Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 92 of 2023

Reserved on : 24.02.2026
Pronounced on: 12.03.2026

1. Shri Shalenbor Wahlang
2. Smti B

...Petitioners

- versus -

1. State of Meghalaya represented by the Secretary, Government of Meghalaya, Home (Police) Department, East Khasi Hills District, Meghalaya.

2. Smti Skhemkeri Syiem

...Respondents

Coram:
Hon'ble Mrs. Justice Revati Mohite Dere, Chief Justice
Hon'ble Mr. Justice H.S.Thangkhiew, Judge

Appearance:

For the Petitioners : Ms L. Khiangte, Adv.
Mr Th Rakesh, Adv.

For the Respondents : Mr A. Kumar, AG with
Mr R. Gurung, Addl PP
Mr A.H. Kharwanlang, Addl Sr GA
Mr S.P. Mahanta, Amicus Curiae with
Mr D. Dkhar, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes
ii)	Whether approved for publication in press:	Yes

JUDGMENT: **(per the Hon'ble, the Chief Justice)**

The aforesaid petition is placed before us pursuant to the reference made by the learned Single Judge (Hon'ble B. Bhattacharjee, J) vide order dated 12th June, 2024, in view of his disagreement with the judgment and order dated 23rd March, 2022 passed by the coordinate Bench (Hon'ble W. Diengdoh, J) in ***Crl Petn No. 63 of 2021***.

2. Although, the learned Single Judge has not framed the issue for reference, having perused the said order dated 12th June, 2024, the following issue is framed:

Whether a case under the POCSO Act, 2012, which is a Special Act, protecting children from sexual exploitation and sexual abuse, and considered as heinous crime, can be quashed with the consent of the accused and the victim, under Section 528 of BNSS, having regard to the fact, that the POCSO Act has an overriding effect on any other law and there being no specific exclusion, can any personal law or custom prevail over or override the provisions of the POCSO Act?

3. **Brief facts giving rise to the filing of the aforesaid petition**.

The petitioner No. 1, aged 22 years (accused) and the petitioner No. 2, aged 16 years (victim/prosecutrix) have filed the aforesaid petition jointly seeking quashing of the FIR dated 3rd May, 2019 filed by the respondent No. 2 (i.e., grandmother of petitioner No. 2) with the Diengpasoh Police Station, Shillong being P.S. Case No. 5 (05) of 2019, alleging offences punishable under Sections 5(j)(ii) and 6 of the POCSO Act, 2012. In the FIR, the respondent No. 2 has alleged that the petitioner No. 2 aged 16 years was sexually assaulted by the petitioner No. 1 aged 22 years, resulting in the petitioner No. 2 becoming pregnant. After investigation, the police filed charge-sheet as against the petitioner No. 1 and the case is presently pending before the learned Special Judge (POCSO), Shillong being Special (POCSO) Case No. 103 of 2019.

According to the petitioner Nos. 1 and 2, they were in a consensual relationship and from the said relationship they have

a child and that they have been living together as husband and wife since 2018. It is also contended that the said relationship has been accepted by the family members of the petitioners. Accordingly, the petitioner Nos. 1 and 2 have filed the aforesaid petition seeking quashing of the FIR/proceeding with the consent of the petitioner No. 2 (victim) and the respondent No. 2 (original complainant, who is the grandmother of the petitioner No. 2).

4. It is in the aforesaid facts, that the learned Single Judge (B.Bhattacharjee, J), made the following observations, whilst making the aforesaid reference.

(i) that in the absence of any material to show when the parties got married, under which prevailing custom or law, it was not possible to consider what would be the obligation of the parties towards each other in the relationship;

(ii) that the object of the Prohibition of Child Marriage Act which aims to discourage and abolish the practice of Child Marriage and the provisions of the

POCSO Act which protects children from sexual exploitation and sexual abuse, cannot be ignored or lost sight of; and

(iii) that the provisions of the POCSO Act shall have an overriding effect on any other law, and that unless and until there is a specific exclusion, no personal law or custom can prevail over or override the provisions of the POCSO Act.

