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2025 SCC OnLine SC 1200

In the Supreme Court of India

(BEFORE ABHAY S. OKA AND UJJAL BHUYAN, JJ.)

Suo Motu Writ Petition (C) No. 3 of 2023

In Re : Right to Privacy of Adolescents

With

Criminal Appeal No. 1451 of 2024

Suo Motu Writ Petition (C) No. 3 of 2023 and Criminal Appeal No. 1451 of 2024

Decided on May 23, 2025

Advocates who appeared in this case:

By Courts Motion

Ms. Madhavi Divan, Sr. Adv. (Amicus Curiae)

Ms. Liz Mathew, Sr. Adv. (Amicus Curiae)

Ms. Nidhi Khanna, AOR, Ms. Aishani Narain, Adv., Mr. Sameer Choudhary, Adv., Ms. Aandrita Deb, Adv., Ms. Bagavathy Vennimalai, Adv., Ms. Mallika Agarwal, Adv.

Mr. Huzefa Ahmadi, Sr. Adv., Mr. Kunal Mimani, AOR, Mr. Abhinav Rana, Adv. for the Appellant(s);

Mr. Dibyadyuti Banerjee, Adv., Ms. Sumedha Halder, Adv., Mr. Abhijit Sengupta, AOR, Mr. Paras Chauhan, Adv., Mr. Navneet Kansal, Adv., Mr. Manoj Kumar, Adv., Mr. Dhananjay Kumar, Adv., Mr. Huzefa Ahmadi, Sr. Adv., Mr. Kunal Mimani, AOR, Mr. Kartikey Bhatt, Adv., Mr. Abhinav Rana, Adv., Ms. Ankita Sharma, AOR, Ms. Aishwarya Bhati, A.S.G.

Ms. Swarupama Chaturvedi, Sr. Adv., Ms. Ruchi Kohli, Sr. Adv., Ms. Chinmayee Chandra, Adv., Ms. Archana Surve Shinde, Adv., Ms. Riddhi Jad, Adv., Ms. Anupriya Srivastava, Adv., Ms. Shivika Mehra, Adv., Ms. Poornima Singh, Adv.

Dr. N. Visakamurthy, AOR, Mr. Anuj Bhandari, AOR, Ms. Nidhi Khanna, AOR, Ms. Astha Sharma, AOR, Mr. Aravindh S., AOR, Mr. Aman Gautam, Adv., Mr. Shiv Mangal Sharma, A.A.G.

Ms. Nidhi Jaswal, AOR, Mr. Kunal Mimani, AOR, Mr. Abhinav Rana, Adv., for the Respondent(s).

The Judgment of the Court was delivered by

ABHAY S. OKA, J.:—

FACTUAL ASPECTS

1. Criminal Appeal No. 1451 of 2024 has been preferred by the State

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of West Bengal, being aggrieved by the judgment and order dated 18th October 2023, passed by a Division Bench of the High Court of Judicature at Calcutta. In Suo Motu Writ Petition (C) No. 3 of 2023, this Court's attention was drawn to certain objectionable observations made in the aforesaid judgment. While dealing with the same, this court took note of the systemic failure of the State to protect the victim, resulting in her fate and wellbeing being ultimately tied up with that of the accused. Accordingly, in this judgment, we are dealing with the issue of sentencing of the accused arising out of the criminal appeal and the Suo Motu Writ Petition. We are also dealing with the issue of rehabilitation of the victim and her child.

2. The learned Special Judge appointed under the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act') convicted the accused for the offences punishable under Section 6 of the POCSO Act and Sections 363 and 366 of the Penal Code, 1860 (for short, 'the IPC'). For the offence punishable under Section 6 of the POCSO Act, the accused was sentenced to undergo rigorous imprisonment for twenty years and pay a fine of Rs. 10,000/-. For the offences punishable under Sections 363 and 366 of the IPC, the accused was sentenced to undergo rigorous imprisonment for four years and five years respectively and was also ordered to pay a fine of Rs. 2,000/- and Rs. 5,000/- respectively. Though the learned Special Judge under the POCSO Act came to the conclusion that the accused was guilty of the offences punishable under clause (n) of sub-section (2) and sub-section (3) of Section 376 of the IPC, in view of the sentence imposed for the offence punishable under Section 6 of the POCSO Act, no separate punishment was imposed. The accused preferred Criminal Appeal (DB) 14 of 2023 before the Calcutta High Court against the conviction. The High Court by the Impugned Judgment dated 18th October 2023 purported to exercise its jurisdiction under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973 (for short, "the CrPC") to set aside the conviction of the accused for the aforesaid offences.

