

Shri Shivaraj S/O Basavaraj Madiwalar vs The State Of Karnataka on 20 January, 2025

Author: Hemant Chandangoudar

Bench: Hemant Chandangoudar

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NC: 20
CRL.P No. 100

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 20TH DAY OF JANUARY, 2025
BEFORE
THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDA
CRIMINAL PETITION NO. 100117 OF 2025 (482(Cr.PC

BETWEEN:

SHRI. SHIVARAJ S/O. BASAVARAJ MADIWALAR
AGE. 30 YEARS, OCC. COOLIE,
R/O. HAGANUR, TQ. HUVINHADAGALI,
DIST. VIJAYANAGAR-583216.

(BY SRI. S.M.MUCHHANDI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THE POLICE INSPECTOR NIPPANI
RURAL POLICE STATION, TALUK. NIPPANI,
DISTRICT. BELAGAVI-591237,
REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
HIGH COURT OF KARNATAKA
AT. DHARWAD BENCH-580011.

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Location: HIGH
COURT OF

KARNATAKA
DHARWAD BENCH

2. SMT. KALLAVVA W/O. RAMA MAMADAPURE
(MOTHER OF VICTIM), AGE. 32 YEARS,

Date: 2025.01.22
15:00:42 +0530

OCC. HOUSEWIFE, R/O. KURUBARGALLI,
AKKOLA VILLAGE, TQ. NIPPANI,
DIST. BELAGAVI-591211.

3. SMT. SAMPADA W/O. SHIVARAJ MADIWALAR
AGE. 14 YEARS, R/O. HAGANURU VILLAGE,
TQ. HUVINAHADAGALI,
DIST. VIJAYANAGAR-583216.

...RE

(BY SRI. ASHOK T.KATTIMANI, ADDL. GOVT. ADVOCATE
SRI. MAHANTESH S.HIREMATH, ADVOCATE FOR R2 AND R

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CRL.P No. 100117 of 2025

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C. (528
OF BNSS), PRAYING TO, CALL FOR RECORDS IN SPL.CASE
NO.83/2023 PENDING ON THE FILE OF ADDL.DISTRICT JUDGE,
FTSC-I, BELAGAVI, AT BELAGAVI, AND TO ALLOW THE PETITION
FILED BY THIS PETITIONER/ACCUSED BY QUASHING THE ENTIRE
CHARGE SHEET FILED IN SPL.CASE NO.83/2023 NIPPANI RURAL
P.S. CRIME NO.99/2020 U/S 363, 366, 366(A), 376(1), 376(2) (h),
376(2)(i), 376(2)(o), 344, 506 OF IPC AND SECTION 4 AND 6 OF
POCSO ACT PENDING TRIAL ON THE FILE OF HON'BLE
ADDL.DISTRICT AND SESSIONS JUDGE FTSC-I, BELAGAVI, AT
BELAGAVI.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

ORAL ORDER

The petitioner-accused, who is charge sheeted for the offences punishable under Sections 363, 366, 366(A), 376(1), 376(2)(h), 376(2)(i), 376(2)(o), 344, 506 of IPC and Sections 4, and 6 of POCSO Act, 2012, is before this Court.

2. The case of the prosecution is that, a missing complaint was filed by the mother of the survivor, and during the course of investigation, the survivor was traced on 25.01.2023 and her statement was recorded, wherein, it is alleged that, she met the petitioner in the fields of Davanagere when they were grazing the sheep. Later, the survivor came to Akkol village and the petitioner came to Akkol Village and called her over phone at 11.45 p.m. The survivor went along with the petitioner and both were started living together and the petitioner committed forcible sexual intercourse for about two years and she became pregnant due to the sexual intercourse.

NC: 2025:KHC-D:837 The petitioner-accused was aged about 23 years and the survivor was aged about 17 years as of the date of the incident.

3. The petitioner-accused, the survivor and her mother are present before this Court and they have filed a joint affidavit stating that the marriage of the petitioner-accused with the survivor was solemnized on 17.9.2024 and the same was registered before the jurisdictional Sub-Registrar. It is further stated, from the sexual intercourse, a female child was born on 8.5.2023.

4. The complainant and the survivor, who are present before this Court, have no objection for quashing the proceedings.

5. The learned Additional Government for the respondent-State submitted that the offences alleged against the petitioner is heinous and crime against the survivor, and therefore the same cannot be compounded.

6. In identical circumstances, the High Court of Rajasthan, in the case of Tarun Vaishnav -vs- State of Rajasthan, at paras 18 and 19 has held as follows:

"18. This Court feels that it is a fit case to exercise its inherent powers under Section 482 of the Code for quashing the FIR to secure the ends of justice, because:-

(i) an adolescent girl of tender age (16 years) has fallen in love with a boy of 22 years;

(ii) both being immature, apparently driven by momentary emotions have fallen prey to lust, surpassing social, moral and legal limits;

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(iii) the complainant is the police and the girl or her family are neither aggrieved party nor complainant;

(iv) the girl has been consistent in her stand that she consented to the physical relationship. Not only in her statements under Section 161 and Section 164 of the Code but also before this Court, the girl unequivocally accepted that she had consented to the act;

(v) their fornication though may be without legal and moral sanction, has resulted in child birth;

(vi) parents of both - the girl and the boy having forgiven their respective children for their felony, intend to tie them in nuptial knot, when the prosecutrix attains marriageable age;

(vii) if the prosecution continues, the petitioner is sure to face conviction, as the girl is minor. The conviction will result in 10 years of incarceration which would bring more agony and misery to the girl and her newly born son, rather than securing justice;

(viii) and also because, the basic ingredients of retributive theory of punishment -"avenge for the person wronged" is completely absent.

19. Faced with such situation and upon appraisal of the overall circumstances, as an exceptional case, this Court is persuaded to allow the petition, as prayed. The impugned FIR No.0260/2022 registered at Police Station Devnagar, Jodhpur City (West) against the petitioner, is hereby, quashed not only on the basis of compromise, but also for the reasons mentioned hereinabove and what has transpired during the course of hearing."

6. The judgment of the High Court of Rajasthan was taken up in an appeal, and the Hon'ble Supreme Court has confirmed the decision of the High Court of Rajasthan in SLP (Crl.) No. 1890/2023 dated 3.3.2023.

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7. Though the survivor was the minor as on the date of incident, however, having regard to the fact that, the marriage of the survivor with the accused having been solemnized, and the survivor is aged more than 18 years as on the date of the marriage, if the petitioner-accused is subjected to trial it would result in incarceration of the petitioner accused resulting in causing misery and agony to the survivor rather than securing justice. Therefore, the continuation of the criminal proceedings will be an abuse of process of law. Accordingly, I pass the following:

ORDER

i) The petition stands allowed.

ii) The impugned proceedings in Spl.Case No.83/2023 pending on the file of the learned Addl. District Judge, FTSC-I Belagavi, is hereby quashed.

Sd/-

(HEMANT CHANDANGOUDAR) JUDGE HR Ct:vh