5. The learned Single Judge having disagreed with the judgment and order dated 23rd March, 2022 passed by the coordinate Bench of this Court (Hon'ble Diengdoh, J) in ***Crl. Petn. No. 63 of 2021 (Shri Skhemborlang Suting and anr*** v. ***State of Meghalaya & anr),*** allowing a petition under Section 528 BNSS seeking quashing of the FIR/proceeding by consent of the accused and the victim (prosecutrix), has referred the aforesaid petition to the Division Bench of this Court for consideration.

6. Ms L. Khiangte, learned counsel for the petitioners submitted that there is no impediment in law to quash the FIR/proceeding, even if the case is one under the POCSO Act, under Section 528 of BNSS (earlier, Section 482 Cr.P.C.). She also submitted that, the parties i.e., the petitioner No. 1 and petitioner No. 2 are living together and have a child from the said relationship, who is now aged seven years. She further submitted that both, i.e., petitioner No. 2 and the respondent No. 2 have filed their respective affidavits giving their no objection/consent to the quashing of the proceedings initiated against the petitioner No. 1. Learned counsel for the petitioners further submitted that if the FIR/proceeding is not quashed, grave injustice would be caused not only to the petitioner No. 1, who is the bread winner of the family but also to the petitioner No. 2 and the child born from the said relationship resulting in grave miscarriage of justice.

7. Mr A. Kumar, learned Advocate General fairly does not dispute the fact, that there is no bar under Section 528 of BNSS

(earlier, Section 482 Cr.P.C.) to quash proceeding, even if the prosecution is one, under the POCSO Act. Learned Advocate General submitted that, however, the power under Section 528 of BNSS (earlier, Section 482 Cr.P.C.) is to be exercised with due caution and in exceptional cases, having regard to the facts and circumstances of the case. Learned Advocate General also fairly states that in a case of consensual relationship i.e., romantic relationship where the boy and the girl are young and, if the relationship is with consent, resulting in marriage and sometimes, a child, there is no impediment in quashing the said proceeding, inasmuch as, continuation of the proceeding will jeopardise the lives of the parties as well as career of the husband who is the bread winner. He submitted that in the State of Meghalaya, marriages by co-habitation are also recognised and as such, the same will also have to be borne in mind while considering a case seeking quashing of the FIR/proceeding under the POCSO Act.

8. Mr S.P. Mahanta, learned Amicus Curiae submitted that where the victim is between the age of 16 and 18, the court will have to balance the equities and take into consideration the nature of relationship between the parties, even if the minor's consent in law, is immaterial. He submitted that the peculiar circumstances, particularly, in rural areas/villages will have to be taken into consideration in cases of romantic relationships and that the court will also have to take into consideration, lack of awareness programme in villages and in schools. He thus, submitted that, there is no bar under Section 528 of BNSS (earlier, Section 482 Cr.P.C.) to quash proceeding under the POCSO Act, if the Court is satisfied that the consent of the victim, is an informed consent and is genuine.

9. Before we proceed to answer the reference, it would be apposite to consider the scope of a petition seeking quashing of a case under Section 528 of BNSS, with the consent of the parties.

10. The Apex Court in ***Gian Singh*** v. ***State of Punjab & anr*** reported in ***(2012) 10 SCC 303***, in para 61 of the said judgment held as under:

> "*61. 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 flavour 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."

11. In ***Narinder Singh & ors*** v***. State of Punjab*** reported in ***(2014) 6 SCC 466***, the Apex Court in paragraph 29 held as under:

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

29.1. *Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to*

compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

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

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

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

29.4. *On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.*

29.5. *While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the*

accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. *Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.*

29.7. *While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at*

this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

12. Similarly, in ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and ors*** v. ***State of Gujarat & anr*** reported in ***(2017) 9 SCC 641***, the Apex Court reiterated in paragraph 16 as under:

