



CHILD-CENTRIC CRIMINAL LIABILITY IN THE DIGITAL ERA: JUST RIGHTS FOR CHILDREN ALLIANCE AND ANR. V. S. HARISH AND ORS.

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INTRODUCTION

Just Rights for Children Alliance and Anr. v. S. Harish and Ors.¹ It is a landmark case in India's digital criminal jurisprudence. The Supreme Court clarified the scope of Section 15² of the Protection of Children from Sexual Offences (POCSO) Act, redefined "possession" through the doctrine of constructive possession, and corrected the High Court's narrow understanding of liability for online "child sexual exploitation and abuse material" or CSEAM. It lays down a victim-centric framework that reshapes how child sexual abuse material is criminalised and regulated in India.

FACTS OF THE CASE

In 2020, the All-Women's Police Station Ambattur, Chennai, Tamil Nadu received a report of Cyber Tipline of the National Crime Records Bureau (NCRB), which stated that S. Harish was an active consumer of child pornography on his mobile phone for the past two years. Accordingly, an FIR was lodged against him under Section 67B³ of the Information Technology (IT) Act and 14(1)⁴ of the POCSO on the same day. The accused's mobile phone was seized during the investigation and sent for analysis. On being questioned, the accused had admitted to regular viewing of pornography since college.

The Computer Forensic Analysis Report of 2020 stated that two video files of child pornography activity, along with more than a hundred pornographic video files, were downloaded and stored in the said mobile phone. Although initially, the FIR was registered for

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¹Just Rights for Children Alliance and Anr v S Harish and Ors (2024) INSC 716

² Protection of Children from Sexual Offences Act 2012, s 15

³ Information Technology Act 2000, s 67B

⁴ Protection of Children from Sexual Offences Act 2012, s 14 (1)

the offence punishable under Section 14(1) of the POCSO, with the course of investigation and findings, the chargesheet, upon completion of the investigation in 2023, included Section 67B of the IT Act and 15(1)⁵ of the POCSO.

PROCEDURAL HISTORY

The Mahila Fast Track Mahila Court, Tiruvallur, convicted the accused of disturbing public morals, which is a cognizable offence under Section 67B of the IT Act & 15 (1) of the POCSO Act. The accused, however, filed an appeal against the judgment before the High Court of Madras to quash the chargesheet and criminal proceedings against him. The High Court quashed the judgments on three grounds:

Section 14(1) of POCSO states that the accused person must have used the child for pornographic purposes, and in the present case, the accused was a mere viewer and hence not liable under this section. Section 67B of the IT Act criminalises the publication or transmission of material depicting children in a sexually explicit act. Here, although the accused was a regular viewer of pornography, no evidence exists that he had published or transmitted the same. Hence, his act of watching or downloading child pornography falls out of this section's purview.

The Kerala High Court in an earlier judgement had stated that “watching an obscene photo or obscene video by a person by itself will not constitute an offence under Section 292⁶ of the Indian Penal Code.” The High Court further stated that Mere possession or storage of any pornographic material is not an offence under the POCSO.

ISSUES OF THE CASE

1. What is the scope of Section 15 of the POCSO and the underlying distinction between the three sub-sections?
2. Whether mere viewing, possessing or storing of any child pornographic material is punishable under the POCSO?
3. What is the true scope of Section 67B of the IT Act?

⁵ Protection of Children from Sexual Offences Act 2012, s 15 (1)

⁶ Indian Penal Code 1860, s 292

4. What is the scope of Section 30⁷ of the POCSO, and what foundational facts are necessary for invoking the statutory presumption of culpable mental state in respect of Section 15 of the POCSO?
5. Whether the statutory presumption contained in Section 30 of the POCSO can be invoked only at the stage of trial by the Special Court alone established under the POCSO? In other words, whether it is permissible for the High Court in a quashing petition filed under Section 482⁸ of the Code of Criminal Procedure to resort to the statutory presumption of culpable mental state contained in Section 30 of the POCSO?

