

Can't Equate Act Of Mutual Love Between Young Boyfriend-Girlfriend To 'Sexual Assault' Under POCSO Act: Meghalaya HC

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While quashing POCSO charges against a minor's partner, the **Meghalaya High Court** has observed that the term 'sexual assault' as per the POCSO Act cannot be attributed to an act where there is mutual love and affection between a young couple (boyfriend and girlfriend).

The observation came from the bench of **Justice W. Diengdoh** while disposing of the plea preferred by the POCSO accused and the mother of the victim on mutual understanding.

The matter came to light when the mother of the minor lodged an FIR before the police officer complaining that her minor daughter was sexually assaulted by petitioner No.1/accused on two occasions.

The incident was allegedly narrated to her by her minor daughter/victim who was found absent from her room by the teacher of the school where she was studying and who had accordingly reported the matter to petitioner No.2.

The police then registered a case under Section 5(I)/6 of the POCSO Act and petitioner No.1 was accordingly arrested and was in custody for about 10 months before he was

released on bail. Now, he along with the mother of the minor victim moved the instant plea seeking quashing of the case.

The minor girl, in her 164 and 161 CrPC statement stated that the accused is her boyfriend and her relationship with him was consensual and of her own free will. The counsel for the petitioners also submitted that this is a case where two teenagers are involved in a romantic relationship and being unaware of the legal restrictions, had indulged in a physical relationship out of their own free will and consent.

It was therefore argued that it is not a case of sexual assault as could be understood from the provisions of the POCSO Act.

Taking note of the facts of the case, the Court, at the outset, noted that in a case of rape or sexual assault, the act not only affects the physical well-being of the victim but would also leave a very deep emotional scar which would require prolonged counseling for the experience and the image to be erased from the mind of the victim.

However, the Court further observed that though the consent of the child is no consent at all, however, in the instant case there was mutual love and affection between the victim-child, and the accused.

"...in a case where there is mutual love and affection between a child and a person which might even lead to a physical relationship, though the consent of the child under the law is immaterial as far as prosecution for an alleged offence of sexual assault is concerned, but considering the peculiar facts and circumstances of a particular case, such as in a case of a boyfriend and girlfriend particularly, if both of them are still very young, the term 'sexual assault' as could be understood under the POCSO Act cannot be attributed to an act where, there is, as pointed above, mutual love and affection between them," the Court remarked as it held that it was in the interest of justice if the case was quashed.

Resultantly, the petition was allowed and petitioner No.1 was set at liberty from any liability in the said criminal case.

Case title - Silvestar Khonglah & Anr. Vs. State of Meghalaya & Anr. [Crl. Petn. No. 45 of 2022]