

STRENGTHENING LEGAL FRAMEWORKS AGAINST CHILD SEXUAL EXPLOITATION: A CASE ANALYSIS OF JUST RIGHTS FOR CHILDREN ALLIANCE V. S. HARISH, 2024 INSC 716 (23 SEPTEMBER 2024)

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INTRODUCTION

The case of *Just Rights for Children Alliance v. S. Harish* concerns a critical issue regarding child sexual exploitation and abuse material (CESAM) and the application of legal provisions under the *Protection of Children from Sexual Offences Act, 2012* (POCSO Act) and the *Information Technology Act, 2000* (IT Act). The main question raised before the Supreme Court was whether viewing CESAM is punishable under Section 15 of the POCSO Act and Section 67B of the IT Act, and whether the statutory presumption of a culpable mental state under Section 30 of the POCSO Act can be invoked in a quashing petition. The case explores significant legal principles regarding the possession and consumption of CESAM, statutory presumptions of malicious intent, and the evolving legal framework aimed at protecting children from sexual exploitation.

Factual Background

On January 29, 2020, the police received information that the respondent, S. Harish, was consuming CESAM, which is often referred to as child pornography under the POCSO Act. The investigation revealed that Harish had downloaded material depicting children in sexual acts on his mobile phone. Subsequently, an FIR was registered against him under Section 67B of the IT Act (for electronically publishing or transmitting material involving children in sexual acts) and Section 14(1) of the POCSO Act (Punishment for using children for pornographic purposes). During investigation, the respondent admitted to having viewed pornography during college, and a forensic analysis of his mobile phone confirmed the presence of CESAM.

Although Section 14(1) was initially invoked, it was later dropped, and Section 15(1) was applied instead, which pertains to the possession or storage of CESAM and the failure to delete, destroy, or report such material.

Harish filed a petition in the Madras High Court to quash the criminal charges, arguing that mere viewing or downloading of CESAM without publication or transmission did not constitute an offense. On January 11, 2024, the High Court quashed the charges, finding no offense based on mere consumption of CESAM.

The appellants, a group of NGOs working against child trafficking and sexual exploitation, appealed to the Supreme Court, challenging the High Court's ruling.

Legal Questions

3. Whether the viewing of CESAM is punishable under Section 15 of the POCSO Act and Section 67B of the IT Act?
4. Can the statutory presumption of a culpable mental state under Section 30 of the POCSO Act be invoked during quashing proceedings?

Decision of the Supreme Court

The Supreme Court, in a judgment delivered by Justice Pardiwala, overturned the High Court's decision and restored the criminal proceedings against the respondent. The Court examined the legal provisions under the POCSO Act and the IT Act and elaborated on the scope of these statutes, particularly regarding the possession, consumption, and transmission of CESAM.

Reasons for the Decision

9. Scope of Section 15 of the POCSO Act

The Supreme Court upheld the interpretation of Section 15(1) of the POCSO Act, which criminalizes the storage or possession of CESAM with the intent to share it, as well as the failure to delete or report the material. The Court emphasized that Section 15(1) does not require the actual transmission or publication of CESAM to constitute an offense. The Court recognized that the consumption of CESAM, coupled with the failure to delete or report it, constitutes an offense under the POCSO Act, as it is an "Inchoate Crime" or "Inchoate Offense"—an offense committed in preparation for a further crime.

10. Viewing Amounts to Possession

The Supreme Court clarified that viewing CESAM is equivalent to possession under Section 15(1) of the POCSO Act. This is a shift from the pre-2019 framework, where Section 15 only criminalized storage of CESAM for commercial purposes. The 2019 Amendment to the POCSO Act expanded the scope to include possession of CESAM as a criminal act. The Court acknowledged that possession can be "constructive possession," meaning the person may not physically possess the material but has control over it through devices or other means. Even if the material is deleted, if a person exercises control

over it, such as viewing it, it amounts to possession.

11. Possession at the Time of FIR Registration

The Court also observed that Section 15 of the POCSO Act does not specify that the possession or storage of CESAM must be contemporaneous with the filing of the FIR. If evidence is found that CESAM was stored or possessed at any point of time, the offense would apply, regardless of when the criminal proceedings were initiated.

12. Presumption of Criminal Mental State under Section 30 of the POCSO Act

The Supreme Court ruled that Section 30 of the POCSO Act creates a rebuttable presumption of a culpable mental state when the offense requires malicious intent. This presumption can assist the prosecution, as it is often difficult to establish direct evidence of malicious intent in cases involving inchoate crimes. The Court ruled that when High Courts deal with quashing petitions, they can rely on this statutory presumption to avoid bypassing the legislative presumption concerning malicious intent. However, the presumption may be disregarded if no foundational facts have been established by the prosecution.

13. Scope of Section 67B of the IT Act

Section 67B of the IT Act criminalizes the creation, possession, propagation, consumption, and dissemination of CESAM. The Court held that the provision covers both direct and indirect acts of online sexual exploitation and abuse of children, making it applicable not only to dissemination but also to the mere possession or consumption of such material.

14. Role of Intermediaries under Section 79 of the IT Act

The Court held that intermediaries (such as online platforms) cannot invoke Section 79's immunity unless they remove the CESAM and report it to the police under the POCSO Act. This further strengthened the responsibility of online platforms in curbing child exploitation material.

15. Discontinuation of the Expression "Child Pornography"

The Court recommended that the term "child pornography" be replaced with "child sexual exploitation and abuse material" to more accurately reflect the criminal nature of the offense and highlight the harm caused to children. The Court urged the Union Government to bring an amendment to the POCSO Act or promulgate an ordinance for this change.

16. Suggestions to the Union Government

The Court suggested that the Union Government amend Section 15 of the POCSO Act to make it easier for the public to report CESAM via an online portal. This would improve accessibility and efficiency in addressing instances of child sexual abuse material.

Impact and Implications of the Judgment

- **Broader Scope for Criminalizing Possession:** The judgment broadens the scope of criminal liability under the POCSO Act and the IT Act, emphasizing that viewing CESAM without transmission or publication can still lead to prosecution, thus deterring consumers of such material.
- **Constructive Possession:** The ruling introduces the concept of constructive possession, which strengthens the law's ability to prosecute individuals who may not physically store CESAM but have

control over it through devices or other means.

- **Presumption of Malicious Intent:** The statutory presumption of malicious intent is crucial in aiding prosecutions, especially in complex cases involving inchoate crimes where direct evidence of intent may be lacking.
- **Online Platforms' Accountability:** The Court's ruling on the responsibility of online intermediaries strengthens the role of platforms in preventing the dissemination of CESAM and protecting children from exploitation.
- **Clarification of Terminology:** The shift from "child pornography" to "child sexual exploitation and abuse material" better aligns with the serious nature of the offense and promotes a clearer understanding of the crime's impact on children.

Conclusion

The Supreme Court's judgment in *Just Rights for Children Alliance v. S. Harish* plays a pivotal role in reinforcing legal provisions aimed at curbing child sexual exploitation and abuse. By clarifying the scope of the POCSO Act and IT Act, the Court has ensured that even those who consume CESAM are held accountable, sending a strong message against the normalization of such heinous crimes. The ruling also highlights the need for legislative reforms to ensure a more robust framework for protecting children from sexual abuse and exploitation in the digital age.

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