

HIGH COURT OF KERALA**Bench: Justice K. Babu****Date of Decision: 27th May 2024**

CRL.MC NO. 682 OF 2023

Chandra Mouli ...Petitioner**VERSUS****State of Kerala ...Respondent****Legislation:**

Section 354-A(1)(i) of the Indian Penal Code (IPC)

Sections 7, 8, 9(o), and 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act)

Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015

Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Section 164 of the Code of Criminal Procedure (Cr.P.C.)

Section 207 of the Cr.P.C.

Section 31 of the POCSO Act

Section 228-A of the IPC

Section 23 and 33(7) of the POCSO Act

Sections 66 and 67 of the Information Technology Act, 2000

Section 74 of the Juvenile Justice Act

Subject: Challenge to the order of the Fast Track Special Court (POCSO), Thrissur, which directed the petitioner to file an affidavit stating that the copy of the victim's statement recorded under Section 164 Cr.P.C. will not be misused.

Headnotes:

Criminal Law – Right to Access Documents under CrPC and POCSO Act – Affidavit Requirement by Special Judge – Held Unwarranted – Accused's Right to Certified Copies Upheld – The High Court of Kerala quashed the order of the Special Judge directing the petitioner's counsel to file an affidavit stating that the copy of the statement recorded under Section 164 CrPC would not be misused. The Court held that the accused has a statutory right under Section 207 CrPC to access relevant documents, including statements recorded under Section 164 CrPC, without such conditions, as the statutory provisions and Supreme Court directives sufficiently safeguard the interests of victims. [Paras 1-14].

Constitutional Law – Right to Practice Profession – Protection of Legal Practitioners' Duties – The High Court emphasized that imposing conditions

on lawyers without any foundation is an interference in their right to practice, which is protected under Article 19(1)(g) of the Constitution and governed by the Advocates' Act. The Court held that lawyers, as officers of the court, are expected to perform their duties legally and ethically, and unnecessary apprehensions should not lead to imposing unwarranted conditions. [Paras 13-14].

Evidence Evaluation – Safeguards Against Misuse of Victim's Statements – Adequacy of Existing Legal Provisions – The Court noted that various statutory provisions, including Section 228-A IPC, Sections 23 and 33(7) of the POCSO Act, and the IT Act, along with Supreme Court directives in cases like Sakshi v. Union of India and Nipun Saxena v. Union of India, provide adequate protection against the misuse of victims' statements and identity disclosure. Therefore, additional affidavits were deemed unnecessary. [Paras 4-12].

Decision – Quashing of Special Judge's Order – Directive for Issuance of Certified Copies – The Court directed the Special Judge to issue certified copies of the statements recorded under Section 164 CrPC to the petitioner forthwith, reaffirming the accused's right to these documents under Section 207 CrPC and Section 31 of the POCSO Act. [Para 14].

Referred Cases:

- Sakshi v. Union of India (2004) 5 SCC 518
- Nipun Saxena and Another v. Union of India and Others (2019) 2 SCC 703

Representing Advocates:**Renjith B. Marar for the petitioner****M.K. Pushpalatha for the respondents**
.....**ORDER**

The challenge in this CrI.M.C. is to the proceedings dated 29.9.2022 of the Fast Track Special Court (POCSO), Thrissur in CrI.M.P.No.477/2022 in S.C.No.358/2022. The petitioner is alleged to have committed offences punishable under Section 354-A(1)(i) of the Indian Penal Code, Sections 7, 8, 9(o) & 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned counsel who appeared for the petitioner in the trial court on 28.9.2022 submitted an application seeking certified copy of the statement of the victim recorded under Section 164 Cr.P.C. On the application, the learned Special Judge passed the following:-

“Petitioner is directed to file affidavit stating that copy of the statement will not be misused.” This proceeding is under challenge.

2. I have heard the learned counsel for the petitioner Sri.Renjith B Marar and the learned Public Prosecutor.
3. The learned counsel for the petitioner submitted that the petitioner has a statutory right under Section 207 Cr.P.C. to get free of cost documents which include the statement recorded under Section 164 Cr.P.C. or any other relevant document. The learned counsel submitted that as per Section 31 of

the POCSO Act, the provisions of Cr.P.C. shall apply to the proceedings before a Special Court except as provided in the POCSO Act. The learned counsel submitted that the right of the accused to receive all the relevant documents under Section 207 Cr.P.C. is still intact and therefore, the court below was bound to provide the petitioner the copy of the statements recorded under Section 164 Cr.P.C. The learned counsel further submitted that the impugned proceedings directing the counsel for the petitioner to file an affidavit stating that he will not misuse the statements recorded under Section 164 Cr.P.C. is an act of imposing onerous and illegal conditions on the petitioner as well as on his counsel.

