

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 09TH DAY OF SEPTEMBER 2020 / 18TH
BHADRA, 1942

CRL.A.No.1087 OF 2019

AGAINST THE JUDGMENT DATED 20.07.2019 IN SC 1092/2017
OF ADDITIONAL SESSIONS COURT, ERNAKULAM

APPELLANT/ACCUSED:

ABHISHEK.K.A @ BHANU
AGED 27 YEARS
S/O.ASOKAN, KEECHAMKERIL HOUSE, NEAR
THOTTARA CHEEPUKAL, KULAYATTIKKARA.P.O.,
AMBALLOOR VILLAGE, PIN-682315.

BY ADVS.
SRI.C.P.UDAYABHANU
SHRI.RASSAL JANARDHANAN A.
SHRI.ABHISHEK M. KUNNATHU
SRI.BOBAN PALAT
SRI.NAVANEETH.N.NATH
SRI.P.U.PRATHEESH KUMAR

RESPONDENT:

1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM.

R1 BY SMT.AMBIKA DEVI S, SPL.GP ATROCITIES
AGAINST WOMEN & CHILDREN & WELFARE OF W & C
SRI.SUMAN CHAKRAVARTHY, SPL. GOVT.PLEADER
SRI. MANU FOR LEGAL SERVICE AUTHORITY
SRI. B. JAYASURYA, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
25-08-2020, THE COURT ON 09-09-2020 DELIVERED THE
FOLLOWING:

P.B.SURESH KUMAR, J.

Criminal Appeal No.1087 of 2019

Dated this the 9th day of September, 2020

J U D G M E N T

The sole accused in S.C.No.1092 of 2017 on the files of the Additional Sessions Court, Ernakulam has come up in this appeal challenging his conviction and sentence in the said case.

2. The victim in the case is a boy aged 11 years. The accusation against the accused is that in between June 2015 and March 2016, the accused used to show to the victim boy obscene pictures from his phone, and in the said course, he had applied his mouth to the penis of the victim boy twice at the kitchen of the house of the accused, and thereby committed the offences punishable under Section 11(iii) read with Section 12 and Sections 5(l) and 5(m) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act). It is also the accusation in the case that the accused has caused

injury to the penis of the victim boy while assaulting him sexually and thereby committed the offence punishable under Section 323 of the Indian Penal Code (the IPC). It is the further accusation in the case that after having so assaulted and harassed the victim boy sexually, the accused had also threatened the victim boy that he will be killed, if he reveals the overt acts committed by the accused to anyone and thereby committed the offence punishable under Section 506(i) of the IPC.

3. On the accused pleading not guilty of the charges levelled against him, the prosecution examined 12 witnesses on its side as PWs.1 to 12 and proved through them 16 documents as Exts.P1 to P16. Among the witnesses examined on the side of the prosecution, PW1 is the victim boy and PW2 is the mother of the victim boy. Among the documents proved, Ext.P1 is the First Information Statement given by the victim boy and Ext.P11 is the statement of the victim boy recorded under Section 164 of the Code of Criminal Procedure (the Code).

4. On an appraisal of the materials on record, the

court below found that the prosecution has not established the guilt of the accused under Section 11(iii) read with Section 12 of the POCSO Act and also under Section 323 of the IPC. The court, however, found that the accused is guilty of the offences punishable under Sections 377 and 506(i) of the IPC and also under Sections 5(l) and 5(m) read with Section 6 of the POCSO Act and accordingly, convicted him for the said offences. Pursuant to the conviction, the accused was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo rigorous imprisonment for one year for the offence punishable under Sections 5(l) read with Section 6 of the POCSO Act. Identical sentence was imposed on the accused for the offence punishable under Sections 5(m) read with Section 6 of the POCSO Act. Similarly, the accused was sentenced to undergo rigorous imprisonment for three months for the offence punishable under Section 506(i) of the IPC. No sentence was imposed on the accused for the offence under Section 377 of the IPC. The court also ordered the substantive sentences imposed on the accused to run concurrently. As noted, the

accused is aggrieved by his conviction and sentence.