"***16.*** *The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:*

***16.1**. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.*

***16.2**. The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.*

***16.3**. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.*

***16.4**. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court.*

***16.5**. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;*

***16.6**. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the*

family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

***16.7**. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.*

***16.8**. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*

***16.9**. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*

***16.10**. There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."*

13. In the ***State of Uttar Pradesh*** v. ***Anurudh & anr*** reported in ***2026 SCC Online SC 40***, the Apex Court was considering an appeal filed by the State of Uttar Pradesh, which had challenged grant of bail to the accused therein. The accused therein was facing the prosecution under Sections 363, 366 of the IPC and, 7 and 8 of the POCSO Act, 2012. The victim was a 12-year-old child. The Apex Court observed that repeated judicial notice was taken of misuse of the laws, including the POCSO Act. Accordingly, the Apex Court directed its judgment to be circulated to the Secretary, Law, Government of India, to consider initiation of steps as may be possible to curb this menace, inter alia, the introduction of a Romeo – Juliet clause exempting genuine adolescent relationships from the stronghold of this law; and also to consider enacting a mechanism enabling the prosecution of those persons who by the use of these laws seek to settle scores.

14. Considering the aforesaid, what emerges is that the High Court has the inherent jurisdiction to quash a proceeding or FIR

in exceptional cases, to secure the ends of justice and to prevent abuse of the process of the Court, and to do complete justice keeping in mind the parameters laid down by the Apex Court in this regard and in the peculiar facts in hand of the case, before it. It may also be noted that the inherent power is of wide plenitude with no statutory limitation, however, the said power has to be exercised in accordance with the guidelines engrafted in such power and the judgments of the Apex Court.

15. At the outset, we may note that it is difficult to lay down any straitjacket or fixed formula, as to when a POCSO case can be quashed under Section 528 of BNSS (earlier, Section 482 Cr.P.C.), inasmuch as, what would be the exceptional cases would depend on the facts and circumstances of the case, i.e., the age of the parties, whether the consent given by the victim is an 'informed' consent, whether the parties have got married, have a child, etc. No doubt, the object of enacting the POCSO Act is laudable, but, at the same time we cannot ignore the harsh realities that stare us in the face. Also, what cannot be lost sight

of is, there is a minimum sentence stipulated under the POCSO Act and the IPC/BNS, and hence, Courts now, cannot even award a sentence lesser than the minimum, after recording special and adequate reasons.

16. The POCSO Act has been specially enacted for protecting the "child", who is defined as any person below the age of 18 years. The salient feature of the POCSO Act is, that it is a gender-neutral enactment which regards the best interest and wellbeing of the child as being of paramount importance at every stage, i.e., from the time of registration of the FIR till completion of the trial and includes giving physical, emotional, intellectual assistance to the child, who is considered vulnerable, having been exploited. Under the POCSO Act, consent of the child below the age of 18 years, is immaterial and is not 'consent' in the eyes of law, even if the victim has consented to the sexual relationship.

17. It is pertinent to note, that prior to the enactment of the POCSO Act, the age of consent for a girl was 16 years and that

when POCSO Act was enacted, the age of consent was raised from 16 years to 18 years. Even, Section 375 of the IPC was amended by the Criminal Law (Amendment) Act, 2013 following the recommendation of Justice J.S. Verma in the wake the Nirbhaya incident. Thus, as a consequence of the aforesaid provision, if a girl below 18 years, enters into a consensual relationship with a boy, the said act would attract the rigours of the POCSO Act, as well as, would constitute an offence under Section 376 of the IPC. Thus, it is presumed under the law, that a girl below the age of 18 years is not capable of giving consent even if, she is a consenting party, making the boy guilty of committing the offence under the POCSO Act. Even if the girl is one day shy of 18 years, it would be an offence as the girl's consent is immaterial. The intent of the POCSO Act and Criminal (Amendment) Act, 2013, was to target sexual exploitation of children, whether male or female. However, today, we find that a large number of cases pertaining to consensual adolescent/teenage relationship, have risen, more particularly,

between the age group 16 to 18 years, after the increase of the age of consent from 16 to 18 years.

