

aforesaid case, both the petitions stand **dismissed.**

(2023) 5 ILRA 1608
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.04.2023

BEFORE

THE HON'BLE J.J. MUNIR, J.

Application U/S 482. No. 12717 of 2023

Neelam **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

Counsel for the Applicant:

Sri Shashi Prakash Misra, Sri Jai Prakash Singh

Counsel for the Opposite Parties:

G.A., Sri Pramod Kumar Pandey

(A) Criminal Law - The Code of Criminal Procedure, 1973 - Section 482 - Inherent power - Indian Penal Code, 1860 - Sections 363, 366 and 120-B , The Protection of Children from Sexual Offences Act, 2012 - Section 2(d), 16/17 - proceedings under Section 376 I.P.C. and POCSO Act, cannot be quashed on the basis of a compromise between the accused and the victim. (Para - 10)

(B) Criminal Law - adjudication of cases involving gender related crimes - courts should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction. (Para - 8)

Compromise application filed - signed by applicant, prosecutrix, first informant, and prosecutrix's mother and father - case against applicant - conspired with - to cause prosecutrix

to elope with a Class X student - application states - prosecutrix, informant, and husband do not want to pursue prosecution further - prosecutrix and her parents moved an application seeking to compromise. **(Para - 2,3)**

HELD:- No good grounds to quash ongoing trial proceedings based on the provided facts. **(Para - 11)**

Application u/s 482 Cr.P.C. rejected. (E-7)

List of Cases cited:

1. Aparna Bhat & ors. Vs St. of M.P. & anr., 2021 SCC OnLine SC 230
2. Pravin Kumar Singh & ors. Vs St. of U.P. Thru. Prin. Secy. Home Deptt. & anr., 2023 SCC OnLine All 131
3. Nardeep Singh Cheema @ Navdeep Singh Cheema Vs St. of Punj. & ors., CRM-M-2270-2020
4. Om Prakash Vs St. of U.P. & anr., 2023 SCC OnLine All 93

(Delivered by Hon'ble J.J. Munir, J.)

1. This application has been filed seeking to quash the proceedings of Special Sessions Trial No. 71 of 2018 (arising out of Case Crime No. 1888 of 2017 (State v. Neelam and others) under Sections 363, 366 and 120-B I.P.C. and Section 16/17 of the Protection of Children from Sexual Offences Act, 2012, Police Station - Bakhira, District - Sant Kabir Nagar, pending before the Court of the Additional Sessions Judge/Special Judge (POCSO Act), Sant Kabir Nagar.

2. The submission of the learned Counsel for the applicant is that a compromise application dated 13.12.2023 has been filed, signed by the applicant, the prosecutrix, as also the first informant and

her husband, that is to say, the mother and father of the prosecutrix. The case against the applicant is that she along with one Aman, conspired to cause the prosecutrix to elope with one Amiullah. The prosecutrix at the time when she eloped, was aged fifteen years and a student of Class X, reading in the local inter-college. It is true that a compromise application has been filed, which is signed by the informant, the prosecutrix, the prosecutrix's father and also by the applicant, where it is said that the prosecutrix, the informant and her husband do not want to pursue the prosecution any further. The prosecutrix's testimony during trial was recorded, where she testified as P.W. 2 on 10.05.2019. The relevant part of her testimony reads:

"अमिउल्लाह मुझे लेकर मुंबई गया वहाँ अमिउल्लाह मुझको लेकर एक जगह गया था और रात में मेरे साथ मेरी इच्छा के विरुद्ध बलात्कार किया और धमकी दिया किसी से कहोगी तो तुम्हारे भाई की हत्या कर देंगे। बलात्कार वाली बात मैंने डर के कारण महिला सिपाही को नहीं बताया था। अमन मुंबई में मिला था बस स्टेशन से "अमिउल्लाह के साथ कमरे पर ले गया। मुझे भागने में नीलम और अमन की साजिस थी।"

3. Now, much after that testimony, the prosecutrix and her parents have moved an application seeking to compromise on 13.12.2022.

4. Heard Mr. Jai Prakash Singh, Advocate holding brief of Mr. Shashi Prakash Misra, learned Counsel for the applicant, Mr. Pramod Kumar Pandey, learned Counsel appearing on behalf of opposite party no. 2 and Mr. Shashi Shekhar Tiwari, learned A.G.A. on behalf of the State.