5. Heard the learned counsel for the accused as also the learned Public Prosecutor.

6. The learned counsel for the accused submitted that the conviction of the accused is solely based on the evidence tendered by the victim boy. It was pointed out that in order to rest the conviction of the accused solely based on the evidence of the victim, the evidence shall be of a sterling quality. It was argued that the evidence of the victim boy in the case on hand cannot be said to be of a sterling quality. The learned counsel placed reliance on the decision of the Apex Court in **Rai Sandeep v. State (NCT of Delhi)**, (2012) 8 SCC 21, in support of the said contention. The learned counsel elaborated the said submission pointing out that the prosecution has not specified the dates on which and the time at which the accused has committed the alleged overt acts. According to the learned counsel, non mentioning of the dates on which and the time at which the alleged overt acts have been committed, would certainly create a doubt as to the genuineness of the prosecution case. It was also pointed out by the learned counsel

that in so far as it is alleged that the accused has sexually assaulted the victim boy on several occasions during the relevant period, the admitted conduct of the victim boy in not disclosing the alleged overt acts to anyone including his own sibling would also create a doubt as to the genuineness of the case of the prosecution. In order to reinforce the said contention, the learned counsel has also relied on a statement made by the victim boy that he used to communicate freely with his sister on all matters affecting him. Placing reliance on the admission made by the victim boy during cross-examination that he had left the place abandoning his home and relatives on a few occasions and that he was taken for counselling to a place, it was argued by the learned counsel that the victim boy was suffering from some psychological ailments and that the case can only be one instituted based on the hallucinations of the victim boy. The learned counsel has also contended that, at any rate, the court below was not justified in convicting the accused for the offence punishable under Section 377 of the IPC, in the absence of a charge for the same.

7. Per contra, the learned Public Prosecutor

submitted that the evidence tendered by the victim boy in the case is not only natural, but also consistent with the other materials on record, and the court below cannot, therefore, be found fault with for having convicted the accused based on the said evidence.

8. Having heard the learned counsel for the parties on either side and having perused the materials on record, the point arising for consideration is as to whether the prosecution has established the guilt of the accused under Sections 377 and 506(i) of the IPC and Sections 5(l) and 5(m) read with Section 6 of the POCSO Act.

9. As rightly pointed out by the learned counsel for the accused, there was no charge against the accused for the offence punishable under Section 377 of the IPC. It is seen from the materials on record that the court below found the accused guilty of the offence punishable under Section 377 of the IPC on the assumption that the accused was charged for the said offence as well, without considering the question as to whether the proved facts would disclose the said offence. In the circumstances, according to me, the conviction of the accused

under Section 377 of the IPC is unsustainable. It is also seen that the accused has already undergone the sentence imposed on him for the offence under Section 506(i) of the IPC and no arguments were, therefore, advanced in relation to the said conviction. As such, the only remaining question to be considered is as to whether the prosecution has established the guilt of the accused under Sections 5(l) and 5(m) read with Section 6 of the POCSO Act.

10. Coming to the aforesaid question, as noted, the contention advanced by the learned counsel for the accused is that the evidence of the victim boy on which the conviction is rested, is not of a sterling quality. I shall deal with the said contention a little later, as it is necessary for me to refer to the provision contained in Section 29 of the POCSO Act before dealing with the said contention. Section 29 of the POCSO Act provides that where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the said Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

This court held in the judgment in Criminal Appeal No.419 of 2019, that in the light of the said provision, if the prosecution produces evidence, which if accepted, would constitute the offence, then it is for the accused to prove that he did not commit the offence on the principle of preponderance of probability. It was also held by this court in the said case that if the accused fails to do so, the presumption would apply and the prosecution will be considered to have discharged its burden to prove the guilt of the accused. In the light of the said decision, the questions to be considered in a case arising under the POCSO Act is as to whether the prosecution has adduced evidence to prove the foundational facts constituting the guilt of the accused and if so, whether the accused has proved his innocence on the principle of preponderance of probability. As noted, the accused does not dispute the fact that the evidence let in by the prosecution, if accepted, would establish the case of the prosecution. His case is only that the evidence tendered by the victim boy is not of a sterling quality. The pointed question, therefore, is as to whether the accused has discharged the burden to prove his innocence in the case.

11. I shall now examine the question aforesaid. As PW1, the victim boy has deposed that he was residing with his mother, elder sister and also his grandmother; that his father is no more; that his mother is a housemaid; that the accused was residing near his house; that he used to make fan using motor and battery; that the accused used to give him materials for the same; that the accused has applied his mouth to his penis one day at the house of the accused; that the accused used to show him obscene pictures from his phone; that the accused used to give him intoxicating drinks and that the accused used to pour Ganja powder on his penis before applying his mouth to his penis. PW1 also deposed that the accused used to threaten him with dire consequences, if he reveals the occurrences to anyone; that he did not reveal the occurrences to anyone for some time on account of the threat of the accused and later revealed the occurrences to his mother and she, in turn, complained to the police. In response to specific questions put by the Public Prosecutor, the victim boy has deposed that the accused has committed the aforesaid overt acts once at the kitchen of the house of the accused, on another occasion at the workshop of