3. This Court by a detailed judgment dated 20th August 2024, set aside the impugned judgment of the High Court and restored the verdict of the learned Special Court to the extent of the conviction of the accused for the offences punishable under clause (n) of sub-section 2 and sub-section (3) of Section 376 of the IPC and Section 6 of the POCSO Act. This Court confirmed the acquittal of the accused for the offences punishable under Sections 363 and 366 of the IPC. However, the sentencing was postponed for the reasons recorded in the judgment. In paragraph 2 of the said judgment, the basic facts of the case have been mentioned and in paragraph 3, the findings recorded by

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the High Court have been mentioned. Paragraphs 2 to 5 of the judgment are relevant which read thus:

> "2. The victim girl was fourteen years old at the time of the incident. The victim's mother lodged a First Information Report (FIR) on 29th May 2018. The victim's mother stated in her complaint that the victim, who was her minor daughter, escaped from her home at 5 : 30 p.m. on 20th May 2018 without informing anyone. On inquiry, it was found that the accused enticed her to leave her house. The accused did so with the help of his two sisters. The victim's mother repeatedly visited the house of the accused and requested him to facilitate the return of her daughter. However, the victim did not come back. A female child was born to the victim. Admittedly, the accused is the biological father of the child. There was a gross delay in the investigation, and the accused was arrested on 19th December 2021. The chargesheet was filed on 27th January 2022 against the accused for the offences for which he was convicted. In addition, the accused was charged with the offence punishable under Section 9 of the Prohibition of Child Marriage Act, 2006. The prosecution examined seven witnesses. We may note here that as the learned Special Judge under the POCSO Act found that there was no evidence of marriage between the victim and the accused, the charge under Section 9 of the 2006 Act was held as not substantiated.
>
> 3. By the impugned judgment, the High Court held that the offences punishable under Sections 363 and 366 of the IPC were not made out, and therefore, the High Court acquitted the accused for the said two offences. Considering the factual scenario that the High Court noticed, it purported to exercise its jurisdiction under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Cr. P.C.') to set aside the conviction of the accused for the offences punishable under Section 6 of the POCSO Act and sub-sections 2(n) and (3) of Section 376 of the IPC. The High Court noted that the mother of the victim had disowned her and therefore, the victim was continuously residing with the accused along with their minor child.
>
> 4. The Suo Motu writ petition was initiated based on the directions issued by the Hon'ble Chief Justice of India for challenging the impugned judgment. The State Government has preferred the criminal appeal to challenge the order of acquittal.
>
> 5. Considering the nature of the observations made by the High Court and the findings recorded by it, this Court appointed Ms. Madhavi Divan and Ms. Liz Mathew, the learned senior counsel, as *amicus curiae* to assist the Court. Both of them have rendered

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valuable assistance to the Court. Along with them, Ms. Nidhi Khanna, Advocate-on-Record, has also assisted the Court. We have heard Mr. Huzefa Ahmadi, the learned senior counsel appearing for the State Government and the learned counsel representing the accused and the victim. The learned senior counsel for the State Government has taken a fair stand. The accused and the victim are on the same page and want to continue their cohabitation."

4. In paragraphs 15 and 15.1, this Court has dealt with the objectionable portions of the impugned judgment of the High Court. Thereafter, this Court also dealt with the exercise of plenary powers of the High Court under Section 482 of the CrPC to quash the order of conviction. In paragraphs 23 and 23.1, this Court held thus:

"23. There are various decisions of this Court holding that the High Court can exercise jurisdiction under Section 482 of the Cr. P.C. to quash a prosecution on the grounds of settlement or by consent. One such judgment is in the case of *Gian Singh* v. *State of Punjab*, (2012) 10 SCC 303. Paragraph 58 of the said decision reads thus:

"58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably,

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irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed."

(emphasis added)

23.1 Therefore, in view of the settled position of law, in the facts of the case, even if the accused and the victim (who has now attained majority) were to come out with a settlement, the High Court could not have quashed the prosecution."

4.1 In paragraphs 24 and 25, this Court highlighted the helpless position in which the victim of the offences under the POCSO Act was placed. Paragraphs 24 and 25 read thus:

"24. The situation in which the victim was placed after the commission of the offence needs a bit of elaboration. As noted earlier, the victim left her house on 20th May 2018, and her mother filed a complaint on 29th May 2018. On 1st June 2018, PW-5 (ASI Gopal Chandra Saha) brought the victim from the house of the accused to the police station. After her medical examination was conducted, she was sent for safe custody at Alor Disha Child Line at Champahati. PW-2, mother of the victim, without giving any particulars stated that she got her daughter back from Narendrapur Sanlaap home. She claimed in the cross-examination that the victim remained in her house for one year and, later on, went back to the house of the accused. She admitted that she never went to the home of the accused, not even to see her grandchild. The victim's parents completely abandoned her, at least from the year 2019.

25. Ms. Madhavi Divan, the learned *amicus curiae*, rightly emphasized that no opportunity was made available to a girl of fourteen or fifteen years of age to make an informed choice to decide whether to stay with the accused. She did not get any support from her parents and the State machinery when she required it the most. As held by us hereafter, the State machinery failed to act according to the law to take care of the victim. The situation in which she was placed at that time was such that she had no opportunity to make an informed choice about her future. She had no option but to seek shelter where it was provided to her i.e. in the house of the accused. In any event, it is doubtful whether she could have made an informed choice at the age of fourteen or fifteen."

