

18.04.2022
Sl. No.8
akd/PA

**C. R. A. (DB) 29 of 2022
(CRAN 1 of 2022)**

In Re : An application for admission of appeal under Section 374(2) of the Code of Criminal Procedure, 1973 filed on 28.02.2022 :

A N D

Prafulla Mura

vs.

The State of West Bengal & Anr.

Mr. Amal Krishna Samanta

... .. for the appellant

Ms. Amita Gaur

... .. for the State

The present appeal has been filed challenging an order of conviction under Section 6 of the POCSO Act. Appellant has arrayed the minor victim as a respondent describing her by name and also disclosing her father's name. We are of the view such disclosure in the petition of appeal runs contrary to the provisions of Section 33(7) of the POCSO Act as well as Section 228A of the Indian Penal Code.

Section 33 sub-section (7) of the POCSO Act reads as follows:-

“33. Procedure and powers of Special Court. * ****

(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. ”

Section 228A of the Indian Penal Code reads as follows:-

“228A. Disclosure of identity of the victim of certain offences etc. – (1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376AB, section

376B, section 376C, section 376D, section 376DA, section 376DB or section 376E is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is –

- (a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or
- (b) by, or with the authorisation in writing of, the victim; or
- (c) where the victim is dead or minor or of unsound mind, by or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation. – For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation. – The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.”

Interpreting the aforesaid sections, the Apex Court in ***Nipun Saxena vs. Union of India***¹ observed the identity of the victim when she is an appellant in case of acquittal is not required to be disclosed. Procedure of filing appeal without disclosure of identity was succinctly stated as follows:-

“28. Before parting with this aspect, we would like to deal with a situation not envisaged by the law-makers. As we have held above, Section 228-A IPC imposes a clear-cut bar on the name or identity of the victim being disclosed. What happens if the accused is acquitted and the victim of the offence wants to file an appeal under Section 372 CrPC? Is she bound to disclose her name in the memo of appeal? We are clearly of the view that such a victim can move an application to the court praying that she may be permitted to file a petition under a pseudonymous name e.g. ‘X’ or ‘Y’ or any other such coded identity that she may choose. However, she may not be permitted to give some other name which may indirectly harm another person. There may be certain documents in which her name will have to be disclosed e.g. the power of attorney and affidavit(s) which may

¹ (2019) 2 SCC 703

have to be filed as per the Rules of the Court. The Court should normally allow such applicant to file the petition/appeal in a pseudonymous name. Where a victim files an appeal we direct that such victim can file such an appeal by showing her name as 'X' or 'Y' along with an application for non-disclosure of the name of the victim. In a sealed envelope to be filed with the appeal she can enclose the document(s), in which she can reveal her identity as required by the Rules of the appellate court. The Court can verify the details but in the material which is placed in the public domain the name of the victim shall not be disclosed. Such an application should be heard by the Court in chambers and the name should not be reflected even in the cause list till such matter is decided. Any documents disclosing the name and identity of the victim should not be in the public domain.”

We are of the view similar restrictions with regard to disclosure of identity of the victim ought to be followed in an appeal preferred against conviction where the victim is made a respondent.

With regard to a minor victim the Court further observed Clause (c) of sub-section (2) of section 228A of the Indian Penal Code shall not apply and disclosure of identity can only be made by the Court in the interest of the child. The Bench finally directed as follows:-

50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

50.2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorisation of the next of kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.

50.3. FIRs relating to offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E IPC and the offences under POC SO shall not be put in the public domain.

50.4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.

50.5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.

50.6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.

50.7. An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228-A(2)(c) IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228-A(1)(c) and lays down criteria as per our directions for identifying such social welfare institutions or organisations.

50.8. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

50.9. All the States/Union Territories are requested to set up at least one “One-Stop Centre” in every district within one year from today.”

It may not be out of place to mention that in ***Bijoy @ Guddu Das Vs. The State of West Bengal***² similar directions with regard to non-disclosure of identity of a minor victim under POCSO Act had been given.