the accused and once at the old house of the accused and that once the accused has caused an injury to his penis and he had to pretend before his mother that the same was caused while climbing on a tree, for her to apply medicine on the wound. Again to a specific question put by the Public Prosecutor as to the occasion for him to disclose the occurrences to his mother, the victim boy deposed that he had left the place once leaving his kith and kin and was traced on the next day from a nearby place; that he was taken by his mother from there to his teacher and it was thereafter, that he revealed the occurrences to his mother. PW1 has also deposed that he has given Ext.P1 statement to the police; that he was taken thereafter to the doctor and later before the Magistrate and that he has given a statement to the Magistrate as well. Similarly, to a specific question put by the Public Prosecutor, PW1 has deposed that the occurrences took place in between 2015 and 2016. To a specific question put by the court in cross examination as to the reason for leaving the place, the victim boy answered that he did so fearing the accused.

12. PW2, the mother of the victim boy deposed

that the accused is residing near her residence; that the victim boy was fond of electrical accessories; that the accused used to call PW1 to his house promising him the accessories which he wanted; that once PW1 told her that if the accused calls him, she should tell the accused that he is not at home; that PW1 did not tell her the reason for taking such a stand then, though she questioned him on that; that the victim was found missing on 10.12.2016 and that he was traced out on the next day from a nearby place. It was also deposed by PW2 that since PW1 was reluctant to come back home, she took him to the house of his teacher and PW1 did not reveal anything to his teacher also. PW2 also deposed that PW1 revealed to her later at home, when she compelled, that the accused used to show him obscene pictures and used to compel him to do things as in the video; that the accused used to apply his mouth to his penis and that the accused used to do this to the victim boy threatening him that if he does not permit him to do that, he would show the video of the sexual assault which he has recorded, to his mother. It was also deposed by PW2 that she, thereafter, took the boy to his class teacher and he then revealed the occurrences to his

class teacher and it is the class teacher who, in turn, informed the matter to the police. PW5 is the doctor who examined the victim boy on 14.12.2016. He deposed that the victim boy was brought before him with the history of alleged sexual assault and on examination, he found a wound scar in the penis of the boy.

13. In the cross examination of the victim boy, it was brought out that on a few occasions, he attempted to leave the place leaving his kith and kin. Similarly, it was brought out in his cross examination that he did not reveal about the sexual assault to which he was subjected to, at any time except on the last occasion when he was traced out. It was also brought out in the cross-examination that the victim boy was taken for counselling in connection with his aforesaid conduct. Similarly, in the cross examination of the mother of the victim boy, what was attempted to be brought out was only that the statements made by her that the victim boy had left the house only once and that he was not taken for counselling in connection with the said conduct are incorrect. Further, the suggestion made to the victim boy and also to his mother by the counsel for the accused

during cross examination was only that there were no occurrences at all as alleged, and that the complaint has been lodged based on the hallucinations of the victim boy who is suffering from psychological ailments. The materials brought out from PW1 and PW2 in cross-examination as indicated above are not sufficient, according to me, to discredit the evidence tendered by them which would not only appear to be very much natural, but also consistent with the other evidence tendered by the prosecution including the evidence tendered by the doctor, PW5, and the previous statements of the victim boy namely Ext.P1 statement given by him under Section 154 of the Code and Ext.P11 statement given by him under Section 164 of the Code.

14. As regards the conduct of the victim boy in leaving his house on a few occasions which was projected by the learned counsel for the accused to contend that the victim boy is suffering from some psychological/ psychiatric ailments, it is worth referring to the following passage from the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition Text Revision (DSM-IV-TR) of the American Psychiatric Association :

“The following associated constellation of symptoms may occur and are more commonly seen in association with an interpersonal stressor (e.g., childhood sexual or physical abuse, or domestic battering): impaired affect modulation; self destructive and impulsive behavior; dissociative symptoms; somatic complaints; feelings of ineffectiveness, shame, despair, or hopelessness; feeling permanently damaged; a loss of previously sustained beliefs; hostility; social withdrawal; feeling constantly threatened; impaired relationships with others; or a change from the individual's previous personality characteristics. (underline supplied)”

The fact that victims of child sexual abuse will have a tendency to withdraw from social relationships by running away from home has been taken note of by the courts in India and abroad as well. The relevant observation from the decision of the Supreme Court of New Jersey in **White v. Violent Crimes Compensation Board** reads thus:

“More over, it has been observed that a frequent component of the “rape trauma syndrome” rather consistently encountered in rape victims is a so-called “global fear of everyone” which is often marked by withdrawal from social relationships in reaction to that most dehumanizing of all crimes.” (underline supplied)

The relevant observation from the decision of the Delhi High

Court in **Mohan v. State (G.N.C.T.) of Delhi**, 2010 SCC Online Delhi 1976, reads thus:

