

## Alakh Alok Srivastava vs Union Of India on 1 May, 2018

**Equivalent citations:** AIR 2018 SUPREME COURT 2440, 2018 CRI LJ 2929, 2018 ALLMR(CRI) 3590, (2018) 192 ALLINDCAS 231 (SC), (2018) 192 ALLINDCAS 231, (2018) 1 WLC(SC)CVL 770, (2018) 2 ALD(CRL) 170, (2018) 2 BOMCR(CRI) 711, (2018) 2 CRIMES 324, (2018) 2 CURCRIR 330, (2018) 2 JLJR 353, 2018 (2) KLT SN 68 (SC), (2018) 2 MADLW(CRI) 805, (2018) 2 ORISSA LR 136, (2018) 2 PAT LJR 417, (2018) 3 ALLCRILR 732, (2018) 3 ANDHLD 179, (2018) 3 BOM CR 746, (2018) 3 CIVLJ 908, (2018) 3 JCR 99 (SC), (2018) 3 MAD LJ(CRI) 282, (2018) 71 OCR 1, (2018) 7 SCALE 88, (2019) 106 ALLCRIC 334, AIR 2018 SC( CRI) 755

**Author:** Dipak Misra

**Bench:** D.Y. Chandrachud, A.M. Khanwilkar, Dipak Misra

1

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) No.76 OF 2018

ALAKH ALOK SRIVASTAVA

.....PETITIONER

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENTS

**J U D G M E N T** Dipak Misra, CJI.

The instant Writ Petition initially raised two issues, first, the treatment of an eight month old female child who had become a victim of a crime committed under the Protection of Children from Sexual Offences Act, 2012 (for brevity, 'the POCSO Act') and

the second, speedy trial and monitoring of the trials under the POCSO Act in a child friendly court regard being had to the letter and spirit of the provisions contained in the said Act.

2. The first prayer was dealt with vide orders dated 31st January, 2018, 1st February, 2018 and 12th March, 2018. It is necessary to note here that regard being had to the health condition of the child, a team of doctors from the All India Institute of Medical Sciences (AIIMS) was sent to visit the patient at Kalawati Saran Children Hospital. That apart, a direction was issued to the authorities of the Delhi State Legal Services Authority to accompany the team of doctors.

3. A team of doctors along with the competent authority of the Delhi State Legal Services Authority examined the victim and submitted a report. The relevant part of the report reads as follows: □ “Examination revealed 8 month old female infant alert and active, sharing bed with another girl child. She was breast feeding with normal vital signs (HR 120/min, Respiratory rate 32/min, no distress, saturation 98% on room air, temperature 36.8 C). Her weight was 5.6 kilogram and physical appearance looks normal. Systemic examination did not reveal any abnormality. The operated perineal wound was looking normal and the colostomy was healthy.

Overall the child looks stable and recouping following surgery. The surgical wound will need regular aseptic dressings and further management will be done as per need. In view of providing holistic care, the team felt that the child may be shifted to AIIMS under care of Pediatrics Surgery, Pediatrics & Obstetrics Department with support from Psychiatry (for parenteral counseling). Team talked to family (Father & Mother) took consent for transfer of child under care by AIIMS team which they agreed but were worried and concerned about child's health. Father was counseled and given assurance for providing best care. Being less than one year age all medical expenses will be exempted at AIIMS under Janani Shishu Suraksha Yojana of Government of India.”

4. Be it stated, the Member Secretary of the Delhi State Legal Services Authority filed a status report which mentions that the child had been shifted to AIIMS for better treatment. That apart, the Member Secretary stated thus: □ “That, in the instant case as per report received from DLSA concerned it has stated that vide order dated 30.01.2018 by the Court of Ld. Additional Sessions Judge, Rohini Court an interim compensation of Rs.75,000/□ has been awarded in accordance with Delhi Victim Compensation Scheme, 2015. After completion of necessary formalities i.e. bank account etc. the amount of the said interim compensation would be disbursed immediately through RTGS.

That, it is submitted that DLSA Secretary, North□West has also visited at Kalawati Saran Hospital and met the parents of the child in the morning of 31.01.2018 and apprised them of their legal rights qua Delhi Witness Protection

Scheme, 2015, Delhi Victim Compensation Scheme, 2015 etc. It is also submitted Legal Services Advocate of DLSA has been appointed for providing legal aid in the matter.”