Relevant directions are set out 1as follows:-

“**40.** *** *** ***
*** *** ***

5. The investigating agency shall not disclose the identity of the victim in any media and shall ensure that such identity is not disclosed in any manner whatsoever except the express permission of the Special Court in the interest of justice. Any person including a police officer committing breach of the aforesaid requirement of law shall be prosecuted in terms of section 23(4) of the said Act.

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8. The identity of the victim particularly his/her name, parentage, address or any other particulars that may reveal such identity shall not be disclosed in the judgment delivered by the Special Court unless such disclosure of identity is in the interest of the child.”

In order to avoid illegal publication of identity and other particulars of victim of offences under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E of the Indian Penal Code as well as minor victims in the pleadings and/or documents filed before this Court, necessary amendments are required to be made to the rules of this Court.

Accordingly, we direct Registrar General to place the matter before the Rule Committee of this Court for considering the issue of amendments of the rules of the Court so that the identity of victims of sexual offences including minor victims under POCSO Act are not disclosed in the pleadings and other records of the Court.

Till such amendments are made to the aforesaid rules, this Court considers it prudent to issue the following directions:-

² 2017 SCC OnLine Cal 417

Practice directions pertaining to non-disclosure of identity of victims of sexual offences and offences under POCSO Act:-

- (a) *No pleading in any proceeding pertaining to offences under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E of the Indian Penal Code as well as offences under POCSO Act filed before this Court shall disclose the identity of the victim, that is, the victim's name, parentage, address or any other particulars relating to her identity;*
- (b) *Vakalatnama executed by the victim disclosing her identity shall be filed in a sealed cover;*
- (c) *Affidavit sworn by the victim in the proceeding which by law requires disclosure of her identity shall be kept in a sealed cover. Redacted copy of the affidavit must also be filed which shall be kept as a part of the public records;*
- (d) *Redacted copies of pleadings/ affidavits, documents and/or annexures shall be served upon the parties to the proceedings unless otherwise directed by the Court;*
- (e) *All documents/ annexures filed in the proceedings disclosing identity of the victim shall be kept in sealed cover and wherever possible redacted copies shall be filed and kept as a part of the public records of the Court;*
- (f) *Inspection of the documents/ annexures filed in the proceedings disclosing identity of the victim and kept in sealed cover shall be given only with the permission of the Court;*
- (g) *A declaration shall be made in the body of the petition stating the identity of the victim, as aforesaid, has not been disclosed;*
- (h) *In the event disclosure is made, declaration shall be made stating that the same has been made as per the authorisation in writing of the victim or in the event the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of the next of kin of the victim as per sub-section (2) of Section 228A of the Indian Penal Code;*
- (i) *In case of a minor no disclosure of the identity of the victim shall be made without the permission of the Court and only in the interest of the victim;*

(j) Without express order from the Court, Department concerned shall not receive pleadings in any matter pertaining to the aforesaid offences unless they are in conformity to the aforesaid directions;

Registrar (IT) is directed to upload these directions in the official website of the High Court for spreading awareness amongst litigants and other stakeholders and to ensure due compliance of the statutory requirements of section 228A of the Indian Penal Code and 33(7) of the POCSO Act including the directions in the ***Nipun Saxena*** (supra).

In view of the aforesaid, we direct the learned advocate for the appellant to redact the name of the victim and her father from the cause title of the petition and describe the victim as follows : 'x' (*victim*) *represented through her father (PW2)*. He is directed to effect service upon the opposite party no.2 through registered speed post with acknowledge due. No doubt, postal cover with regard to service of notice upon the victim would naturally require disclosure of her name as well as her address. Such disclosure is a practical necessity. Hence, to ensure minimum publication of the identity of the victim, it is directed postal cover annexed with the affidavit of service must be filed before this court in a sealed cover and shall not be opened save and except with the permission of the court.

Let this matter appear under the same heading two weeks hence.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)