“It cannot be ignored that the rape of a child is a terrible incident. It results in the external crisis in the life of the victim. Rape Trauma Syndrome is a label given to a collection of syndromes with which the victims are inflicted. Many psychologists have divided the Rape Trauma Syndrome with two effects, one is the immediate disruption and disorganization in the life-style of the victim in general and the second phase is the long-term effect in which some victims have nurtured suppressed feeling throughout the life while some attempt to reorganize their lives. Studies which have been conducted to assist the trauma of rape victims indicate that many such children report difficulty in sleeping; nightmares are often seen, and some cry out in sleep. It is very few children, who escape with no symptoms. Behavioural symptoms with which such children suffer include general irritability, behavioural problems at school, acute withdrawal, depressive symptoms, running away from home and expressive of delinquent behaviour. Long terms effects are more harmful. Sexual disorientation or psychoses are found to be related to childhood rape, labeled by psychologist as ‘Psychological Time Bomb’. Therefore, sexual abuse of a child cannot be let off lightly”. (underline supplied)

In the light of the materials aforesaid, the contention of the accused that the victim boy is suffering from some

psychological/psychiatric ailments and that the case is one lodged based on the hallucination of the victim boy, is only to be rejected and I do so.

15. It is evident from the discussions made in the preceding paragraphs that the accused has failed miserably in discharging his burden to prove his innocence in the case. On the other hand, it is explicit from the materials on record that the prosecution has proved the guilt of the accused under Sections 5(l) and 5(m) read with Section 6 of the POCSO Act, beyond reasonable doubt.

For the aforesaid reasons, I do not find any infirmity in the decision of the court below. The appeal, in the circumstances, is without any merit and the same is, accordingly, dismissed.

Sd/-
P.B.SURESH KUMAR, JUDGE.

DK

P.B.SURESH KUMAR, J.

Criminal Appeal No.1087 of 2019

Dated this the 9th day of September, 2020.

O R D E R

In the course of the hearing of the above matter arising under the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act), a few disturbing facts concerning the implementation of the said statute have come to the notice of this court. The POCSO Act is one that provides for protection of children from sexual assault, sexual harassment and child pornography by safeguarding their interests through a prompt and systematic multi-sectoral intervention involving the State Government, the Child Welfare Committee under the Juvenile Justice (Care and Protection of Children) Act, the Police, the Special Court, Non-Government Organizations and Professionals and Experts assisting the children. Unlike other penal statutes,

the POCSO Act provides for the participation of the child also in the proceedings before the Special Court to make the justice delivery effective and meaningful. Section 25(2) of the statute which mandates that copies of the documents specified in Section 207 of the Code of Criminal Procedure shall be given to the child or to his/her legal representative, upon the final report being filed in the case and Section 40 of the statute which provides that the child shall be entitled to assistance of a legal counsel of his/her choice and if he/she is unable to afford a legal counsel, the Legal Service Authority shall provide to him/her a legal counsel in the matter, demonstrate the aforesaid statutory intendment. Section 33(8) of the statute providing for compensation to the child also illustrates the aforesaid contemplation of the statute. At the same time, it is the scheme of the said statute that the children who have been sexually abused are not subjected to secondary victimisation in the course of the justice delivery process. Similarly, unlike other penal statutes, Section 39 of the POCSO Act makes it obligatory for the State Government to prepare guidelines for the use of the stakeholders to be associated with pre-trial and trial stages

to assist the child. In exercise of the power conferred under Section 39, the State Government has prepared elaborate guidelines prescribing the general principles to be followed by professionals and experts assisting the child at pre-trial and trial stages, guidelines for interviewing the child, guidelines for the medical and health professionals, guidelines for psychologists and mental health experts, guidelines for social workers and support persons, guidelines for child development experts etc. The guidelines also provide for rendering legal aid and other services to the victim. The guidelines prescribe in detail the roles to be played by the Special Public Prosecutor and the lawyer of the child in the matter of conducting the cases before the Special Court. Suffice it to say that the guidelines are exhaustive, and if the same are given effect to in its letter and spirit, the POCSO Act would certainly serve its purpose.

2. Although the guidelines have been formulated by the State Government as early as on 20.4.2015, the same were not made available to any of the stakeholders including the State Legal Services Authority which is to play a pivotal role in the implementation of the POCSO Act or to the public, until this

court took notice of the said fact in this matter. Needless to say, the POCSO Act was being implemented in the State during the last almost five years without the stakeholders not being aware of the guidelines to be followed by them in the matter of implementing the provisions of the statute. It was noticed that on account of the same, the implementation of the statute was not in accordance with the statutory intendment and the children involved the cases were deprived of their valuable rights to avail legal aid and various other benefits. To quote one instance, even while the Government is spending crores for giving effect to the statute, the hard reality is that the children involved in the cases are not even provided the diet money which they are entitled, when they come to give evidence in the matter.