5. On 12.03.2018, when the matter was listed, it was submitted by Ms. Pinky Anand, learned Additional Solicitor General, that the victim child had been discharged from AIIMS but she was required to undergo another surgery which had been fixed for 17th April, 2018.

6. As far as the child in the instant case is concerned, we have been apprised that she has undergone a second surgery and she is presently stable. Ms. Pinky Anand, learned Additional Solicitor General, would submit that if any medical assistance is required and the same is brought to her notice, proper care shall be provided to the child.

7. With regard to the second aspect, on 01.02.2018, it was urged by petitioner who appeared in person that as far as cases under the POCSO Act are concerned, there should be speedy disposal of such cases and on a subsequent date, information was sought from the High Courts in respect of the monitoring of speedy disposal of such cases.

8. When the matter was called up today, the petitioner filed a chart stating the number of cases under the POCSO Act pending in various States and sought intervention of this Court for issuing directions so that sensitivity with regard to the said legislation is shown by the trial courts and further, there should be a speedy trial as postulated in the POCSO Act.

9. We have heard Mr. Alakh Alok Srivastava, the petitioner, who has appeared in person and Ms. Pinky Anand, learned Additional Solicitor for the respondent□Union of India.

10. The POCSO Act has been legislated keeping in view the fundamental concept under Article 15 of the Constitution that empowers the State to make special provisions for children and also Article 39(f) which provides that the State shall in particular direct its policy towards securing that the 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. The Statement of Objects and Reasons of the Act indicate the focus for reduction of child abuse and protection of children from the offences of sexual assault, sexual harassment and pornography, etc. The relevant part of the Statement of Objects and Reasons of the POCSO Act is extracted below:□

“3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the ‘Study on Child Abuse: India 2007’ conducted by the Ministry of Women and Child

Development. Moreover, sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalized. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences Against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is, therefore, proposed to enact a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process incorporating child friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.”

11. In this context, it is apposite to reproduce the long Preamble of the POCSO Act. It is as follows:□  
“An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

Whereas clause (3) of article 15 of the Constitution, inter alia, empowers the State to make special provisions for children;

And whereas, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

And whereas it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

And whereas it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

And whereas the State parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent –

(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;

(c) the exploitative use of children in pornographic performances and materials;

And whereas sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.”

12. In *Eera through Dr. Manjula Krippendorf v. State (NCT of Delhi)* and another<sup>1</sup>, one of us (Dipak Misra, J), dwelling upon the purpose of the Statement of Objects and Reasons and the Preamble of the POCSO Act, observed: “20. ... the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On a avid and diligent discernment of the preamble, it is manifest that it recognizes the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well being are regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The statement of objects and reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing childfriendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POCSO Act.” <sup>1</sup> (2017) 15 SCC 133

13. At the very outset, it has to be stated with authority that the POCSO Act is a gender neutral legislation. This Act has been divided into various Chapters and Parts therein. Chapter II of the Act titled “Sexual Offences Against Children” is segregated into five parts. Part A of the said Chapter contains two Sections, namely Section 3 and Section 4. Section 3 defines the offence of “Penetrative Sexual Assault” whereas Section 4 lays down the punishment for the said offence. Likewise, Part B of the said Chapter titled “Aggravated Penetrative Sexual Assault and Punishment therefor” contains two sections, namely Section 5 and Section 6. The various sub-sections of Section 5 copiously deal with various situations, circumstances and categories of persons where the offence of penetrative sexual assault would take the character of the offence of aggravated penetrative sexual assault. Section 5(k), in particular, while laying emphasis on the mental stability of a child stipulates that where an offender commits penetrative sexual assault on a child, by taking advantage of the child’s mental or physical disability, it shall amount to an offence of aggravated penetrative sexual assault.

14. That apart, Section 28 which occurs in Chapter VII titled “Special Courts” requires for designation of a Court of Session in each district as Special Court specifically, to try offences under the POCSO Act for ensuring a speedy trial which is one of the fundamental objectives of the Act. Further, Section 32 stipulates that State Government shall appoint a Special Public Prosecutor for every Special court, so designated under Section 28, for conducting cases only under the POCSO Act.

15. Chapter VIII of the Act deals with the procedure and powers of these Special Courts and the procedure for recording evidence of the child victim. Section 33 falling under Chapter VIII provides for various safeguards at the trial stage and ensures that various manifold interests of the child are protected. We think it appropriate to reproduce the relevant part of Section 33: □  
“33. Procedure and powers of Special Court – (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts. (2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination □ in □ chief, cross □ examination or re □ examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial. (4) The Special Court shall create a child □ friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court. (5) The Special Court shall ensure that the child is not called repeatedly to testify in the court. (6) The Special Court not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation. – For the purposes of this sub □ section, the identity of the child shall include the identity of the child’s family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.”

