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Case Comment: In Re: Right to Privacy of Adolescent

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INTRODUCTION

The case of **In Re: Right to Privacy of Adolescents** is a Suo Motu case by Article 32 of the Indian constitution taken under the Directions of the Chief Justice of India along with an appeal preferred by the State of West Bengal, against the judgment passed by the Calcutta High Court in the Criminal Appeal Case of **Probhat Purkait @ Provat v State of West Bengal**¹ in which the accused was proven guilty and convicted by a Special Judge appointed under the POCSO Act. This appeal case attracted the importance and caution of the apex court because of the impugned judgment Delivered by the division bench, in which the court used its plenary powers to quash the petition and acquitted the accused. The problem arises with the mode of usage of plenary powers that makes it arbitrary. This analysis will reveal the contention of the Supreme Court regarding this judgment and the core of the excessive usage of powers of the High Court.

¹ *Probhat Purkait @ Provat v State of West Bengal* (2023) 1 HCC 626

OUTLINE OF CASE

Case Name: IN RE; RIGHT TO PRIVACY OF ADOLESCENT² {PROBHAT PURKAIT @ PROVAT v STATE OF WEST BENGAL}

Case No: SUO MOTU WRIT PETITION (CIVIL) NO.3 OF 2023 With CRIMINAL APPEAL NO: 1451 OF 2024

Bench: JUSTICE ABHAY S. OKA, JUSTICE UJJAL BHUYAN. JJ

Citation: [2024] 8 S.C.R 575; 2024 INSC 614

Judgement Date: 20TH AUGUST 2024

Statutes Involved: POCSO ACT,2012, JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015, INDIAN CONSTITUTION,1950, INDIAN PENAL CODE,1860

Case Laws Cited: GIAN SINGH V STATE OF PUNJAB & ANR³

FACTS

In this case, a 14-year-old girl escaped from her house and eloped with a 25-year-old man. After the mother of the victim tried to convince her to return home, on 29th May 2018, the mother of the victim filed a complaint, and an FIR was lodged. There was an adverse delay in the investigation and the man was arrested on 19th December 2021. Eventually, the victim gets pregnant and gives birth to a female baby due to penetrative sexual intercourse with the accused. Penetrative Sexual Assault on a minor girl by an adult man with or without consent will automatically attract the provisions of rape under IPC. The charge sheet was framed, and the accused was convicted by the special judge appointed under the POCSO Act by the District Court, Bharatpur, for the offences under Section 363,366,376(2)(n),376(3) of IPC and Section 6 of the POCSO Act. As per the conviction, the accused was sentenced to 20 years of imprisonment under section 6 of the POCSO act and 4 and 5 years, respectively, for kidnapping and abduction under 363 & 366 of IPC. No separate punishment was imposed for rape against a child under 18 years of age. After 4 years, in 2023, a divisional bench of Calcutta High Court heard the appeal in this

² *In Re: Right to Privacy of Adolescents* (2024) 8 SCR 575

³ *Gian Singh v State of Punjab and Anr* (2012) 8 SCR 753

case. The court acquitted the accused on 18th October 2023. The court acquitted the accused from the charges under sections 363 and 366 of IPC as there is no evidence to support this charge and held that the offence was not made out. The court made irrelevant statements and contended that it was a consensual non-exploitative sexual act arising in a romantic relationship. The court made a victim shaming and stereotyping judgment in this case as to the young girls to control their sexual urges and maintain the duty to protect their dignity of body⁴. The court also stated that POCSO should be amended to exclude consensual relationships. Using the powers of the high court under article 226, read with section 482 of CRPC, the court quashed the FIR against the accused and acquitted him by setting aside the conviction. After this controversial judgment was passed on 7th December 2023, the Supreme Court took *Suo Motu* out of the case, following the directions of CJI, for the challenge.

ISSUES

1. What are the essentials in a judgment for an appeal against the order of conviction?
2. Can an offence tried under POCSO be termed a romantic relationship?
3. Whether the judgment may contain the personal opinion of judges in a particular case.
4. Whether the high court can exercise excessive powers to quash the conviction on grounds of settlement for heinous offences like rape.