3. Further, while dealing with the cases arising under the POCSO Act, it has also come to the notice of this court that the cases are being investigated by police personnel who are not informed of the rights of the children or trained to deal with the children and members of their family in a child sensitive manner. Lack of professionalism is writ large in the

investigations. Fundamental flaws such as, not collecting legal evidence to prove the age of the child for want of awareness as to the relevance of such evidence, have come to the notice of this court not in one, but in several cases. It was observed that statements of the children are not recorded in terms of Sections 25 and 26 of the POCSO Act. Similarly, evidence are not collected to establish the sexual abuse through behavioural indicators, or to explain the trauma induced "counter intuitive behaviour" of the victim, thereby making the child a witness without credibility. Though most of the cases are framed based on the sole evidence of the victim, it was found that no mechanism, whatsoever, is in place to ensure the correctness of the statements. It was shocking to observe that when further investigation was ordered by this court in some cases after the final report is filed against the accused, the investigating agencies have reported that the cases are false. Needless to say that the investigations in the cases are not conducted in a foolproof manner.

4. Coming to the trial, fundamental flaws like omission to mark vital documents/material objects, omission to

prove vital documents formally by examining appropriate witnesses, omission to cause production of vital documents, omission to examine vital witnesses etc. were noticed in several cases. Needless to say, the quality of the prosecution of the cases arises under the POCSO Act needs to be improved. Further, the scheme of the statute is that even while the Special Public Prosecutor is responsible for the trial, it is the responsibility of the lawyer of the child to ensure that all concerns of the child are raised in the proceedings, by building up a good rapport with the Special Public Prosecutor. It is also the scheme of the statute that it is for the lawyer of the child to identify the issues which need to be determined by the Special Court in regard to the welfare and best interests of the child. Unfortunately, a lawyer is not seen engaged for any child in any proceedings under the POCSO Act or the service of a lawyer is seen provided to the child by the Legal Services Authority in any case. That apart, it has come to the notice of this Court that on account of the inaction on the part of the State Government in providing funds for disbursement under the Victim Compensation Scheme in force, even the compensation ordered by the Special

Court and the compensation determined by the District Legal Services Authorities concerned based on the recommendations made by the Special Court for the children involved in the cases arising under the statute have not been disbursed for the last few years.

5. In **Nipun Saxena v. Union of India**, (2019) 2 SCC 703, having felt that a one-stop support centre for women and children as one conceived and established at Hyderabad in the name "BHAROSA" would be ideal for implementing the provisions of the POCSO Act, especially to ensure that the children who have been sexually abused are not subjected to secondary victimisation in the course of the justice delivery process, the Apex Court issued directions to the State Governments to constitute at least one "one-stop centre" like the one established in Hyderabad in every district within a year. Paragraphs 47 to 49 of the judgement in **Nipun Saxena** which is worth referring to, read thus:

"47. Any litigant who enters the court feels intimidated by the atmosphere of the court. Children and women, especially those who have been subjected to sexual assault are virtually overwhelmed by the atmosphere in the courts.

They are scared. They are so nervous that they, sometimes, are not even able to describe the nature of the crime accurately. When they are cross-examined in a hostile and intimidatory manner then the nervousness increases and the truth does not come out.

48. It is, therefore, imperative that we should have courts which are child-friendly. Section 33(4) POCSO enjoins on the Special Court to ensure that there is child-friendly atmosphere in court. Section 36 lays down that the child should not see the accused at the time of testifying. This is to ensure that the child does not get scared on seeing the alleged perpetrator of the crime. As noted above, trials are to be conducted in camera. Therefore, there is a need to have courts which are specially designed to be child-friendly and meet the needs of child victims and the law.

49. These courts need not only be used for trying cases under POCSO but can also be used as trial courts for trying cases of rape against women. In fact, it would be in the interest of children and women, and in the interest of justice if One-Stop Centres are also set up in all the districts of the country as early as possible. These One-Stop Centres can be used as a central police station where all crimes against women and children in the town/city are registered. They should have well-trained staff who are sensitive to the needs of children and women who have undergone sexual abuse. This staff should be given adequate training to ensure that they talk to the victims in a compassionate and sensitive manner. Counsellors and psychiatrists should also be