18. As noted above, the age of consent has been increased in various Indian statutes from 16 years to 18 years. In countries such as Hungary, Italy, Portugal, children under the age group of 14 years are considered capable of giving consent to sex, whereas, in Japan, London and Wales, the age of consent is 16 years. In countries such as Sri Lanka, the age of consent is 16 years and in Bangladesh, the age of consent is 14 years. At this stage, it may also be noted, that the United Nations has formally defined "Adolescent" as a person between 10 to 19 years of age and 'young people' in South East region, as persons between 10 to 25 years of age. Infact, the genesis of the age of consent can be traced back to the 19th century, where a girl aged 11 years (minor girl) was married off, to a man, aged 35 years. The girl, aged 11 years died when her husband forcibly consummated the marriage. This incident/case paved the way for the Legislation in India, to enact the 'Age of Consent Act' 1891.

19. Several High Courts from time to time, including the Apex Court have flagged their concerns regarding prosecution of boys in ***Romeo - Juliet*** cases i.e., romantic relationship cases. In ***Atul Mishra*** v. ***State of Uttar Pradesh*** passed in ***Crl. Miscellaneous Bail Application No. 53947 of 2021*** decided on ***25th January, 2022***, the Allahabad High Court while deciding the bail application of the accused charged for an offence under the POCSO Act, noted that the victim and the accused knew each other from school, had eloped and were staying with each other for a couple of years and that they even had a child from the said relationship, clearly indicating that the relationship was consensual. The Court in paragraph 15 of the said order noted as under:

> "*15. Reverting back to the facts of the present case, when both the parties (boy as well as girl) who are in their teens and college going, both of them met in the school during NCC parade, developed a natural inclination towards each other, thereafter cutting across the caste barrier between them eventually have decided to marry with each other. No doubt the girl was barely 14½ years on the date of incident. Both of them fled away, got married in a Shiv Temple at Delhi and remained in company with each other for almost two years during which the girl has given birth to a baby, who is now 7-8 months old. She was clear in her mind that she does not want to go back with her parent but wants to*

remain in the company of the applicant, to whom she has accepted her husband. This relationship has given birth to a baby on 21.5.2021.”

20. The Madhya Pradesh High Court, recently in a case requested the Central Government to reduce the age of 18 years to 16 years. The Court observed that the present age of 18 was disrupting the fabric of the society as due to social media awareness and easily accessible internet connectivity, children were getting puberty at an early age resulting in getting attracted to each other, resulting in consensual physical relationship.

21. Even the High Court of Karnataka, in the case of ***State of Karnataka*** v. ***Basavraj : 2022 SCC OnLine Kar 1608*** observed in paragraphs 29.8, 29.9 and 29.10 as under:

> “***29.8*** *Having come across several cases relating to minor girls above the age of 16 years having fallen in love and eloped and in the meantime, having had sexual intercourse with the boy, we are of the considered opinion that the Law Commission of India would have to rethink on the age criteria, so as to take into consideration the ground realities.*
>
> ***29.9*** *The aspect of consent even by a girl of 16 years and above would have to be considered if there is indeed an offence under the IPC and/or POCSO Act. Normally when*

evidence is lead the victim is a major and the testimony given then of an act committed while being a minor would have to be given due value.

29.10 *It is also seen that many of the above offences which are deemed offences are deemed to have been committed as a result of or on account of lack of knowledge on the part of the minor girl and the boy. Many a time the boy and girl involved are either closely related and/or very well known to each other being class mates or otherwise. One thing leads to the other and being of an impressionable age, some things are done by a boy and girl, which ought not to have been done and done without knowing the applicability of POCSO Act or certain provisions of the IPC, which make them an offence. Though lack of knowledge is no excuse, can minors be presumed to have knowledge of the applicable law would be the question required to be asked in such a situation."*

22. Similarly, in ***Vijayalakshmi & another*** v. ***State Rep. by the Inspector of Police and another: 2021 SCC OnLine Mad 317***, the Court while dealing with a case of quashing the proceeding against an accused under the IPC, POSCO Act and Prohibition of the Child Marriage Act, 2006, by consent, found that during the trial, the victim and the family had turned hostile and stated that relationship was consensual and the victim had eloped with the boy on her own accord.

