



CRIMINAL

Minor Victims Cannot Waive Justice: Rajasthan High Court Reaffirms POSCO Protections

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Background and Factual Matrix

On 29 May 2021, a minor girl was allegedly subjected to gang rape and sexual assault by four named individuals Sunil Kumar, Ravi Kumar, Ravindra, and Kundan Lal all residents of Khanpur Mewan, District Alwar, Rajasthan. The petitioner lodged FIR No. 261/2021 at Police Station Kishangarh Bas, District Alwar, registering offences under Sections 323 and 376D of the Indian Penal Code and Sections 5 and 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. During investigation, the petitioner's statements were duly recorded under Section 164 of the Code of Criminal Procedure before the Court of Juvenile Magistrate, Kishangarh Bas, wherein she categorically and specifically named the accused and alleged rape upon her person.

However, the Investigating Officer recorded statements of other witnesses and, on that basis, concluded that no such incident had taken place. Treating the FIR as false, the Police filed a Final Report (Negative) before Special POCSO Court No. 4, Alwar. The Trial Court summoned the petitioner who was at the relevant time residing at the Government Savitri Bai Phule Kanya Chhatrawas, Ambedkar Nagar, Alwar to respond to the Final Report. The minor petitioner submitted a 'no objection,' indicating she did not wish to pursue proceedings. Relying solely on this expression of consent, the Special Judge accepted the Final Report vide order dated 12 November 2021, thereby closing all proceedings against the accused persons.

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The Proceedings Before the High Court

The petitioner challenged the impugned order by way of a criminal miscellaneous petition before the High Court of Judicature for Rajasthan, Bench at Jaipur. The matter was listed for expeditious hearing pursuant to directions issued by the Supreme Court of India in *Vijay Kumar and Ors. v. State of Rajasthan* (SLP (Cr.) No. 773/2026, decided on 15.01.2026), wherein the Apex Court observed that prolonged interim orders in criminal petitions had stalled trials in serious offences including murder, rape, dacoity, and dowry death. High Courts were accordingly directed to take up such long-pending matters on priority.

Submissions of the Parties

Learned counsel for the petitioner, Mr. Santosh Kumar Jain, advanced the submission that the minor victim had consistently and specifically named the accused in the FIR as well as in her Section 164 Cr.P.C. statement. It was contended that the investigation was neither fair nor impartial, and that the consent expressed by the petitioner a minor carried no legal validity. Counsel further argued that the Magistrate was duty-bound to scrutinize the allegations in the FIR and the victim's recorded statement before accepting the Final Report, and that closure of proceedings based solely on the minor's 'no objection' was contrary to law.

The learned Public Prosecutor, Mr. Jitendra Singh Rathore, appearing on behalf of the State of Rajasthan, opposed the petitioner's arguments in form but was unable to substantively controvert the submissions advanced on her behalf.

Legal Analysis and Court's Reasoning

Justice Anoop Kumar Dhand undertook a comprehensive analysis of the legal position governing the rights of minor victims in POCSO proceedings. The Court affirmed the well-settled proposition that where the prosecutrix is a minor below 18 years of age, her consent is entirely immaterial in the eyes of law. Since the POCSO Act is a special legislation and Section 375 Sixthly of the IPC renders the consent of a minor prosecutrix legally irrelevant to the question of commission of the offence, the prosecution under Sections 5 and 6 of the Act of 2012 cannot be quashed merely on the ground that the victim subsequently agrees not to

pursue proceedings. The Court held that consent, once immaterial for the registration of the offence, remains immaterial at every subsequent stage of the proceeding.

The Court further observed that the Trial Court had erred in summoning the minor victim herself to respond to the negative final report. It held that it would have been far more appropriate for the Special Judge to summon the parents or guardian of the minor petitioner to represent her interests. The Court emphasised that minors lack the legal capacity and maturity to fully comprehend the consequences of withdrawing from criminal proceedings, and that any such statement of closure by a minor ought to be subjected to close judicial scrutiny. Additionally, the Court underscored that under Section 40 of the POCSO Act, every minor victim has an indefeasible right to legal assistance. In the present case, no such assistance was provided to the petitioner before her consent was acted upon, rendering the impugned order legally unsustainable.

Precedents Relied Upon

The Court placed significant reliance on the Supreme Court's authoritative pronouncement in *State of Madhya Pradesh v. Madanlal*, (2015) 7 SCC 681, wherein the Apex Court emphatically held that in cases of rape or attempt to rape, any conception of compromise or settlement is wholly impermissible. The Supreme Court had declared that rape is a crime against the very body and dignity of a woman, and that courts must remain absolutely removed from any subterfuge that may lead them to adopt a soft approach in such matters. The High Court also drew upon the Supreme Court's observations in *Shyam Narain v. State (NCT of Delhi)*, (2013) 7 SCC 77, which affirmed that the thought of sullyng a woman's physical frame constitutes the demolition of the fundamental civilised norm of physical morality.

Final Decision

The High Court quashed and set aside the impugned order dated 12 November 2021 passed by the Special Judge, POCSO Court No. 4, Alwar. The matter was remitted to the Trial Court with specific directions to summon the parents or guardian of the minor victim and to afford them an opportunity to file a protest petition if they deemed fit. The Trial Court was further directed to pass appropriate orders strictly in accordance with law, on the basis of the evidence and material on record. Importantly, the Court directed that legal assistance be provided to the petitioner and her parents or guardian through the District Legal Services Authority, in the event they were not already represented by counsel. This judgment serves as a critical reminder that the legal protection afforded to minor victims under the POCSO Act is absolute and cannot be circumvented by the minor's own expressions of disengagement from the proceedings. Courts are statutorily obligated to look beyond surface-level consent in matters involving the safety, dignity, and justice of child victims.

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