available on call at these Centres so that if necessary the victims are counselled and in some cases it would be appropriate if the counsellors question the victims in a manner in which they have been trained to handle the victims of such offences. These One-Stop Centres should also have adequate medical facilities to provide immediate medical aid to the victims and the medical examination of the victims can be conducted at the Centre itself. These One-Stop Centres should also have video conferencing facility available where the statement of the victims to be mandatorily recorded under Section 164 CrPC can be recorded using video conferencing facilities and the victims need not be produced in the Court of the Magistrate. There should be courtroom(s) in these One-Stop Centres which can be used for trial of such cases. As far as possible these Centres should not be situated within the court complex but should be situated near the court complex so that the lawyers are also not inconvenienced. Resultantly, the victims of such offences will never have to go to a court complex which would result in a victim-friendly trial. One such Centre which has already been set up is "BHAROSA" in Hyderabad. This can be used as a model for other One-Stop Centres in the country."

It is noticed that though the above judgement was rendered on 11.12.2018, One-Stop Centres have so far not become fully operational in the State in as much as the Special Courts are not

functioning in the premises of the On-Stop Support Centres.

6. As it was found that general directions are to be issued by this Court to plug the gaps in the implementation of the provisions of the POCSO Act in order to make the justice delivery provided for under the statute effective and meaningful, this Court issued notice to the State Public Prosecutor as also the Kerala State Legal Services Authority, in terms of the interim order passed in this matter on 19.8.2020.

7. In response to the said order, two statements have been filed on behalf of the State, one by the Inspector General of Police, Crime Branch of the State Government and the other by the Director, Women and Child Development Department of the State Government. In the statement filed by the Inspector General of Police, it is mentioned, among others, that Special Juvenile Police Units consisting of personnel who are trained by the UNICEF in juvenile justice principles, under the leadership of a Deputy Superintendent of Police, have been established in every District for implementing the POCSO Act. It is also mentioned in the statement that in addition, Child Welfare Officers and Child Protection Officers are posted in

every police station. It is, however, conceded in the said statement that when trained officers are transferred from respective stations, their services will not be available. Similarly, it was also mentioned in the said statement that substantial number of posts sanctioned in the Forensic Science Laboratories are lying vacant and the shortage of man power in the Forensic Science Laboratories is also hampering the investigation and trials. In the statement filed by the Director of the Women and Child Development Department, it is mentioned, among others, that steps are being taken to implement the provisions of the statute and the suggestions made by the Directorate of Women and Child Development are pending consideration before the Government. It is also mentioned in the said statement that trainings are being arranged for the stakeholders; that it has been decided to provide advance amount to the Child Protection Officers to meet the expenses for availing the services of Psychologists, translators, special educators and other experts for assistance to the children during the investigation and trial of the cases and that amounts have been sanctioned for establishing a child friendly Court in Ernakulam.

8. Heard Adv.Suman Chakravarthy, the Senior Public Prosecutor, Adv.Manu.S, the counsel for the Kerala State Legal Services Authority, Adv.C.P.Udayabhanu, the counsel for the appellant in the case and Advocates Sandhya Raju and Ranjith Marar, who preferred applications for impleading in the matter in the light of the interim order passed on 19.8.2020. This Court also interacted with Sri.Srijith IPS, the Inspector General of Police, Crime Branch, who was present in Court at the time of hearing.

9. Adv.Suman Chakravarthy, the Senior Public Prosecutor, placing reliance on the statements filed on behalf of the State, submitted that earnest and sincere efforts are being taken for implementing the provisions of the statute in the State. It was pointed out by the Senior Public Prosecutor in the course of his arguments that the One - Stop Centres directed to be established by the Apex Court would be fully operational soon.

10. The learned counsel for the Kerala State Legal Services Authority submitted that compensation in terms of the provisions of the statute is to be paid in accordance with the

Kerala Victim Compensation Scheme 2017 and that the Member Secretary of the State Legal Services Authority who is to disburse the compensation under the Scheme is unable to do so since funds are not made available by the Government for disbursement under the Scheme. It was also pointed out by the learned counsel that of late, though funds provided by the Central Government amounting to Rs.7.6 Crores for payment of compensation to the victims in cases of this nature have been made available to the State Legal Services Authority, the same was in a different head of account, of which the Member Secretary of the Kerala State Legal Services Authority is not authorised to make withdrawals. It was also pointed out by the learned counsel that though several letters have been addressed by the State Legal Services Authority to the State Government, the issue is yet to be resolved.