23. The Apex court in the case of ***K. Kirubakaran*** v. ***State of Tamil Nadu***: ***2025 SCC OnLine SC 2307*** was dealing with a case, where the accused was convicted for the offence punishable under Section 366 of the IPC; Section 6 of the POSCO Act and was sentenced to rigorous imprisonment for 5 years and 10 years, respectively with fine. The appeal of the accused was dismissed by the High Court. It appears that during the pendency of the said appeal before the High Court, the appellant therein and the victim (prosecutrix) got married and the couple was blessed with a child, who was one year old. The Apex Court while considering the conviction of the appellant who had challenged the judgment and order of conviction, was confronted with one question, i.e., whether the proceeding could be quashed considering the appellant was convicted of a heinous offence despite the fact, that the appellant and the victim had got married and, had a child and were happily living together? The Apex Court in this context in paragraphs 6, 7, 8 and 9 observed as under"

> ***"6.*** *We are conscious of the fact that a crime is not merely a wrong against an individual but against society as a*

whole. When an offence is committed, it wounds the collective conscience of the society and therefore the society, acting through its elected lawmakers, determines what would be the punishment for such an offence and how an offender should be dealt with, to deter its recurrence. The criminal law is, thus, a manifestation of the sovereign will of the society. However, the administration of such law is not divorced from the practical realities. Rendering justice demands a nuanced approach. This Court tailors its decisions to the specifics of each case: with firmness and severity wherever necessary and it is merciful when warranted. It is also in the best interest of society to bring a dispute to an end, wherever possible. We draw inspiration from Cardozo, J. to hold that the law aims to ensure not just punishment of the guilty, but also harmony and restoration of the social order.

***7.** With such perspective in mind, we need to proceed to balance the competing interests of justice, deterrence, and rehabilitation.*

***8. The founding fathers of the Constitution conferred this Court with the extraordinary power to do "complete justice" in proper cases. This constitutional power stands apart from all other powers and is intended to avoid situations of injustice being caused by the rigid application of law**.*

9. Per the law made by the legislature, the appellant having been found guilty of a heinous offence, the proceedings in the present case on the basis of a compromise between the appellant and his wife cannot be quashed. But ignoring the cry of the appellant's wife for compassion and empathy will not, in our opinion, serve the ends of justice. Even the most serious offenders of law do receive justice moderated by compassion from the courts, albeit in

appropriate cases. Given the peculiar facts and circumstances here, a balanced approach combining practicality and empathy is necessary. The appellant and the victim are not only legally married, they are also in their family way. While considering the offence committed by the appellant punishable under the POCSO Act, we have discerned that the crime was not the result of lust but love. The victim of crime herself has expressed her desire to live a peaceful and stable family life with the appellant, upon whom she is dependent, without the appellant carrying the indelible mark on his forehead of being an offender. Continuation of the criminal proceedings and the appellant's incarceration would only disrupt this familial unit and cause irreparable harm to the victim, the infant child, and the fabric of society itself."

(emphasis supplied)

24. Accordingly, the Apex Court by invoking its power under Article 142 of the Constitution quashed the proceeding against the appellant - accused therein, including his conviction and sentence.

25. Similarly, in ***In Re: Right to Privacy of Adolescents'*** case i.e., ***Sou Motu Writ Petition (C) No. 3 of 2023***, the Apex Court was dealing again with a case, under the POCSO Act. In the said case, the trial court had convicted the accused therein under the