HIGH COURT'S REASONS

The High Court made reasons for the acquittal of the accused, as this was a consensual, non-exploitative sexual relationship between the accused and the victim. As the accused was in jail, the victim was abandoned by her mother, and there was no means of living for the victim. Also, in the cross-examination, the victim agreed to stay with the accused. The court figures out a non-existing category of non-exploitative consensual sex⁵ while dealing with the offence of rape under the POCSO Act. It shall be noted that sexual intercourse with a minor irrespective of consent given, shall be construed as Rape, and it will attract penal provisions, especially guilty under the

⁴ 'In Re: Right to Privacy of Adolescents' (*Drishti Judiciary*, 22 August 2024) <<https://www.drishtijudiciary.com/current-affairs/In-re-right-to-privacy-of-adolescents>> accessed 11 November 2024

⁵ *In Re: Right to privacy of Adolescents* (2024) 8 SCR 575

POCSO act. The court also supported the claim of the accused by stating that as this happened in the rural area, they were unaware of the implications of child marriage and sexual intercourse with minors. But it is to be noted that ***Ignorance of Law is No Excuse***. It is an impact of the failure of the state's duty to provide care & protection to the victim by way of the Child Welfare Commission under **The Juvenile Justice (Care & Protection) Act**. Here the court failed to do its duty to recommend the CWC to take care of the victim. But the court acted so ignorant and abandoned the victim's rights. The court has to ensure the rights of the victims to protect them from injustice.

USAGE OF EXCESSIVE POWER

The court by way of using its plenary powers under Section 482 of CRPC read with Article 226, quashed the FIR against the accused and set aside the district court's order of conviction. This is an inherent power vested with the high court to quash the FIR when parties agree to console by way of settlement. But the question is whether it can be used for charges involving heinous crimes and prove guilt. The answer is the high court cannot acquit the accused by exercising its power when the guilt was proven, especially in rape cases. In the case of ***Gian Singh v State of Punjab & Anr***, it was held that "while using this plenary powers to quash the criminal petitions it shall be a non-compoundable offence and it is done to restore peace between the victim and accused. At the same time, in respect of offences like Murder, Rape, Dacoity etc...⁶ under IPC or offence of Moral Turpitude under Special Statutes can have no legal sanction at all". Hence, the high court cannot quash the petition, and its activities were made by using excessive powers.

STATE'S FAILURE

It is the responsibility of the state to take care of the victims of sexual assault and to ensure their dignified right to life guaranteed under Article 21 of the Indian constitution. Article 21 ensures the fundamental right to life and dignity here; both the minor who is the victim of sexual assault and the minor child born to the victim have been deprived of the right to a healthy and dignified life. Therefore, both of them were entitled to rehabilitation benefits under The Juvenile Justice (Care & Protection) Act, which is consistent with Article 21 of the Indian constitution. As per

⁶ *Gian Singh v State of Punjab and Anr* (2012) 8 SCR 753

section 19 of the POCSO act, when a sexual assault against a minor happens, it shall be informed to the Special Juvenile Police Unit or the local police, and a report to be made regarding the incident. It shall be the duty of such authority to make the necessary arrangements for the care & protection of the victim by admitting them to a shelter home within 24 hours of information received⁷. It shall be reported to the Child Welfare Commission and Special Court or nearest Session Court regarding the incident. Based on the report submitted, the CWC shall take cognizance of the offence and conduct an inquiry, ensuring the care and protection of the victims under section 30 of the JJ Act. The JJ act also provides for the power of inquiry, rehabilitation and social reintegration of victims and also a care mechanism for the victim once she leaves the home. It is mandated for the authorities under section 31 of the JJ Act to produce the victim before the CWC within 24 hours of information received. The CWC, under section 36 of the JJ Act, has the power to conduct inquiries regarding the incident. The children in need of care and protection shall reside in homes for rehabilitation and social reintegration. In this case, base-level action under section 19 of POCSO itself was not implemented. The investigation was not made properly, and there exists an adverse delay, which led to the non-enforcement of the rights of the victim.