11. Adv.C.P.Udayabhanu, the learned counsel for the appellant, has brought to the notice of the court the decisions of this court in **Jaseer Aboobacker v. State of Kerala**, 2018 (3) KLT 945 and **Ramlal N.R. v. State of Kerala and another**, 2020 (1) KHC 249 and several other cases of

similar nature, to bring home the point that the investigation in the cases arising under the statute is conducted in the State in a very casual manner, as a result of which, the fundamental rights guaranteed to several innocent persons under Article 21 of the Constitution are impaired on account of the unnecessary incarceration and other miseries to which they are subjected to, let alone the loss of reputation caused to them and to the members of their families. The learned counsel has also highlighted the trauma to which the children who are forced to make false statements against their own kith and kin on account of the compulsion of others, and its consequences in their life. The upshot of the arguments of the learned counsel is that there has to be some mechanism to ensure that the statements of the children involved in such cases are made voluntarily.

12. Adv.Sandhya Raju, having regard to the consequences of child sexual abuse, emphasised the need to resolve the issues affecting the welfare of sexual assault survivors on an emergent basis. It was also pointed out by the learned counsel based on the materials produced by her that despite the enactment, there is a spike in the number of cases

reported and conviction rates are significantly low due to flaws in the investigation of the cases.

13. The steps stated to have been taken by the State Government for implementing the provisions of the statute as disclosed in the statement filed by the Inspector General of Police, Crime Branch are hardly sufficient to give effect to the provisions of the statute, for it is by now established that the same did not bring about any significant change in the system in place. As noted, the steps taken by the State Government in the Women and Child Development Department as disclosed in the statement filed by the Director of the Department are merely steps towards imparting training for the stakeholders, sanctioning of amounts to the Child Protection Officers to meet their expenses and for establishing a child friendly Court in Ernakulam. The aforesaid, according to me, are only a very few among the various issues to be tackled in order to achieve the object and purpose of the statute.

14. On a careful appraisal of the situations prevailing in the State as regards implementation of the provisions of the POCSO Act revealed from the large number of

cases arising under the statute, I am of the view that the system in place needs to be improved radically, and the same would not be possible without the interference of this court. In the aforesaid circumstances, the following general directions are issued, in exercise of the power of this court under Articles 226 and 227 of the Constitution of India, with a view to protect the children involved in the cases from the risk of secondary victimisation and to make the justice delivery under the statute effective and meaningful :

1. The State Government shall take immediate steps to make the One-Stop Support Centres directed to be established by the Apex Court in **Nipun Saxena**, operational. The State Government shall thereafter establish in a time bound manner as many One-Stop Support Centres needed in the State, so that victims of cases arising under the POCSO Act need not go anywhere else for the purposes of the POCSO Act

2. The State Government shall appoint a Nodal Officer at the appropriate level, within two months from the date of receipt of a copy of the judgment, to coordinate the activities of the various Government Departments towards implementation of the provisions of the POCSO Act, and that officer shall identify and resolve the issues that impede the

proper implementation of the POCSO Act in the State in the manner in which it is conceived. That officer shall also be the one point contact for all stakeholders to place before the Government the various issues that impede the implementation of the statute to be tackled by the Government.

3. The Nodal Officer so appointed shall be responsible for coordinating the training of the various stakeholders including the Police personnel in juvenile justice principles, to ensure consistency in their approach.

4. The Registrar (Subordinate Judiciary) of this Court shall, in coordination with the Nodal Officer of the State Government and the Kerala Judicial Academy, impart to the Presiding Officers of the Special Courts training in juvenile justice principles from the best available resources, including the training of UNICEF.

5. The State Government shall consider whether the Child Protection Officers and Child Welfare Officers in the Police force could be formed into a separate cadre, so that they would function as Child Protection Officers and Child Welfare Officers wherever they are transferred and if it is not possible, ensure that Child Protection Officers and Child Welfare Officers are posted in every police station after appropriate training.

6. The State Government shall take immediate steps to fill up the vacancies in the Forensic Science Laboratories in the State to ensure that shortage of man power in the Laboratories is not hampering investigations and trials of the cases arising under the POCSO Act.

7. The State Government shall take appropriate steps forthwith to ensure that competent among the eligible aspirants for appointment as Special Public Prosecutor are appointed to that post.

8. The Director General of Prosecution and the State Public Prosecutor shall ensure that the Special Public Prosecutors conducting prosecution in cases arising under the POCSO Act are imparted proper training either directly or in co-operation with the Kerala Judicial Academy.

9. The State Police Chief shall designate a woman IPS officer in every district, to oversee and ensure that the investigations of cases arising under the POCSO Act are conducted strictly adhering to the provisions contained in the POCSO Act and the Rules made thereunder and having due regard to the guidelines formulated under Section 39 of the POCSO Act. If a woman IPS Officer is not available in a district, the State Police Chief would be free to designate one of the available IPS officers for the said purpose.

10. The IPS officer so designated shall ensure that investigation of the cases arising under the POCSO Act are conducted only by the officers who are trained in Juvenile Justice Principles.