PRINCIPLES REFERRED

Section 14(1) of the POCSO Act, 2012: “Whoever uses a child or children for pornographic purposes shall be punished with imprisonment for a term which shall not be less than five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine.”

Section 15(1) of the POCSO Act, 2012: “Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than five thousand rupees and in the event of second or subsequent offence, with fine which shall not be less than ten thousand rupees.”

Section 67B of the IT Act, 2000: “Whoever—

- (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in a sexually explicit act or conduct; or
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or
- (c) cultivates, entices or induces children to an online relationship with one or more children for and in a sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or
- (d) facilitates abusing children online, or

⁷ Protection of Children from Sexual Offences Act 2012, s 30

⁸ Code of Criminal Procedure 1973, s 482

- (e) records in any electronic form of abuse or that of others about sexually explicit acts with children,

shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees: Provided that provisions of section 67,⁹ section 67A¹⁰ and this section does not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form—

- (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or
- (ii) which is kept or used for bona fide heritage or religious purposes”

Article 15(3),¹¹ The Constitution of India: “Nothing in this article shall prevent the State from making any special provision for women and children.”

Article 39,¹² The Constitution of India: “(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.”

“(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and against moral and material abandonment.”

United Nations Convention on the Rights of the Child, 1989:¹³ The United Nations Convention on the Rights of the Child, ratified by India on 11th December 1992, requires the State Parties to undertake “all appropriate National, bilateral and multilateral measures to prevent:

⁹ Information Technology Act 2000, s 67

¹⁰ Information Technology Act 2000, s 67A

¹¹ Constitution of India 1950, art 15 (3)

¹² Constitution of India 1950, art 39

¹³ United Nations Convention on the Rights of the Child 1989, art 34

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- and
- (c) The exploitative use of children in pornographic performances and materials”

Doctrine of Constructive Possession: Constructive possession denotes possession of both the ability to control the object and the knowledge of such control. The Court in the present case relied on the cases of *United States v. Tucker*.¹⁴ and *United States v. Romm*¹⁵ to reach these essentials for Constructive possession.

Section 482 of Cr.P.C.,1973: “Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

CONTENTIONS OF THE APPELLANT (JUST RIGHTS FOR CHILDREN ALLIANCE & ANR.)

The Counsel for the appellants pleaded that the High Court’s judgment that “mere storage or possession of any child pornographic material does not amount to an offence” poses a significant threat to the well-being of children and may result in further spreading of child pornography, affecting society at large. He relied on Article 15¹⁶ and 39 of the Constitution and the United Nations Convention on the Rights of the Child 1989. He further contended that it was given in the charge sheet itself that the accused had been watching child pornographic videos for the past two years.

The counsel also stated that the High Court, instead of proceeding under Section 15(1) of the POCSO, had judged erroneously under Section 14(1) of the POCSO. Section 15(1) of the POCSO explicitly penalises the act of downloading and failing to delete or report child pornography, which could have made the accused liable. Hence, the judgment should be revised.

¹⁴ *United States v Tucker* 243 F 3d 499 (8th Cir 2001)

¹⁵ *United States v Romm* 455 F 3d 990 (9th Cir. 2006)

¹⁶ Constitution of India 1950, art 15

The Counsel also stated that the High Court had failed to distinguish between adult pornography and child pornography, as Sections 67 and 67A of the IT Act deal with adult pornography, while Section 67B was specifically introduced in 2009 to provide strict punishment for “collecting, browsing or downloading” child pornography. Section 30 of the POCSO also states that it is presumed that the accused had the required culpable mental state and has the burden to prove the allegations false.

