

(2018) 09 RAJ CK 0070
In the Rajasthan High Court
Case No : Civil Writ Petition No. 15853 of 2017

Rajasthan State Legal Services Authority @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 04-09-2018

Acts Referred:

Protection of Children from Sexual Offences Act, 2012 — Section 32, 36, 37, 38, 39
Code of Criminal Procedure, 1973 — Section 284

Citation : (2018) 09 RAJ CK 0070

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : R.N. Mathur, Prateek Mathur, Nikhil Saini, N.M. Lodha, Kunal Jaiman

Judgement

Mr. R.N. Mathur, learned Senior Counsel appearing for the petitioner, submitted that though the State has created 55 Special Courts for POCSO Act

but no provision has been made for the buildings and other infrastructure.

Mr. N.M. Lodha, learned Advocate General, has produced a photostat copy of the letter dated 6th August, 2018 of the Principal Secretary to the

Government, Law and Legal Affairs Department, Government of Rajasthan, Jaipur, addressed to all the District Collectors, asking them to provide

Government buildings for such courts at the District Headquarters in consultation with the District & Sessions Judge concerned and if no such building

is available, then to make arrangement for the building on rent basis.

Mr. R.N. Mathur, learned Senior Counsel, submitted that as per the provisions of the Protection of Children from Sexual Offences Act, 2012 (for

short, the POCSO Act), conducive atmosphere has to be provided to the child not only for recording statement but also for the entire period of

trial. Learned Senior Counsel in this connection referred to Section 36 of the POCSO Act, which inter-alia provides that the Special Court shall 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. For this purpose, the Special Court may record the statement of a

child through video conferencing or by utilising single visibility mirrors or curtains or any other device. Section 37 of the POCSO Act requires 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.

Its proviso lays down that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed

to issue a commission in accordance with the provisions of Section 284 of the Code of Criminal Procedure, 1973. Section 38 of the POCSO Act

provides that wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on

payment of such fees as may be prescribed, while recording the evidence of the child. If the child has a mental or physical disability, the Special Court

may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having

such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

Learned Senior Counsel also referred to Section 32 of the POCSO Act, which inter-alia provides that the State Government shall, by notification in the

Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act. He also

referred to the Model Guidelines issued under Section 39 of the POCSO Act issued by the Ministry of Women and Child Development. Clause 2 of

Chapter 8 thereof provides that during criminal investigation, certain minimum level of protection is required in relation to any interviews with the

victim. These should be carried out in a sensitive manner and advocates as well as law enforcement officials should be received appropriate training to

this end. Such training should ensure that these persons know appropriate methods of interviewing which will take into account a victim's

particular situation, minimise distress and maximise the collection of high-quality evidence. Learned Senior Counsel also referred to Clause 4 of the

Model Guidelines, which has given detailed discretion with regard to child-friendly courtrooms and waiting areas.

Learned Senior Counsel also referred to judgment of the Supreme Court in Alakh Alok Srivastava Vs. Union of India â?" AIR 2018 SC 2440, and

drew attention of the court to para 23 of the report, in which it is directed that 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; and 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 with instructions to fast track the cases by not granting unnecessary adjournments and following the

procedure laid down in the POCSO Act so as to conclude the trial in a time bound manner. 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. It was further directed that 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.

On considering all the submissions made at the Bar and keeping in view the provisions of the POCSO Act, aforementioned Model Guidelines and the

observations made by the Supreme Court in Alakh Alok Srivastava, supra, we find that the stop gap arrangement that has been made by the State

Government in directing the District Collectors of the respective districts to provide accommodation in government buildings, if available, in

consultation with the District & Sessions Judge, or provide rental accommodation, may not be permanent solution. Even though the creation of 55

Special Courts is a welcome move on the part of the State Government but in order to make true compliance of the provisions of the POCSO Act in

letter and spirit, the Special Courts have to be established in such a way that a child-friendly atmosphere is available to the victim during the entire

proceedings of the trial. For sensitization of the Presiding Officers as also the Public Prosecutors and law enforcement officials, the Director,

Rajasthan State Judicial Academy, Jodhpur may frame a module of training programme in consultation with the Registrar General of the High Court

as also the Director (Prosecution) of the State Government and the Director General of Police, State of Rajasthan, keeping in view the provisions of

the POCSO Act, the judgment of the Supreme Court in Alakh Alok Srivastava, supra, as also Model Guidelines issued by the Ministry of Women and Child Development under Section 39 of the POCSO Act.

We require the Chief Secretary to the Government of Rajasthan, to file an affidavit within a period of four weeks with regard to allotment of land for these Courts and for construction of buildings, having child/victim friendly atmosphere with adequate infrastructure/paraphernalia.

A copy of this order be provided to the learned Advocate General as also Mr. R.N. Mathur, learned Senior Counsel for the petitioner. A copy of this

order may also be forwarded to the Director, Rajasthan State Judicial Academy, Jodhpur.

List the matter again on 08.10.2018.