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THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3850 of 2024

(In the matter of an application under Section 528 of the Bharatiya
Nagarika Suraksha Sanhita, 2023 r/w Section 482 of the Code Of
Criminal Procedure, 1973)

Fayazuddin Khan@Badal Khan Petitioner

-Versus-

State of Odisha & Others Opposite Parties

For the Petitioner : Mr. Amitav Tripathy, Advocate

For the Opposite Parties : Mr. Bibekananda Nayak,
Additional Government Advocate

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing:18.02.2025 : : Date of Judgment:04.03.2025

S.S. Mishra, J. The petitioner has filed the present application under Section 528 of the BNSS, 2023 r/w Section 482 of the Cr.P.C., 1973, seeking quashing of the criminal proceedings arising out of Nayagarh P.S. Case No. 60 of 2022, corresponding to T.R. Case No. 135 of 2022, pending before the learned Additional Sessions Judge-cum-Special Court under the POCSO Act, Nayagarh.



2. The prosecution case originates from an FIR lodged by the informant on 10.05.2022, alleging that on 09.05.2022, the petitioner kidnapped her minor daughter (Opposite Party No.3) and took away gold ornaments and cash of Rs.8,000/- from their house.
3. Based on these allegations, Nayagarh P.S. Case No. 60 of 2022 was registered under Sections 363/366/376(2)(n) of the Indian Penal Code, 1860 (IPC) read with Section 6 of the POCSO Act. Upon completion of the investigation, a charge sheet was filed, and the learned trial court took cognizance of the offences.
4. During the pendency of the trial, the petitioner and Opposite Party No.3 entered into a marital relationship after the latter attained the age of majority. They are now living together as husband and wife, and the informant (Opposite Party No.2) has expressed her willingness not to prosecute the matter further.
5. Mr. Tripathy, the learned counsel for the petitioner submits that the entire case was based on a love affair between the petitioner and Opposite Party No.3, which was opposed by their families due to religious differences. Consequently, both the petitioner and Opposite Party No.3 left their respective homes and later solemnized their marriage.



6. It is further submitted that at the time of the alleged incident, Opposite Party No.3 was a minor, and due to that, the police rescued her and handed over to her parents. However, upon attaining majority, she voluntarily married the petitioner, and they are now living together happily.

7. Learned Counsel for the petitioner contends that continuation of the criminal proceedings would serve no useful purpose, as the alleged victim does not support the prosecution case, and the matter has been amicably resolved between the parties. Even all the family members of the Opposite Party No.3 after having agreed to the alliance, will not support prosecution case.

8. It is also submitted that the informant (Opposite Party No.2) has no objection to quash the proceedings and is ready to submit an affidavit before this Court stating the same.

9. Mr. Nayak, the learned Additional Government Advocate appearing for the State of Odisha opposes the prayer for quashing on the ground that serious offences under Sections 376(2)(n) IPC and Section 6 of the POCSO Act have been invoked against the petitioner.



10. Relying on the judgment of the Hon'ble Supreme Court in ***Ramji Lal Bairwa & Another v. State of Rajasthan & Others***¹, Mr. Nayak has contended that cases involving offences under the POCSO Act cannot be quashed merely on the basis of a compromise between the parties, as offences are considered to be the crimes against society at large and not just against an individual victim. He further submits that indulgence by this Court at this stage would cause defeat of the object of the POCSO Act.

11. Learned counsel for the State submits that even if the victim and her family do not wish to proceed with the case, the gravity of the offence and the legislative intent behind the POCSO Act necessitate that the trial be conducted in accordance with law.

12. The applicability of the principle laid down in the recent Judgment of the Hon'ble Apex Court in ***Ramji Lal Bairwa v. State of Rajasthan*** (supra) vis-à-vis the present case needs to be delved upon. The Hon'ble Supreme Court has held as under: -

“25. Thus, in unambiguous terms this Court held that before exercising the power under Section 482, Cr. P.C. the High Court must have due regard to the nature and gravity of the crime besides observing and holding that heinous and serious offences could not be quashed even though a victim or victim's family and the offender had settled the dispute. This Court held that such offences are not private in nature and have a serious impact on the society. Having understood the position of law on the second question that it is the bounden duty of the court