provisions of the IPC and POCSO Act. Against the said judgment and order of conviction, the accused had preferred an appeal before the Calcutta High Court and the High Court in exercise of its jurisdiction under Article 226 of the Constitution read with Section 482 of the Cr.P.C. had set aside the conviction of the accused. The said judgment and order of acquittal was challenged by the State of West Bengal. The Apex Court by a detailed judgment and order dated 20th August, 2024 set aside the impugned judgment of the High Court and restored the verdict of the Special Court to the extent of conviction of the accused under the POCSO Act. However, it directed that the accused shall not be required to undergo sentence as awarded by the trial court, having regard to the fact, that the accused was married to the victim girl and from the said marriage, have a child. The Apex Court had also taken suo motu cognizance of the case and accordingly, ***In Re: Right to Privacy of Adolescents*** with ***Sou Motu Writ Petition (C) No. 3 of 2023*** reported in ***2025 SCC OnLine SC 1200***, the Court in its judgment and order dated ***23rd May, 2025***, has set out in detail the plight of the victim girl

in such cases (in the said case, the girl was 14 years of age). The Court referred to the constitutional obligations of the State and also observed that under the existing law, the State could have taken adequate care of the victim, however, the same was not done. The Court further noted that the State in its machinery had failed and also there was a collective failure of the society at large. Paragraphs 37 and 38 of the said judgment are reproduced hereunder:

> "**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.

38. *Unfortunately, in our society, due to whatever reasons, we find that there are cases and cases where the parents of the victims of the offences under the POSCO Act abandon the victims. In such a case, it is the duty of the State to provide shelter, food, clothing, education opportunities, etc., to the victim of the offences as provided in law. Even the child born to such a victim needs to be taken care of in a similar manner by the State. After the victim attains the majority, the State will have to ensure that the victim of the offence can stand on his/her legs and, at least, think of leading a dignified life. That is precisely what Section 46 of the JJ Act provides. Sadly, in the present case, there is a complete failure of the State machinery. Nobody came to rescue the victim of the offence, and thus, for her survival, no option was left to her but to seek shelter with the accused."*

26. Thus, the Apex Court in the said case broadly considered three issues i.e., (i) the issue of sentencing; (ii) the issue with regard to rehabilitation of the victim and her child; and (iii) about adopting measures for adolescents' wellbeing and child protection which goes to the root cause of the problem in our changing society. The Apex Court noted, that in this particular case, it was not the legal crime which had caused trauma to the victim, rather it was the legal battle which ensued, consequent

to the crime that had taken a toll on the victim. It noted that the victim herself was required to raise funds for the legal battle to bring her husband out from the jail. The Court further noted that the facts of the case was an eye-opener for everyone, highlighting the lacuna in the legal system. It noted that though the incident was seen as a crime in law, the victim did not accept it as one. The Court not only perused the report submitted by the Committee so appointed but also interacted with the victim, after which they opined that if the accused was sent to jail, the worse sufferer would be the victim herself. The Court further noted that the society, the family of the victim and the legal system had done enough injustice to the victim; that the victim was subjected to enough trauma and agony; and, that it did not want to further add injustice to the victim by sending her husband to jail. In addition to the aforesaid, the Court directed that the victim be given assistance to complete her education and settle down in life and that the victim's daughter be provided with education; and, overall ensure, better living conditions for her family.

27. In both, the aforesaid cases i.e., ***K. Kirubakaran*** (supra) and in ***In Re: Right to Privacy of Adolescents*** (supra), the Apex court was dealing with a POCSO case, and had exercised its power under Article 142 of the Constitution to do justice. It was further noted, in each of the cases, that the cases will not be treated as a precedent.

28. Infact, recently the Apex Court in the case of ***State of U.P.*** v. ***Anurudh and another*** reported in ***2026 SCC OnLine SC 40***, referred the said case to the Government of India to consider introduction of a *Romeo – Juliet* clause exempting genuine adolescent relationships from the stronghold of POCSO. In this case, the Apex Court took judicial notice of the judgment of the Allahabad High Court in ***Satish alias Chand*** v. ***State of U.P. [Crl. Misc. Bail Appl. No. 18596 of 2024]*** wherein, the High Court noted four factors to be considered with respect to POCSO cases when it comes to consensual relationship between consent adolescents:

> *"A. Assess the Context: Each case should be evaluated on its individual facts and circumstances. The nature of the*

relationship and the intentions of both parties should be carefully examined.

