

(2019) 11 MP CK 0101

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 32797 Of 2019

Ku.Taneesha Sondhiya And Another

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 15-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 320(1), 320(2), 320(3), 320(4), 482
Indian Penal Code, 1860 — Section 354
Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 7, 8

Citation : (2019) 11 MP CK 0101

Hon'ble Judges : Vishnu Pratap Singh Chauhan, J

Bench : Single Bench

Advocate : S.K. Sahu, Vishal Yadav

Final Decision : Dismissed

Judgement

1. Both the applicants have filed this petition under Section 482 of the Code of Criminal Procedure being aggrieved by the order dated 12/06/2019 passed by the Special Judge, Jabalpur in Special Case No.189/2018 whereby dismissing the application filed by both the applicants under Sections 320(1), 320(2), 320(3) of the Code of Criminal Procedure.

2. The facts giving rise to this petition, in short, are that in Special Case No.189/2018 applicant No.2 arraigned as an accused on the report of prosecutrix who is applicant No.1 herein. Applicant No.1 lodged FIR against applicant No.1 which was registered as Crime No.575/2018 at Police Station, Ranjhi for the offences punishable under Section 354 of IPC and Section 7 read with 8 of Prevention of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act'). After investigation charge sheet came to be filed before the Special Court registered as Special Case No.189/2018. At the time of incident, prosecutrix was 12 years old.

3. During trial, prosecutrix i.e. applicant No.1 has been examined on 22/04/2019. After completing chief-examination of prosecutrix, applicant No.2

did not cross-examine prosecutrix and sought time for cross-examination of the prosecutrix. Learned Special Court allowed the prayer and deferred the cross-examination of the prosecutrix. Applicant No.2 not examined prosecutrix on the next date of hearing, but on 11/6/2019 filed an application before the trial Court under Sections 320 and 320(4) of Cr.P.C. contending before trial Court that prosecutrix and her mother settled the matter with applicant No.2, therefore, prayed to permit for compounding the offences and also prayed for closing the criminal case.

4. Learned trial Court vide impugned order dated 12/06/2019 dismissed all the applications on the ground that the offences in which applicant No.2 is being tried, are not compoundable.

5. The applicants have filed this petition on the ground that since both the parties entered into compromise, therefore, there is no dispute left between the parties. Learned trial Court should have allowed the compromise application and closed the trial against the applicant No.2. Both the applicants have filed affidavit in support of the contents made in the petition, therefore, prays for granting permission for compromise in the matter.

6. After hearing learned counsel for the parties, this Court is of the view that in this petition prosecutrix and her guardians appeared. Prosecutrix and applicant No.2 prayed for granting permission for compounding the offences in the pending Special Case No.189/2018.

7. Under Section 320 of Cr.P.C., there is a table in which offences have been mentioned in column which are permitted to be compounded without or with permission of the Court. Applicant No.2 has been charged for the offences punishable under Section 354 of IPC as well as under Section 7 read with Section 8 of POCSO Act. Section 354 of IPC has not been included in the table after amendment in the Code of Criminal Procedure w.e.f. 31/12/2009. The date of incident was 25/09/2018, hence at that time this offence was not compoundable with or without permission of the Court. Offence under Section 7 read with Section 8 of POCSO Act is also not compoundable. When the offences are not compoundable, neither the trial Court nor this Court can permit both the applicants for compounding the offences either under Section 320 or under any other section.

8. If there is clear cut law which is in force at the time of committing the offence, the Court is expected to obey that law. The Court cannot go against the law, therefore, cannot grant any relief which is directly prohibited by the law. On the basis of forgoing discussions and proposition of law, this Court finds that learned trial Court has not committed any error in not allowing the applicants to compound the offence in which applicant No.2 is being tried. In this petition both the applicants seek relief to grant permission for compounding offence which cannot be allowed.

9. Accordingly, this petition is devoid of merit and the same is hereby dismissed.