5. The case under the Protection of Children from Sexual Offences Act, 2012

(for short, 'the Act of 2012') is not a private dispute or an offence of a kind that may be so limited to the interest of the informant and the accused, that the State may not have much to say about. To the contrary, the Act of 2012 is a special statute, which has been enacted with objects and reasons that read:

"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."

6. The enacting clause of the Act reads 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.

Be it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:-"

7. It is evident that the Act of 2012, is a special statute designed to suppress a particularly pernicious mischief in society, and that is, the engagement of children in sexual activities and their exploitation. A child is defined under Section 2(d) of the Act of 2012, as any person below the age of eighteen years. The collective conscience of the society and the legislative mandate whereby it has been translated into a law, are firm in their resolve to suppress sexual exploitation of children or their involvement in such activities. This being the purpose of the Act of 2012 and the object of its enactment, it ill lies in the mouth of the informant, or even the victim, to come up with a plea that they intend to compromise the prosecution. The prosecution is at the behest of the State and the informant or the prosecutrix have no say in it at all. Otherwise too, the prosecutrix was a minor at the time when the incident happened and it is not open to her to make small of an offence against society, merely because she was the victim of it.

8. This question has engaged the attention of the Supreme Court in **Aparna Bhat and others v. State of Madhya Pradesh and another, 2021 SCC OnLine SC 230**, where the following directions

have been issued by their Lordships of the Supreme Court:

"44. Having regard to the foregoing discussion, it is hereby directed that henceforth:

(a) Bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should seek to protect the complainant from any further harassment by the accused;

(b) Where circumstances exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made, in addition to a direction to the accused not to make any contact with the victim;

(c) In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days;

(d) Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the Cr. PC. In other words, discussion about the dress, behavior, or past ?conduct? or ?morals? of the prosecutrix, should not enter the verdict granting bail;

(e) The courts while adjudicating cases involving gender related crimes, should not suggest or entertain any notions (or encourage any steps) towards

compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction;

(f) Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix, during the proceedings, or anything said during the arguments, and

(g) Judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court."

(Emphasis by Court)

9. This Court had occasions to consider in **Pravin Kumar Singh and others v. State of U.P. Thru. Prin. Secy. Home Deptt. and another, 2023 SCC OnLine All 131**, the issue whether prosecutions under the Act of 2012 can be quashed on an application under Section 482 Cr.P.C founded on a compromise. In **Pravin Kumar Singh (supra)** it was held by Hon'ble Ajai Kumar Srivastava-I, J. thus:

"14. So far as the question of quashing of criminal proceeding of S. T. No.20 of 2014 "State vs. Pravin Kumar Singh and others" arising out of Case Crime No.345 of 2013, under Sections 376, 363, 366, 504, 506 I.P.C. and 3/4 POCSO Act, is concerned, Hon'ble Supreme Court in Narinder Singh and others vs. State of Punjab and another reported in (2014) 6 SCC 466, has specifically held that the matter under Section 376 I.P.C. is also such an offence, which, though committed in respect of a particular victim, cannot be termed to be a private dispute between the parties. It has serious adverse societal effect. Therefore,

any proceeding on the basis of alleged compromise of the accused vis-a-vis the victim cannot be quashed. Hon'ble Apex Court in State of Madhya Pradesh vs. Madanlal reported in (2015) 7 SCC 681 while repelling the acquittal on the basis of compromise in the matter pertaining to Sections 376 read with 511 I.P.C., has placed reliance upon principles laid down by three-Judge Bench in Shimbhu vs. State of Haryana reported in (2014) 13 SCC 318."

10. It has been held by the Punjab and Haryana High Court in similar terms in **Nardeep Singh Cheema @ Navdeep Singh Cheema v. State of Punjab and others**, CRM-M-2270-2020, decided on 07.09.2022. I also had occasion to consider this issue in **Om Prakash v. State of U.P. and another, 2023 SCC OnLine All 93**, where it was held that the proceedings under Section 376 I.P.C. and POCSO Act, cannot be quashed on the basis of a compromise between the accused and the victim.

11. On the conspectus of above facts, I do not find any good ground to quash proceedings of the ongoing trial.

12. This application is, accordingly, **rejected.**

(2023) 5 ILRA 1612

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 19.04.2023

BEFORE

THE HON'BLE KSHITIJ SHAILENDRA, J.

Writ-C No. 7730 of 2016

**Dr. Ashok Kumar Tomar
Versus
State of U.P. & Ors.**

**...Petitioner
...Respondents**