11. The IPS officer so designated shall ensure that statements of the children involved in the cases are taken only by trained officers, adhering to the guidelines prepared by the State Government in this regard.

12. The IPS officer so designated shall ensure that statements of the children involved in the cases are taken only when they are physically and psychologically fit to give statements.

13. The Magistrate or Police officer recording the statements of the children involved in the cases shall, wherever possible, ensure that the audio and video of the same are recorded, as provided for under Section 26(4) of the POCSO Act.

14. The IPS officer so designated shall ensure that evidence to prove the sexual abuse through physical as well as behavioural indicators are also collected in every case, having due regard to the guidelines formulated by the State Government in this regard.

15. The IPS officer so designated shall ensure that the experts in the field of Psychology and Psychiatry are cited as witnesses in cases where the behavioural indicators of the child need to be explained.

16. The IPS officer so designated shall ensure that the investigating officers are not swayed by any sort of pressures from any corner, whatsoever, including media.

17. The IPS officer so designated shall ensure that the medical evidence collected by the investigating officers in the cases are consistent with the statements of the children and if not, take necessary steps to conduct further probe as to the inconsistency.

18. The IPS officer so designated shall ensure, before filing the final report in every case, that satisfactory evidence is collected to arrive at the conclusion as to the guilt or innocence of the accused, and if the case is built solely on the statement of the child, ensure also that the statement of the child is one voluntarily given, if necessary, by examining the audio/video recording of the statement and shall, if necessary, obtain the opinions of Psychologists, Psychiatrists and other experts in the field to ensure the correctness of the statements.

19. The Kerala State Legal Services Authority shall prepare a separate panel of experienced advocates having sufficient standing to represent child victims of sexual abuse cases to advise their family/guardians as to their rights and for rendering necessary legal aid to them in the various proceedings in respect of the child.

20. As and when the first information report concerning an offence under the POCSO Act is furnished to the Special Court, the Special Court shall give a communication to the District Legal Services Authority concerned and the District Legal Services Authority shall provide a lawyer to the family or the guardian of the child forthwith, if the family or the guardian of the child are unable to afford a lawyer.

21. The lawyer engaged by the family or the guardian of the child, or the lawyer provided by the Legal Services Authority to the family or guardian of the child, as the case may be, shall be at liberty to move the Legal Services Authority for the various benefits to which the child is entitled to, including the benefits in terms of the guidelines issued by the Government under Section 39 of the POCSO Act.

22. The lawyer engaged by the family or the guardian of the child, or the lawyer provided by the Legal Services Authority to the family or guardian of the child, as the

case may be, shall be at liberty to move the Special Court for appropriate directions for interim compensation, after the registration of the first information report, as provided for under Rule 9 of the Protection of Children from Sexual Offences Rules, 2020, and if interim compensation is ordered by the Special Court, the same shall be forthwith paid to child by the Legal Services Authority.

23. The lawyer engaged by the family or the guardian of the child, or the lawyer provided by the Legal Services Authority to the family or guardian of the child, as the case may be, shall be at liberty to move the Special Court for appropriate directions regarding the investigation of the case in accordance with the decisions of the Apex Court in **Sakiri Vasu v. State of U.P.**, (2008)2 SCC 409) and **Vinubhai Haribhai Malaviya and Others v. State of Gujarat and Another**, 2019 SCC Online SC 1346.

24. The State Government shall take necessary steps forthwith to enable the Kerala State Legal Services Authority to draw and disburse the compensation payable to the victims in cases arising under the POCSO Act, in terms of the provisions of the Kerala Victim Compensation Scheme 2017 by considering the requests made by the Legal Services Authority in this regard, or by providing advance amount to them, and shall ensure that no victim is made to wait for the compensation

ordered to be paid by the Special Court, especially for meeting an urgent need.

25. The special Courts shall ensure that the trial in the cases arising under the POCSO Act is conducted having due regard to the guidelines prescribed by the State Government under Section 39 of the POCSO Act.

26. The Nodal Officer directed to be appointed by the Government in terms of this order shall file a report in this matter once in three months, until relieved from that obligation, indicating the various steps taken in compliance with the directions in this order, notwithstanding the disposal of the criminal appeal, and the criminal appeal would be deemed to be pending for the said limited purpose. The Nodal Officer would also be free to seek appropriate modification of this order, if situations warrant.

27. The registry shall communicate this order to the Special Courts in the State, the Judicial Magistrates in the State empowered to record the statements of the witnesses, the Director General of Prosecution and the State Public Prosecutor, the Kerala State Legal Services Authority and to the Kerala Judicial Academy.

Sd/-

P.B.SURESH KUMAR, JUDGE

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