

**Case Commentary: K DHANDAPANI VERSUS THE STATE BY THE INSPECTOR OF POLICE**

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**Abstract**

The Protection of Children from Sexual Offences Act, 2012 commonly known as POCSO Act is a comprehensive law to provide protection for children from the offences of sexual

assault, sexual harassment and pornography, while including child-friendly systems for reporting, recording of evidence, investigation, and swift trial of offences through designated Special Courts, which protect the interests of the child at every level of the legal process. Lack of strict regulations and insufficient provisions in Indian Penal Code for dealing with and prosecuting for severe crimes like child sexual abuse and exploitation. The court has exercised its authority under Article 142 to protect citizens' rights and maintain constitutional principles whenever the government or legislature has failed to do so. This paper is aimed to examine the Supreme Court's recent order under Article 142 in the case of K DHANDAPANI V. THE STATE BY THE INSPECTOR OF POLICE.

**Keywords:** Supreme Court, Sexual Assault, POCSO act, Children.

<b>Case Title</b>	K DHANDAPANI V. THE STATE BY THE INSPECTOR OF POLICE
<b>Case No</b>	CRIMINAL APPEAL NO.796 OF 2022
<b>Date Of The Order</b>	09-05-2022
<b>Jurisdiction</b>	Supreme Court of India
<b>Quorum</b>	Hon'ble Mr. Justice L. Nageswara rao, Hon'ble Mr. Justice B.R. Gavai
<b>Author Of The Judgment</b>	Both Hon'ble Justices
<b>Appellant</b>	K. Dhandapani
<b>Respondent</b>	The State by the Inspector of Police
<b>Counsel For Appellant</b>	Advocate M.P.Parthiban
<b>Counsel For Respondent</b>	Advocate (Dr) Joseph Aristotle
<b>Acts And Section Involved</b>	I. Indian Constitution, 1950 <ul style="list-style-type: none"> <li>• Article 142</li> </ul> II. Protection of Child from Sexual Offences (POCSO) Act, 2012;

	<ul style="list-style-type: none"> <li>• Sec. 5 (i),</li> <li>• Sec. 5 (j) (ii)</li> <li>• Sec. 5 (n)</li> <li>• Sec. 6</li> </ul>
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## I. Introduction

The Supreme Court's former judge Justice L. Nageswara Rao had represented the law in both real and reel lives. The Hon'ble Mr. Justice L. Nageswara rao is a gem of the Supreme Court. As a judge, he quashed the quota for Marathas; held that forcible vaccination is a violation of the right to privacy; trashed electioneering in the name of religion, race, caste, community or language. Before his retirement, Justice Rao gave two important judgments, back-to-back, the extraordinary powers of the court under Article 142 to do complete justice. One, the order to release of Rajiv Gandhi assassination convict A.G. Perarivalan, and the other to release the POCSO convict Dhandapani in the case of K Dhandapani V. The State By The Inspector Of Police. In this paper, we are going to analyse and discuss this verdict.

## II. FACTS OF THE CASE

The appellant, a woodcutter works on daily wages in a private factory. He who is the maternal uncle of the prosecutrix, was registered FIR for committing rape under Sections 5(j)(ii) read with Section 6, 5(I) read with Section 6 and 5(n) read with Section 6 of Protection of Child from Sexual Offences (POCSO) Act, 2012. He was convicted after trial for committing the said offences and sentenced to undergo rigorous imprisonment for a period of 10 years by the Sessions Judge, Fast Track Mahila Court, Tiruppur on 31.10.2018. The High Court, by an order dated 13.02.2019, upheld the conviction and sentence. Aggrieved thereby, the appellant has filed this appeal.

## III. ARGUMENTS FAVOUR OF APPELLANT:

- A. The appellant claimed that the prosecutrix and he were married and they have two children. (accepted by court)
- B. The appellant submitted that upholding the conviction could not be in the interest of justice and it would disturb the family life of the appellant and the prosecutrix (not accepted)

## IV. ARGUMENTS FAVOUR OF RESPONDENT:

- A. The marriage between the appellant and the prosecutrix is not legal. The prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. (Accepted by court. However, an alternative order was provided)
- The marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

## V. ORDER OF THE COURT:

- A. **This Order shall not be treated as a precedent.**
- B. The prosecutrix has categorically stated that she has two children and they are being taken care of by the appellant and she is leading a happy married life in the record of statement.

- C. The court ordered to set aside the conviction and sentence of the appellant who is maternal uncle of the prosecutrix. **The Court stated that it cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix when there has been the custom in Tamilnadu of the marriage of a girl with the maternal uncle.**
- D. The Court also stated the conviction and sentence of the appellant is set aside in the peculiar facts of the case and shall not be treated as a precedent.

## VI. CONCLUSION

Society is not only changing but also evolving. We need to run with a secure society. Although Indian society has long been a conservative society, in the recent times through the several judgments it adapts its traditional changes, but from this verdict the court allowing the appellants claims due to the concern of that married woman. At the end, maximum of the child marriages are done with the child's inappropriate consent. In the concern of the child's happy we can't decide it is a correct way. This verdict may create a pendulum between the happily living child marriage victims and the protector of the Human Rights.

## VII. Related Case Laws

1. Skhemborlang Suting & Anr. v. State of Meghalaya & Anr. (HC Meghalaya - Criminal Petition No. 63 of 2021)
2. Adelbert Marbaniang & Anr. Vs. State of Meghalaya & Ors. (2022 LiveLaw (Meg) 32)
3. Ranjit Rajbanshi vs The State Of West Bengal And Others, (HC Calcutta - C.R.A. No.458 of 2018)
4. Aman vs The State Of Madhya Pradesh, (HC Madhya Pradesh - MCRC No. 56905 of 2021)
5. Shri. Adelbert Marbaniang & Anr. vs . State Of Meghalaya & Ors., (HC Meghalaya - Criminal Petition No. 31 of 2022)

## REFERENCE

1. Mamta Rao, Law relating to Women & Children, 4th Edition 2018, ISBN: 9789351455547.
2. Kumar Askand Pandey, B.M. Gandhi's Indian Penal Code, Edition: 4th, 2017, ISBN: 9788194284888.
3. Belur Jyoti, Singh Brijesh Bahadur , December 2015, Child Sexual Abuse and Law in India, Crime Science –An Interdisciplinary Journal.
4. Surbhi Garg, THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES: A CRITICAL ANALYSIS, JOURNAL OF LEGAL STUDIES AND RESEARCH, Vol. 4 Issue 4 (2018), p. 402.