B. Consider Victim's Statement: The statement of the alleged victim should be given due consideration. If the relationship is consensual and based on mutual affection, this should be factored into decisions regarding bail and prosecution.

C. Avoid Perversity of Justice: Ignoring the consensual nature of a relationship can lead to unjust outcomes, such as wrongful imprisonment. The judicial system should aim to balance the protection of minors with the recognition of their autonomy in certain contexts. Here the age comes out to be an important factor.

D. Judicial Discretion: Court should use their discretion wisely, ensuring that the application of POCSO does not inadvertently harm the very individuals it is meant to protect."

29. In today's times, what cannot be lost sight of is, with the advent of technology and easy accessibility to information through internet and social media, seekers (children) can easily find material or get information regarding sensitive topics, i.e., sexual information which may have a positive or negative influence upon the children. It may also be noted that this is an era where there is free access to internet, mobile, movies which create a deep impact on the minds of the children creating

inquisitiveness and attraction towards the other sex as also infatuation.

30. What emerges from the aforesaid discussions and the judgments and orders of various courts is that although the statutory age of consent remains binding, as the law stands today, the facts of each case, particularly, the age proximity, voluntariness of the relationship and the future wellbeing of the individuals (victim and child born, if any), etc., must be taken into consideration so that the object of the law is preserved without doing manifest injustice to the parties. No doubt, the laudable object of the POCSO Act is to protect minor children from sexual abuse and exploitation, however, in its application, it has revealed serious issues between legislative design, lived realities and constitutional values. Its detrimental impact has also been observed where there is illiteracy and where adolescents are in a consensual love relationship without the knowledge of the applicable laws and the implications of their actions. A lot many cases arise out of adolescent relationship

often involving girls between 16 to 18 years and boys who are classmates, neighbours or are closely acquainted. These adolescents engage in relationships without knowing the applicability of the POCSO Act/BNS. Since ignorance of law is no excuse, their actions are liable to prosecution. Courts have observed that in such cases, complaints have often been made due to parental opposition or by parents or by doctors, when the girls go for check-up, rather than by the victim herself. It is also noted that in such cases, subsequently, the victim becomes hostile, refusing to depose against the boy and once the girl attains majority, she asserts her autonomy. Adolescent boys, who are in a consensual relationship are also required to face the full rigour of the criminal process which potentially has an effect/impact on their career, education, etc., making the damage irreversible. Of course, arrest, detention, registration of FIR against the boy leads to boys dropping out of school, termination of education, issues of employment and future career prospects due to criminal records even if, ultimately acquitted. It creates barriers of employment and future

opportunities for adolescent boys, despite the relationship being consensual i.e., romantic relationship.

31. The ground realities in the State of Meghalaya cannot be ignored and lost sight of. It shows high incidents of adolescent consensual relationships culminating in elopement and early marriage or living together, as husband and wife, which is recognised by the society. Infact, cases of adolescent relationships where the parties i.e., the victim and the boy have got married or are living together as husband and wife and have a child from the said relationship are far too many, resulting in parties filing petitions under Section 528 BNSS (earlier, Section 482 Cr.P.C.) seeking quashing of the proceeding by consent of the parties.

32. As pointed out by the learned Advocate General, in Meghalaya, the social economic marginalisation of any community, the limited reach of formal legal and health services in remote and rural/tribal areas, and the cultural practices and

norms that shape adolescent behaviour and family dynamics, raise huge concern. He submitted that in fact, the rigid application of a uniform age of consent, without regard to the consensual nature of relationships or the proximity in age between the parties, produces outcomes that are disproportionately punitive, socially disruptive and contrary to the rehabilitative and protective objectives of child-centric legislation. Learned Advocate General further submitted that the State of Meghalaya is confronted with unique societal dynamics, distinct socio-cultural realities and ground level implementation challenges, that may differ significantly from conditions prevailing in other parts of the country. He submitted that, infact the State of Meghalaya, may have to consider whether any amendment is necessitated in the POCSO Act which would necessarily have to be premised upon thorough deliberation, comprehensive data analysis and careful consideration of multiple factors. He submitted that the State in this context would be required to ensure that any amendment does not in any way dilute or compromise the protection afforded to children

from exploitation, abuse and trafficking and that the said amendment remains at all times consistent with the paramount and best interests of the child, as understood both, domestically and under the international law.