CONTENTIONS OF THE RESPONDENT (S. HARISH & ORS)

The Counsel on behalf of the respondent submitted that the FIR was lodged under Section 14(1) of the POCSO and Section 67B of the IT Act, and hence there was no error of law by the High Court. He contended that the date of receiving the videos from the phone was 14 June 2019, at which the 2019 amendment to Section 15 had not been enforced. Additionally, the names of the two files indicate that they were downloaded by WhatsApp, which has an auto-download feature, as shown in a research study, and he was unaware of their existence.

The Counsel contended that the accused was unaware of the law due to the government’s failure to publicise it. Hence, his ignorance of law, along with a bona fide belief, would not constitute an offence under Section(s) 15 of the POCSO and 67B of the IT Act.

He relied on the decisions of the Court in *Chandi Kumar Das Karmarkar v. Abanidhar Roy*.¹⁷ (hereinafter “Chandi Kumar”) and *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*¹⁸ (hereinafter “Motilal Padampat”). The Court in the Chandi Kumar case stated that actions underpinned by a bona fide claim of right negate the presence of dishonest intention and, in the latter case, said that public entities, including the State, are not above the law and must adhere to principles of honesty and good faith in their dealings.

SUPREME COURT'S ANALYSIS

Rejection of Precedents Cited by the Respondent: The Court rejected the Respondent Counsel’s reliance on the two decisions of the court in the Chandi Kumar case and the Motilal Padampat case. In Chandi Kumar, the issue concerned whether ignorance of the law could be excused when a person acted under a bona fide but mistaken belief of a legal right. In Motilal

¹⁷ Chandi Kumar Das Karmarkar v Abanidhar Roy AIR 1965 SC 585

¹⁸ Motilal Padampat Sugar Mills Co Ltd v State of UP (1979) 2 SCC 409

Padampat, the question was whether ignorance of the law amounted to a voluntary waiver of rights.

Thus, the cases are not applicable as the Court stated that a plea of ignorance of law can be a valid defence if it gives rise to a legitimate and bona fide mistake of fact about the existence or non-existence of a particular right or claim. The Court further stated that storage of child pornographic material cannot be equated to any right, even if mistaken, and neither is there any right to store such material. Hence, it is not a valid defence.

Interpretation of Section 15 of POCSO: The Hon'ble Court defined the scope of Section 15 of the POCSO in detail, along with the three distinct offences it penalises.

Sub-section (1) of Section 15 penalises the failure to “delete, destroy or report” any child pornographic material found by any person. “The mens rea required under this provision is derived from the actus reus itself”, i.e., to constitute an offence under this provision, the circumstances must indicate the intent of the accused. The intent, hence, would be a question of fact.

Sub-section (2) of Section 15¹⁹ penalises both the actual “transmission, propagation, display or distribution” of any such sexual act involving children and the facilitation of any of the same. To constitute an offence under this, any form of preparation to transmit or display should also be evident, along with the storage of such material.

Sub-section (3) of Section 15²⁰ penalises the “storage or possession” of any child pornographic material for “commercial purposes”. To constitute an offence under this, some additional proof to show that the possession was done with the intention of any gain or benefit should exist.

Hence, it was concluded that the three subsections of Section 15 constitute independent and distinct offences and therefore cannot coexist simultaneously for the same case. The three subsections vary due to the different degrees of mens rea in the three provisions.

Expansion of “Possession” Through Constructive Possession: The Court broadened the scope of Section 15 of the POCSO by stating that any act of viewing, distributing or displaying any child pornographic material over the internet without having any actual storage or

¹⁹ Protection of Children from Sexual Offences Act 2012, s 15 (2)

²⁰ Protection of Children from Sexual Offences Act 2012, s 15 (3)

possession in any device will also be considered ‘possession’, provided the doctrine of constructive possession was followed, i.e., the person had the knowledge and ability to exercise control over such material.

Interpretation of Section 67B of the IT Act: The Court ruled that Section 67B of the IT Act not only penalises the distribution of child pornographic material, but also the creation, possession, propagation and consumption of such material.

