



2025:HHC:41447

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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No. 1140 of 2025

Decided on : 26.11.2025

Vijay Pal @ Anku

...Petitioner

Versus

State of Himachal Pradesh & Ors.

...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹

For the petitioner	:	Mr. Digvijay Singh, Advocate.
For the respondents	:	Mr. Varun Chandel, Mr. H.S. Rawat, Mr. Mohinder Zharaick, Additional A.G., with Ms. Ranjana Patial, Deputy A.G., for the respondent-State.

Virender Singh, Judge (oral).

Petitioner-Vijay Pal @ Anku has filed the present petition, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), for quashing of FIR No. 45/2025, dated 27.03.2025, (hereinafter referred to as 'FIR in question') registered under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*



the 'POCSO Act'), with Police Station Gaggal, District Kangra, H.P.,

2. The relief of quashing has mainly been sought on the ground that the child victim, when appeared in the witness box, has not supported the case of the prosecution. Not only this, the mother of the child victim, as well as, the uncle of the child victim, when appeared in the witness box, could not depose as per the ingredients of POCSO Act, against the petitioner.

3. Apart from this, a plea has also been taken that the petitioner and respondent No. 2-child victim have solemnized the marriage on 05.10.2025, and on the basis of above facts, a prayer has been made that no useful purpose would be served by continuing the proceedings against the applicant.

4. As per the FIR, mother of the child victim got recorded the statement, under Section 173 of BNSS, disclosing therein, that she, along with other family members, remained out of their house in connection with their work. About 4-5 days prior to the date, when she made the statement to the police, under Section 173 of



BNSS, on 17.03.2025, the child victim had complained her about pain in stomach. On 25.03.2025, the pain was severe, as such, the complainant took the child victim to Tanda Hospital, for treatment, where on checking, it was found that she is carrying fetus in her womb. The child victim, thereafter, gave birth to a female child, on 26.03.2025. When inquired by the complainant, child victim disclosed that the biological father of the same is one Feriwala (a person, who used to sell items in streets). The said person had allegedly raped her. She allegedly stated that the age of child victim is 17 years. She has further got recorded that on 26.03.2025, she had got recorded the age of the child victim as 19 years and child victim has also deposed that whatsoever, has done with her, the same has been done with her consent.

5. According to the complainant, she is illiterate, as such, she had recorded the age of child victim as 19 years. She prayed that action be taken against the accused. The accused was arrested. When the proof regarding the date of birth of the child victim was obtained, her age was found to be 17 years and two months. The



statement of the mother of the child victim was recorded, under Section 174 BNSS.

6. On the basis of above facts, police registered case under Section 6 of POCSO Act), in which involvement of the accused was found and charge-sheet has been filed against him before the Court of learned Additional Sessions Judge, Fast Track Court (POCSO) Kangra at Dharamshala and charges have been framed against him.

7. Along with the petition, petitioner has placed on record the photo copy of the statement of child victim recorded before the learned trial Court, statement of mother of the child victim and cousin brother of the child victim, memorandum of marriage, marriage registration certificate, affidavit of mother of the child victim disclosing therein that the marriage of petitioner and child victim has been solemnized, on 05.10.2025.

8. On the basis of above facts, a prayer has been made to quash the FIR, as well as, the resultant proceedings thereto.

9. Relief of quashing has been sought on the ground that the petitioner and respondent No. 2 always



want to get married and to buttress his contention, petitioner has relied upon the statements of child victim, her mother and her cousin brother, which has been placed on record as PW-1, PW-2 and PW-3. These documents have been relied upon to demonstrate that date of birth is 26.01.2006, instead of 26.12.2007 and date of birth was incorrectly recorded in the documents.

10. While exercising the power under Section 528 of BNSS, this Court can consider only the allegations as contained in the FIR, as well as, found during the investigation. However, the statement of the witnesses recorded before the learned trial Court cannot be considered by this Court, as the evidence, so adduced, by the prosecution, will be considered by the learned trial Court and the said prerogative of the learned trial Court, cannot be snatched away by this Court, while exercising the power under Section 528 of BNSS, that too on the basis of the statements of three PWs. Moreover, the statements of witnesses is to be considered, as a whole and not in piecemeal.



11. Another point, upon which, the quashing has been sought, is marriage between the parties. To demonstrate the said fact, the marriage certificate, as well as, affidavit of the complainant has also been annexed. The factum of marriage, subsequently, in such type of cases, is against the Law, as legislature in its wisdom has enacted the POCSO Act to prevent the child abuse. Although, in the petition, the petitioner has not pleaded the factum of compromise, when he has relied upon the marriage certificate, as well as, affidavit of the complainant, then the relief for which, the present petition is filed, cannot be granted to him, as the same is nothing, but the settlement between the parties.

12. If the facts and circumstances of the present case are seen, in the light of the decision of Hon'ble Supreme Court in "**Ramji Lal Bairwa & Anr. Vs State of Rajasthan & Ors., (2025) 5 SCC 117**", then, no relief can be granted to the petitioner, in the present case, at this stage. Relevant paragraphs No. 15 to 18 of the judgment, are reproduced, as under:-

"15. 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."

16. 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.”

17. 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.

18. 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."

13. At the sake of repetition, it can be held that it is the prerogative of learned trial Court to consider the evidence, placed before it, as such, no relief cannot be given to the petitioner. Consequently, the petition is dismissed.

14. Pending application(s), if any, also stand disposed of.

(Virender Singh)
Judge

26th November, 2025
(Pramod Kumar)