33. What also cannot be lost sight of is, that in Meghalaya, matrilineal system is a rare, ancient societal structure among the Khasi, Garo and Jaintia tribes, where lineage and inheritance pass through the mother. Children take their mother's surname, the youngest daughter inherits the property (is the custodian of ancestral property) and the husband often moves into the wife's house. The system is believed to have originated from an agrarian society and the need to protect the family structure, ensuring women's economic security, social stability and the preservation of tribal identity. Infact, in the Khasi community, women have more independence than women in many patriarchal communities, including the freedom to select their partners, remarry without shame and take an active role in public places like market place and businesses. It is in this background that

this Court would have to consider a case seeking quashing of a POCSO case by consent, keeping in mind all factors, including the girl's (victim's) and her child's social security, by ensuring that she and the child get the benefit of the government schemes, including under the POCSO Act.

34. Thus, from the aforesaid discussion, quashing of a POCSO case under Section 528 BNSS by consent, is permissible even if it is a special statute and there is no specific exclusion of any present law/custom. However, the said discretion has to be used with due care and caution and circumspection in exceptional cases, to do justice. As noted earlier, there cannot be any straitjacket formula as to in which cases the said discretion can or cannot be exercised, inasmuch as, that would depend on the facts and circumstances of each case i.e., the age of the parties coming before the court; whether the consent given by the victim is an informed consent and not under coercion of the family members or the boy; that the victim and the accused are married and have a child or are living together as husband and wife, as

per the customs in the State of Meghalaya, etc. Where parties are living together as husband and wife or are married, a police report, or a report from any authority, be called for, verifying the said claim. Also, while considering whether the consent of the victim is an 'informed consent', it is necessary that the victim places her affidavit on record giving her 'No Objection' to the quashing of the case. That, before such an affidavit is accepted, in order to ensure that the consent is an informed consent, the victim may be sent before the Secretary, MLSA or Secretary, DLSA to ascertain whether the consent is an informed consent, by giving her time to ponder over the same; and a report be called for, before such quashing petition is considered. While quashing the case, the Government schemes that may be available to a victim in a POCSO Act and the child born from the said relationship also be given due weightage as suggested and directed by the Apex Court in the case of ***Re: Right to Privacy of Adolescents*** (supra).

35. No doubt, we are conscious of the fact that a case under POCSO Act, is not a case against an individual, but is an offence against the society as a whole, however, the administration or enforcement of the law cannot be divorced from lived realities. Rendering justice demands not only that the law be applied with precision, but also that it be tempered with fairness, compassion and empathy when the situation/facts of a case, warrant it. Thus, it is necessary to maintain a fine balance between the competing interests of justice, deterrence and rehabilitation. Where the victim and the boy are married or are living together as husband and wife (and recognised), and have a child/children, sending the boy to jail would not serve the cause of justice, rather it would cause great injustice to the victim and the child born from the said consensual relationship, as ultimately, the aim of the law is to do justice. Thus, in cases where the court comes to the conclusion, that the consent given by the victim is a genuine and informed consent and that it would be greater injustice to send the boy to jail, instead of letting the parties live together as one family, the Court may consider

quashing the case, pending trial, keeping in mind what is stated aforesaid. We may note, considering the large number of POCSO cases, in particular *Romeo – Juliet* cases, it is the responsibility of the State Government to create awareness amongst the people, including the children about the provisions of the POCSO Act, its punishment, etc., not only in the cities but also in the interior and remote places, including schools, colleges, etc.

36. Thus, the reference is answered in the aforesaid terms. Place the petition for further consideration on merits, before the Single Bench of the Chief Justice.

(H.S.Thangkhiew)
Judge

(Revati Mohite Dere)
Chief Justice

Meghalaya
12.03.2026
"Sylvana PS"