16. Section 35 provides for recording of the evidence of the child and disposal of the cases. The same being important for the present purpose, it is quoted here: □ “35. Period for recording

of evidence of child and disposal of case. – (1)The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.”

17. The aforesaid provisions make it clear as crystal that the legislature has commanded the State to take various steps at many levels so that the child is protected and the trial is appropriately conducted.

18. Section 37 provides that the Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence; Section 36 casts a duty on the Special Court to ensure that the child is not exposed in any way to the accused at the time of recording of the evidence while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate. The objective of the POCSO Act is to protect the child from many an aspect so that he/she does not feel a sense of discomfort or fear or is reminded of the horrified experience and further there has to be a child friendly atmosphere.

19. Speaking about the child, a three-Judge Bench in M.C. Mehta v. State of T.N. and others<sup>2</sup> opined that: “... “child is the father of man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.”

20. In Supreme Court Women Lawyers Association (SCWLA) v. Union of India and another<sup>3</sup>, this Court has observed: “In the case at hand, we are concerned with the rape committed on a girl child. As has been urged before us that such crimes are rampant for unfathomable reasons and it is the obligation of the law and law-makers to cultivate respect for the children and especially the girl children who are treated with such barbarity and savageness as indicated earlier. The learned Senior Counsel appearing for the petitioner has emphasised on the obtaining horrendous and repulsive situation.” Alice Miller, a Swiss psychologist, speaking about child abuse has said: “Child abuse damages a person for life and that damage is in no way diminished by the ignorance of the perpetrator. It is only with the uncovering of the 2 (1996) 6 SCC 756 3 (2016) 3 SCC 680 complete truth as it affects all those involved that a genuinely viable solution can be found to the dangers of child abuse.”

21. Keeping in view the protection of the children and the statutory scheme conceived under the POCSO Act, it is necessary to issue certain directions so that the legislative intent and the purpose are actually fructified at the ground level and it becomes possible to bridge the gap between the legislation remaining a mere parchment or blueprint of social change and its practice or implementation in true essence and spirit is achieved.

22. Mr. Srivastava has provided us a chart relating to the cases pending under the POCSO Act in all States except Andhra Pradesh, Telangana, Rajasthan and Jammu and Kashmir in respect of which the data is not available. We may take the example of two States, namely, Madhya Pradesh and Uttar Pradesh. The pendency of such cases in the State of Uttar Pradesh is approximately 30884 and in the State of Madhya Pradesh, approximately 10117.

23. It is submitted by Mr. Srivastava that in both the States, the cases are pending at the evidence stage beyond one year. We are absolutely conscious that Section 35(2) of the Act says “as far as possible”. Be that as it may, regard being had to the spirit of the Act, we think it appropriate to issue the following directions:□

(i) The High Courts shall ensure that the cases registered under the POCSO Act are tried and disposed of by the Special Courts and the presiding officers of the said courts are sensitized in the matters of child protection and psychological response.

(ii) The Special Courts, as conceived, be established, if not already done, and be assigned the responsibility to deal with the cases under the POCSO Act.

(iii) The instructions should be issued to the Special Courts to fast track the cases by not granting unnecessary adjournments and following the procedure laid down in the POCSO Act and thus complete the trial in a time□bound manner or within a specific time frame under the Act.

(iv) The Chief Justices of the High Courts are requested to constitute a Committee of three Judges to regulate and monitor the progress of the trials under the POCSO Act. The High Courts where three Judges are not available the Chief Justices of the said courts shall constitute one Judge Committee.

(v) The Director General of Police or the officer of equivalent rank of the States shall constitute a Special Task Force which shall ensure that the investigation is properly conducted and witnesses are produced on the dates fixed before the trial courts.



(vi) Adequate steps shall be taken by the High Courts to provide child friendly atmosphere in the Special Courts keeping in view the provisions of the POCSO Act so that the spirit of the Act is observed.

24. The Registry is directed to communicate this order to the Registrar General of the High Courts so that it can be immediately implemented. With the aforesaid directions, the writ petition stands disposed of.

.....CJI.

(DIPAK MISRA) .....J. (A.M. KHANWILKAR)

.....J. (Dr. D.Y. CHANDRACHUD)

NEW DELHI;

MAY 01, 2018.