the

family.

20. If, the said prayer is allowed, then, it would amount to letting the accused go without legal punishment, in case, the prosecution is able to prove the

case, beyond reasonable doubt, against him.

21. In view of the discussions, made hereinabove, the present petition is liable to be dismissed and is accordingly dismissed.

22. Pending miscellaneous applications, if any, shall also stand disposed of accordingly.