

[Home \(/\)](#) / [High Courts \(/high-court\)](#) / [Orissa High Court \(/high-court/orissa-high-court\)](#) /
"POCSO Act Led To Increase In..."

"POCSO Act Led To Increase In Vindictive Litigation": Orissa High Court Quashes Cases Based On Mutual Settlement, Marriage

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The Orissa High Court has expressed concerns about the misuse of the provisions of the **Protection of Children from Sexual Offences Act, 2012**

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[view_type=browse#:~:text=India%20Code%3A%20Protection%20of%20Children%20fro](https://www.indiacode.nic.in/handle/123456789/2079?view_type=browse#:~:text=India%20Code%3A%20Protection%20of%20Children%20fro) (the POCSO Act), especially by way of prosecution of young males in cases of mutual adolescent romantic relationship.

While allowing a batch of petitions praying to quash criminal proceedings under the stringent legislations, the Single Bench of **Justice Sibo Sankar Mishra** observed–

“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.”

Brief Background & Issue for Consideration

The Court was in seisin over a batch of petitions filed under **Section 482**

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of the CrPC with prayers to quash FIRs and criminal proceedings under the POCSO Act against a number of persons in different cases of sexual intercourse arising out of adolescent romantic relationships or promises of marriage. In all these cases victims were below the age of majority, i.e. 18 years while the alleged offences were committed.

“The growing instances where teenagers were involved in a romantic relationship with each other falls victim to the offences under the POCSO Act is a matter of concern. The teenage romance often turns into cohabiting consensually and the

girl alleges rape due to pressure from the family, fear of the society or when the boy refuses to marry. Since sexual intercourse with a minor is considered “statutory rape”, the criminal case is registered,” it added.

Taking into account the fact that in all the cases, the parties claimed to have settled the disputes between them and they do not intend to pursue the litigation anymore, Justice Mishra formulated the vital question for consideration as to whether the High Court can quash criminal proceedings, particularly in heinous cases like rape, on the basis of mutual settlement between parties.

Power of High Court to Quash Rape Cases On the Basis of Mutual Settlement

The Court noted that as per the provision of **Section 320**

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of the CrPC, compounding of certain offences has been made permissible. It was also underlined that some offences can be compounded between parties *inter se* and some other offences can only be compounded with the permission of the Court.

While discussing about the interplay between the provisions of **Sections 320** and **482** of the CrPC, the Bench referred to the three-Judge Bench decision of the Apex Court in ***Gian Singh v. State of Punjab*** (<https://indiankanoon.org/doc/69949024/>) wherein it was observed:

“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, the top Court had put a note of caution that before exercising 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 quashed even though the victim or victim's family and the offender have settled the dispute, it was clarified.

Decision of Various High Courts on Similar Issues

Considering the above position of law, the Court went on to examine the decisions of different High Courts on similar issues, i.e. cases under the POCSO Act arising out of adolescent consensual romantic and sexual relationships.

The Court noted the observations and decisions of the Delhi High Court in the cases of ***Kapil Gupta v. State of NCT of Delhi & Anr.***

(<https://indiankanoon.org/doc/104388791/>), ***Amar Kumar & Anr. v. The State (Govt. of NCT of Delhi) & Anr., Arjun Kamti v. The State of GNCT of Delhi & Ors.***

(<https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-quashes-pocso-case-parties-married-victim-father-234909>), ***AK v. State Govt. of NCT of Delhi & Anr.***

(https://www.livelaw.in/pdf_upload/1077-xxxx-v-state-govt-of-nct-of-delhi-20-oct-2022-444075.pdf), ***Vijay Kumar v. The State Govt. of NCT of Delhi & Anr.***

(<https://indiankanoon.org/doc/177555603/>) and ***Amit Kumar v. State NCT of Delhi***

([https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/591/judgement/13-12-](https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/591/judgement/13-12-2023/&name=59113122023CRLW16812023_173419.pdf)

[2023/&name=59113122023CRLW16812023_173419.pdf](https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/591/judgement/13-12-2023/&name=59113122023CRLW16812023_173419.pdf)) wherein it was broadly held that the objective behind the enactment of the POCSO Act was not to criminalize adolescent romantic relationships.

It also cited the decision of the Kerala High Court in ***Vishnu v. State of Kerala & Anr.*** (<https://www.livelaw.in/high-court/kerala-high-court/kerala-high-court-sexual-offences-quashing-compromise-with-accused-non-compoundable-teen-relationship-pocso-incest-false-promise-to-marry-rape-229496>)

where the Court laid down broad principles for compounding of sexual offences against women and children upon compromise with accused. Reference was also made to the judgment of the Bombay High Court ***Nauman Suleman Khan v State of***

Maharashtra & Anr. (<https://www.livelaw.in/news-updates/pocso-bombay-high-court-quash-sexual-harassment-fir-pocso-marriage-200946>) wherein the Court quashed an FIR under the POCSO Act for penetrative sexual assault, as the victim girl said that she and the accused were allegedly in love and decided to marry.

The Court also placed reliance on ***Kamal S/o. Subramani v. State represented by The Inspector of Police***, wherein the Madras High Court quashed the proceedings under the POCSO Act as the victim girl stated that she had married the accused and had a child with him. She expressed her desire to not pursue the case further as both families had accepted the marriage and she was living happily with the petitioner. Thus, the Court had held that in the interest of justice, it was apt to quash the case against the accused.

Court's Observations

Justice Mishra then noted that several High Courts have recognized adolescent romantic and sexual relationships to be normal and criminalization thereof is not in consonance with the objective of the POCSO Act.

"If the Court arrived at a conclusion that due to the settlement between the parties, the prosecutrix is likely to depose in favour of the accused or against the prosecution, there is a remote and bleak possibility of conviction and continuation of the legal proceeding shall cause great oppression and prejudice to the accused or the victim and they shall be subjected to extreme injustice, the Court can intervene and quash the proceedings," he further observed.

The Court acknowledged that there has been a rise in romantic relationships wherein one of the parties is below the age of 18 years or both the parties are minor but due to some petty reasons, a case is filed invoking the POCSO Act.

"The aim of the POCSO Act is to protect minors from rapacious sexual offences and sexual violence by predators and criminals but does not aim to criminalize consensual sex of teenagers who have not attained the age of majority. The object

is certainly not to punish teenagers who have not attained the age of majority in romantic or consensual relationship and accused them as offenders under the POCSO Act," it added.

The Bench held that it was never the objective behind enactment of the POCSO Act to prosecute relationships between young people.

"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," the Court emphasized.

In the instant batch of petitions, the Court noted, except one case, in every other case the alleged sexual intercourse has taken place due to consensual relationship and mutual love. Further it observed that the parties have settled the disputes between them and do not intend to pursue the case anymore.

"It can be said that the real life situation of the victims of the POCSO offences have turned out to be in the best interest of the victims and the offences which created impediments for the victims and their families in the societal perspective in the forms of loss of reputation, dignity, diminished chances of marriage for the victim and her kins have been substantially mitigated when the accused married her and started a family had the added effect of reforming the accused and restored the dignity and the chances of normalcy and a good life for the victim and her family."

Therefore, for meeting the ends of justice, the Court deemed it pertinent to quash all the criminal proceedings, except the one where sexual intercourse was found to be non-consensual and forceful.

Case Title: Rojalin Rout & Anr. v. State of Odisha & Anr. and other connected cases

Case No.: CRLMC No. 3460 of 2023 & connected cases

Date of Judgment: April 22, 2024

Citation: 2024 LiveLaw (Ori) 29

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