¹ 2024 SCC OnLine SC 3193



concerned to consider whether the compromise is just and fair besides being free from undue pressure we will proceed to consider the matter further. A bare perusal of the impugned order dated 04.02.2022 would reveal that the High Court has erred in not bestowing proper consideration the law laid down in Gian Singh's case (supra) while rendering the same. The impugned order would reveal that the allegations contained in the subject FIR was not at all even adverted to, before quashing the same. We have referred to the allegations which are of serious nature revealed from the FIR. The complaint in this case is annexed to the FIR produced in this proceeding as Annexure P-1. In the said complaint which led to the registration of the FIR reads thus:—

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

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

Apparently the facts of the present case are distinguishable from those addressed in the cited case. In this instance, the victim and the accused have entered into a marital relationship and are now living a happy married life. This fundamentally alters the nature of the dispute, as the parties have reconciled their differences and moved forward with their lives. However in the case of **Ramji Lal** (supra) a teacher has taken the sexual advantage from a minor girl.



Sexual exploitation and adolescent love affair by its nature is distinguishable. Adolescent love is a conceptual romantic relationship often lead to sexual encounter. However, there is no element of coercion, force or manipulation to drag someone to indulge in sexual activities for personal gratification. If the accused is in a dominating position of power or trust, coerces, forces or manipulates another into sexual activities for personal gratification, financial gain or any other benefit that could only be a case of exploitation. But same age group adolescents falling in love, eloped and married shouldn't be criminalized. In such circumstances, the principles laid down in the judgment by this court in *Rosalin Rout and Anr. V. State of Odisha and Anr.*² Case, which emphasizes the importance of personal reconciliation and the potential to allow quashing of proceedings where the relationship has been restored, should be considered. The facts here do not involve heinous or grave offences that have a significant societal impact rather the case remained in the personal realm, and thus, it would be more appropriate to apply these principles to the current matter, as the reconciliation reflects a positive resolution. In addition, it can also be said that the

² 2024 SCC OnLine Ori 1339



compromise between the parties is in alignment with the guidelines provided in the ***Rosalin Rout*** (supra) judgment.

13. The ***Rosalin Rout*** (supra) case underscores the importance of ensuring that the compromise is genuine, voluntary, and free from any undue pressure, while also taking into account the nature of the offence, age of the accused and victim and the relationship between the parties. In this case, the victim and accused have not only reconciled but have entered into a marital relationship and are living a harmonious life, which supports the notion that the compromise is fair and in accordance with the principles laid out in the ***Rosalin Rout*** (supra) judgment. This indicates that the resolution between the parties is just and should be considered favorably in the interest of justice. For ready reference guidelines called out in the judgment of ***Rosalin Rout*** (supra) is quoted thus:-

“33. It is thus seen that the important and relevant factors that weighed in the minds of different Constitutional Courts relating to sexual offences against the minor centered around the following factors:

- i) Age of victim & accused and/or age difference between them.*
- ii) Nature of relationship between victim and the accused including Trustee or fiduciary relationship.*
- iii) The nature, magnitude, and consequences of the crime.*
- iv) Cases wherein the allegations reek of force, depravity, perversity, or cruelty.*
- v) Consensual relationships ending in marriage.*
- vi) Consensual relationships that start with assurance/expectation of marriage but do not materialize in marriage due to family disapproval,*



change in circumstances or other reasons.

vii) Parties are not interested to prosecute the cases further and jointly approached the court for quashing of proceedings.

viii) The possibility of conviction in the backdrop of parties having come to an agreed terms and not willing to prosecute the case further.

ix) The criminal prosecution will result in injustice to the victims and its closure would only promote their well-being.

x) The continuance of the criminal proceedings and the participation of the victim in that proceedings would adversely affect the mental, emotional, and educational well-being of the victim and protracted trial may possibly stigmatize the victim herself.

xi) The natural disposition and instinct of the victim who has settled in her life with the accused husband to protect her husband and her present and future progenies in the best interest of the family.

xii) In the cases where trial is at advance stage and evidence of the victim has already been recorded, High Court should be circumspect while exercising plenary jurisdiction under section 482 Cr.P.C. The conditions for exercising the jurisdiction under Section 482 Cr.P.C for quashing the criminal proceedings in such cases cannot be exhaustively postulated, therefore, every case has to be dealt with on its own facts in the light of parameters enumerated hereinabove.”