Essentials for Culpable Mental State: The Court also discussed the foundational facts necessary to invoke the statutory presumption of a culpable mental state for an offence under Section 15 of the POCSO. The prosecution under Sub-section (1) may have to establish that the accused had possession of any child pornography material and failed to “destroy, delete or report” the same.

Under Sub-section (2), the prosecution would be required to not only establish such possession as mentioned above, but also any other fact to indicate either the intent or actual “transmission, propagation, display or distribution” of any such material. Under Sub-section (3), the prosecution must establish the “storage or possession” of such material and further prove any fact that might indicate that the same had been done to derive some form of gain or benefit, or the expectation of some gain or benefit.

The Court affirmed that Section 30’s presumption of a culpable mental state applies in quashment proceedings of any POCSO offence. Stating all the above reasons, the Court of Appeal overruled the High Court judgment due to its erroneous nature and restored the Special Court’s judgment.

RATIO DECIDENDI

“Any act of viewing, distributing or displaying etc., of any child pornographic material by a person over the internet without any actual or physical possession or storage of such material in any device or in any form or manner would also amount to possession in terms of Section 15 of the Protection of Children from Sexual Offences Act, 2012, provided the said person exercised an invariable degree of control over such material, by virtue of the doctrine of constructive possession.”

CONCLUSION

Victim-Centric Reasoning: The Court's thoughtful handling of the case's sensitivity, balancing both the legal and moral sides of society, was considerate. The Court recognised the victimisation of children, such as sexual acts, and the infinite harm that their recording and distribution could lead to. The matter was dealt with utmost seriousness.

Terminology Shift: The Court felt that the term "child pornography" could trivialise the crime and undermine the lasting physical and emotional trauma on the child, and suggested replacing the word "child pornography" with "child sexual exploitative and abuse material" or "CSEAM". This victim-centric approach of the Court acknowledges the infinite physical and emotional trauma such abuse causes and the need for a serious and robust response.

Expansion of the Constructive Possession doctrine: The judgment also extended the doctrine of constructive possession to CSEAM cases. The Court held that viewing, distributing, or displaying material over the internet without physical storage, provided the individual exercises control over the material and possesses knowledge of it, also constitutes "possession". However, the lack of a clear definition of 'control' could lead to ambiguities in application in the future, and ordinary internet users who accidentally encounter such materials are now at risk.

Interpretation of Section 15, POCSO: The Court's distinction of the three sub-sections of Section 15 of the POCSO as independent penalises the wrongdoings according to the degree of the mens rea of the guilty. The punishment fits the actual harm each person causes.

Sex Education and State Obligations: The need for sex education was also discussed. The court urged legislative bodies to spread awareness about this right from the initial stages of education. It also highlighted the importance of public participation, accountability, and institutional support in diminishing resistance and fostering a supportive ecosystem for sex education. With regards to the same, the court also broadened the obligation of the state under Section(s) 43²¹ and 44²² of the POCSO to impart sex education and awareness amongst the society. Additionally, the need for providing support services to the victims and rehabilitation programs for the offenders was discussed.

²¹ Protection of Children from Sexual Offences Act 2012, s 43

²² Protection of Children from Sexual Offences Act 2012, s 44

Liability of Social Media Intermediaries: The Court further emphasised the responsibilities of social media intermediaries in reporting such cases to the local authorities, specified under POCSO. They cannot claim exemption from their liability by stating the role of third parties.

The Supreme Court has recognised the deep impact of child sexual abuse and refused to let language or legal technicalities diminish that harm. By expanding what "possession" means, by distinguishing degrees of wrongdoing, and by demanding that schools educate, platforms report, and the state support victims, the Court has constructed a framework that centres the child's suffering rather than the offender's convenience. However, the wide scope of constructive possession demands careful future application to prevent unintended criminalisation. The judgment's success depends entirely on whether the state takes this mandate seriously. The state should take a more proactive role in enforcing the law and exercise caution. Better training, clear guidelines and coordination of institutions could prove to be a significant change.