4. The learned counsel for the petitioner, relying on the relevant provisions in the various statutes and the decisions of the Supreme Court in **Sakshi v. Union of India** [(2004) 5 SCC 518] and **Nipun Saxena and Another v. Union of India and Others** [(2019) 2 SCC 703], submitted that the three pillars of the Constitution have taken all safeguards to protect the interests of the victims of sexual offences. The learned counsel submitted that the relevant provisions in the statutes ensure that the identity of the child or the victim is not disclosed at any time during the course of investigation or trial. It is further submitted that the disclosure of identity of the victims of sexual offences is punishable under various penal provisions in the relevant statutes.
5. The learned counsel brought to my notice Section 228-A of the Indian Penal Code, Sections 23 and 33(7) of the Protection of Children from Sexual Offences Act, Section 65 of the Information Technology Act, 2000 and Chapter V of the Advocates Act, 1961.
6. In **Sakshi** (supra), the Supreme Court issued the following directions:-

“34. The writ petition is accordingly disposed of with the following directions:

(1) The provisions of sub-section (2) of Section 327 CrPC shall, in addition to the offences mentioned in the sub-section, also apply in inquiry or trial of offences under Sections 354 and 377 IPC.

(2) In holding trial of child sex abuse or rape:

(i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;

(ii) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

These directions are in addition to those given in *State of Punjab v. Gurmit Singh* [(1996) 2 SCC 384 : 1996 SCC (Cri) 316].”

7. In **Nipun Saxena** (supra), the Supreme Court issued the following directions:-

“50. In view of the aforesaid discussion, we issue the following directions:

50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

50.2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorisation of the next of kin, unless circumstances justifying the

disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.

50.3. FIRs relating to offences under Sections 376, 376-A, 376AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E IPC and the offences under P_{ocso} shall not be put in the public domain.

50.4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.

50.5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.

50.6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.

50.7. An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228-A(2)(c) IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228A(1)(c) and lays down criteria as per our directions for identifying such social welfare institutions or organisations.

50.8. In case of minor victims under P_{ocso}, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

50.9. All the States/Union Territories are requested to set up atleast one “One-Stop Centre” in every district within one year from today.”

8. As per Section 228-A of IPC, whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376 is alleged or found to have been committed shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. Under Section 228-A, disclosure of identity of the victim is permitted only under certain special circumstances provided therein. Section 23(1) of the POCSO Act prevents the media in making any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information which may have the effect of lowering his reputation or infringing upon his privacy. The Section further prevents from disclosing the identity of a child including his name, address and photograph, family details, neighbourhood or any other particulars which may lead to the disclosure of identity of the child. As per the said provision, the disclosure of identity is allowed only when the Special Court competent to try the case under the Act permits to do so.

9. As per sub-section (7) of Section 33 of the POCSO Act the Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial.

10. Sections 66 and 67 of the Information Technology Act,2000 make publishing or transmitting obscene materials or sexually

explicit materials or evidently doing any act violating the privacy of an individual punishable. Section 74 of the Juvenile Justice Act also prohibit disclosure of identity of children.

11. Relying on the above referred statutory provisions and the directions issued by the Supreme Court in **Nipun Saxena** and **Sakhi** (supra) the learned counsel submitted that the interests of the victims of sexual offences are taken care of by the judiciary, executive and legislature. The learned counsel, relying on the proviso to Section 126 of the Indian Evidence Act submitted that the protection given to the legal professionals is not extended to any communication made in furtherance of any illegal purpose. Chapter V of the Advocates' Act authorises Bar Council to proceed against the lawyers for misconduct in any form.

12. The sum and substance of the arguments of the learned counsel is that compelling the accused/lawyer to submit an affidavit stating that copy of the statement of the victim recorded under Section 164 Cr.P.C. will not be misused is unwarranted as a misuse of the same by any person, including the lawyer concerned, is taken care of by the statutory provisions and the directions issued by the Supreme Court. I am in complete agreement with the submission of the learned counsel for the petitioner.

13. A lawyer appearing for a party in a proceeding is an officer of the Court. He is always expected to discharge his duties and responsibilities legally. A Court is not expected to form an apprehension without any foundation that the lawyer may do some illegal acts during the course of his profession. Issuing any proceedings or directions by any court of law without any foundation on the apprehension that the lawyer may do some acts illegally is an interference in the right to practice. The profession of law by a lawyer is enshrined in Article 19(1)(g) of the Constitution of India

and governed by the Advocates' Act. Hence, I hold that the proceedings dated 29.9.2022 issued by the Special Judge directing the petitioner/lawyer concerned to file an affidavit stating that the copy of the statement recorded under Section 164 Cr.P.C. will not be misused was unwarranted and therefore the same stands quashed. I make it clear that there is not even a need to insist for such an affidavit by the accused himself.

14. I have no doubt that the petitioner is entitled to certified copies of the statements recorded under Section 164 Cr.P.C. under Section 207 Cr.P.C. read with Section 31 of the POCSO Act. The Special Judge is therefore directed to issue certified copies of the statements of the victim recorded under Section 164 Cr.P.C. forthwith.

The CrI.M.C. is disposed of as above.

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