14. It's abundantly clear that in cases involving sexual exploitation, there is no question of quashing the proceedings; as such offences have serious implications for both the victim and society. However, where an adolescent love has evolved into a relationship that is now recognized and approved by societal norms, as seen in this case, the situation differs significantly. The fact that the victim and accused have entered into a marital relationship and are living a happy and peaceful life reflects a genuine reconciliation, which can be seen as a natural progression



in such circumstances. In such instances, where the relationship has been matured to marriage and accepted by society, quashing the proceedings is not only justifiable but may also be in the interest of upholding the principles of reconciliation and personal autonomy, as emphasized in the ***Rosalin Rout*** (supra) judgment. It would be appropriate to reproduce paragraph 31 of the Judgment; which reads as under:

“31. The POCSO Act was enacted with the ultimate objective of prohibiting non-consensual and forced sexual relationships with children, including child sexual abuse and sexual harassment. While the stringent provisions of the POCSO Act have contributed positively to reducing instances of sexual violence against children, they have also led to an increase in vindictive litigation, with false cases being filed against individuals under the act. However, it was never the legislature’s intention to prosecute romantic relationships between young adults. The doctrine of balancing needs to be pressed to service, while evaluating the facts of each individual case and exercising the jurisdiction under Section 482 Cr.P.C. The High Court, under its inherent powers, can interpret and harmonize these provisions to ensure effective implementation of both statutes while safeguarding the rights of the accused and the victim.”

Running a trial against the petitioner in this case would amount to an abuse of the process of law, particularly given the fact that the victim and the petitioner have entered into a marital relationship and are living together in harmony. Sending the man to prison would not only be unjust but would also work against the best



interests of the victim, as it could disrupt the peaceful life they have built together. The continuation of legal proceedings under these circumstances serves no legitimate purpose and would only perpetuate unnecessary hardship to both the parties. In light of their reconciliation and the societal approval of their relationship, it would be more appropriate to quash the proceedings, allowing them to move forward with their lives without the burden of legal interference. Similar view has been echoed by Hon'ble Supreme Court by orally observing in the recent case ***In Re: Right to Privacy of Adolescents***³, wherein the court observed as under:

“This is one case [where] because of the fault of the system, this man will get benefit. He will not get benefit because he has done something good, but to protect the victim and the child”

15. In light of the judgments cited and the discussions made above, it becomes evident that the present case is distinguishable from the typical instances where heinous or grave offences are involved, as outlined in ***Ramji Lal Bairwa v. State of Rajasthan*** (supra). The fact that the victim and accused have entered into a marital relationship and are living a harmonious life significantly alters the nature of the dispute. The principles laid down in the ***Rosalin Rout*** (supra) case, which emphasizes the importance of

³ In *Suo Moto* WP(C) No. 3/2023



personal reconciliation, should apply here, especially considering that the relationship between the parties has been restored and is now recognized by societal norms.

The *Rosalin Rout* (supra) judgment underscores the need for the court to evaluate each case individually, taking into account factors like the nature of the offence, the willingness of the parties to reconcile, and the impact of continuing legal proceedings on the victim. In this case, where the parties have chosen to reconcile and lead a married life together, continuing the trial or sending the accused to prison would be an abuse of the process of law. It would disrupt the well-being of both the victim and the accused and serve no constructive purpose.

Additionally, the observations made in *In Re: Right to Privacy of Adolescents* (supra) align with this view, emphasizing the need to protect the victim's well-being and prevent further harm from vindictive litigation. The doctrine of balancing the needs of justice and the rights of the parties involved should be applied, and in this case, quashing the proceedings is not only justifiable but would also promote the interests of justice and societal harmony.

16. Therefore, in light of the reconciliation, the absence of a serious societal impact, and the need to avoid unnecessary legal



hardship, it is appropriate to quash the proceedings, allowing both parties to move forward with their lives without further legal encumbrances. This approach ensures that justice is served in a fair, compassionate, and practical manner, in line with the established principles of law.

17. Therefore, the criminal proceeding in Nayagarh P.S. Case No. 60 of 2022, corresponding to T.R. Case No. 135 of 2022, pending before the learned Additional Sessions Judge-cum-Special Court under the POCSO Act, Nayagarh and the consequential proceedings arising therefrom qua the present petitioner are quashed. Accordingly, the CRLMC is allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.

The 4th day of March, 2025/ Subhasis Mohanty

Signature Not Verified

Digitally Signed
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