JUDGEMENT

The honourable Supreme Court passed judgment on 20th August 2024 as the accused was guilty of an offence punishable under section 6 of the POCSO act and under 376(2)(n), 376(3) of IPC. The court held that the accused was acquitted of charges⁸ under sections 363 & 366 of IPC. Therefore, the court ordered to set aside the high court's acquittal and restored the district court's conviction. The court ordered the state government to set up an expert committee and appoint a Child Welfare Officer to assist the committee. The committee, within a week of formation, shall submit the details of the benefit which it is willing to provide for the victim. The committee shall meet the victim and communicate the offers of the state government. It shall be the duty of the committee to help the victim with her rights and whether she wants to reside with the accused and his family or to avail the benefits of the state government. The court also ordered the committee to submit a report regarding this.

⁷ Protection of Children from Sexual Offences Act 2012, s 19

⁸ *In Re: Right to Privacy of Adolescents* (2024) 8 SCR 575

The Supreme Court ruled out the essentials to be made out in a judgment while dealing with an appeal against the order of conviction. It must contain a concise statement of the facts of the case, the nature of evidence adduced by prosecution and defence, submissions made by parties, analysis based on re-appreciation of evidence, and reasons for confirming the guilt of the accused or acquittal. The court should re-appreciate the evidence and shall contain the above-mentioned essentials in the judgment. The apex court held that, generally, a court can comment on the conduct of parties, but a judgment can't bear the judge's personal opinion. The advisory jurisdiction can't be exercised by incorporating advice to parties. It should be plain & simple in language and should not contain irrelevant and unnecessary materials.

Coming to the point of terming a romantic relationship in a POCSO case, the court held that the court must ascertain whether the offence was made out or not and must act by the law. It also ruled out that the court cannot commit violence against the law. In this case, penetrative sexual intercourse with a minor ascertains to be rape under IPC. Therefore, terming this as a romantic relationship is irrelevant and an unwanted act. In regards to the usage of plenary powers, the court held that this case involves an offence under POCSO and the accused is proven guilty by the district court. The court cannot use its power to quash the petition once it is proven guilty, especially for the offence involving heinous crimes like murder, rape, dacoity etc... The high court cannot use its power under Article 226, read with Section 482 of CRPC, to acquit an accused who was proven guilty of rape constituted with penetrative sexual assault on a minor irrespective of consent obtained. Therefore, by the settled law, even if the victim comes up with a statement of consent and wishes to reside with the accused, the high court could not quash the petition⁹.

ANALYSIS

The critical analysis shows that the Supreme Court's verdict, by upholding the district court's judgment, was reasonable and valid. The honourable high court, acting as a guardian of fundamental rights, made parenthetical comments in its judgment and deviated from its duty to protect a POCSO victim. The most abysmal part is the court categorises the rape of minors into a non-existing clause of romantic & non-exploitative consensual sexual acts. The Supreme Court ascertained that a minor subjected to penetrative sexual assault by an accused is justified by labelling it as a consensual act that is legally unsound. It shows that the court is influenced by

⁹ *In Re: Right to Privacy of Adolescents* (2024) 8 SCR 575

the pitiful nature of the victim and by the pleadings of the accused as consensual sex. Through this verdict, the importance of the POCSO Act was established once again.

CONCLUSION

POCSO is an eminent act enacted to protect children from sexual assaults and to provide rehabilitation measures. This verdict set out a principle that POCSO can't be negotiated in terms of settlement between parties. By several other comments, the High Court stepped out of its authority and made redundant mentions. The court can comment on the conduct of parties while dealing with a case but these kinds of comments were unnecessary and surplusage. These parenthetical statements made this judgment an impugned one, especially terming the rape of a minor as a consensual act in a romantic relationship.