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5. From paragraphs 26 to 36, this Court has elaborately dealt with the failure of the State to perform its obligation to take care of the victim of the offence under the POCSO Act who was only fourteen years old. This Court referred to the constitutional obligation of the State. This Court also held that the existing statutes have enough provisions to address this kind of situation. Though, under the existing law, the State could have taken adequate care of the poor victim, it was not done. Therefore, very elaborate conclusions were recorded by referring to specific provisions of the POCSO Act and the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the JJ Act'). Ultimately, in paragraphs 37 and 38, this Court has noted the effect of the failure of the State, its machinery as well as the collective failure of society at large. Paragraphs 37 and 38 read thus:

> "37. It is the responsibility of the State to take care of helpless victims of such heinous offences. Time and again, we have held that the right to live a dignified life is an integral part of the fundamental right guaranteed under Article 21 of the Constitution of India. Article 21 encompasses the right to lead a healthy life. The minor child, who is the victim of the offences under the POCSO Act, is also deprived of the fundamental right to live a dignified and healthy life. The same is the case of the child born to the victim as a result of the offence. All the provisions of the JJ Act regarding taking care of such children and rehabilitating them are consistent with Article 21 of the Constitution of India. Therefore, immediately after the knowledge of the commission of a heinous offence under the POCSO Act, the State, its agencies and instrumentalities must step in and render all possible aid to the victim children, which will enable them to lead a dignified life. The failure to do so will amount to a violation of the fundamental rights guaranteed to the victim children under Article 21. The police must strictly implement subsection (6) of Section 19 of the POCSO Act. If that is not done, the victim children are deprived of the benefits of the welfare measures under the JJ Act. Compliance with Section 19(6) is of vital importance. Non-compliance thereof will lead to a violation of Article 21.
>
> 38. Unfortunately, in our society, due to whatever reasons, we find that there are cases and cases where the parents of the victims of the offences under the POSCO Act abandon the victims. In such a case, it is the duty of the State to provide shelter, food, clothing, education opportunities, etc., to the victim of the offences as provided in law. Even the child born to such a victim needs to be taken care of in a similar manner by the State. After the victim attains the majority, the State will have to ensure that the victim of the offence can stand on his/her legs and, at least, think of leading a dignified life. That is precisely what Section 46 of the JJ Act

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provides. Sadly, in the present case, there is a complete failure of the State machinery. Nobody came to rescue the victim of the offence, and thus, for her survival, no option was left to her but to seek shelter with the accused."

6. Paragraph 40, 40.1 and 41 discuss the issue of rehabilitation of the victim and her child. The operative portion of the judgment in paragraph 44 is relevant, which reads thus:

"44. Hence, we pass the following order:

(a) The impugned judgment of the High Court is set aside and the judgment of the Special Court is restored to the extent of the conviction of the accused for the offences punishable under subsections (2)(n) and (3) of Section 376 of the IPC and Section 6 of the POCSO Act. Accordingly, the accused stands convicted. The acquittal of the accused for the offences punishable under Sections 363 and 366 of the IPC is confirmed. The appeal is partly allowed. The issue regarding sentencing will be considered after receiving the report of the committee in terms of clause (h) below.

(b) We direct the Government of West Bengal to constitute a committee of three experts, including a clinical psychologist and a social scientist. The State Government may take the assistance of NIMHANS or TISS for constituting the committee. A child welfare officer shall be appointed to assist the committee as its coordinator and secretary;

(c) The committee shall be formed within three weeks from today;

(d) Within one week from the date of formation of the committee, the State Government shall provide all the material particulars/details of the benefits which it is willing to extend to the victim as stated in paragraph 5 of the note submitted on 9th May 2024 by the learned senior counsel appearing for the State;

(e) Thereafter, the committee shall meet the victim of the offences at such a place as it desires to communicate what the State Government is offering to her. The Committee must also inform the victim about the availability of the benefits of the scheme of the Government of India. The duty of the committee shall be to help the victim to make an informed choice whether she wants to continue to remain in the company of the accused and his family or wants to avail of the benefits offered by the State Government. This exercise will naturally require meetings with the victim on multiple occasions. In what manner this task should be performed is left to the committee to decide;

(f) The committee members must perform their duties very carefully and sensitively while ensuring that the victim does not develop a

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feeling of insecurity. While doing the exercise, the committee will endeavour to carefully ascertain the kind of support, if any, the victim and her child are getting from the accused and his family members;

(g) The State Government and its officials shall render all possible facilities and help to the committee members;

(h) The coordinator of the committee shall submit a report in a sealed cover to this Court by 18th October 2024 through the Advocate-on-Record for the State Government. The report can be a preliminary report or a final report. The report should contain the details of the interactions with the victim and the opinion and recommendations of the committee. The committee is free to give its opinion on the action which would be in the best interest of the victim and her child; and

(i) We direct the Registry to forward copies of this judgment to the Secretaries of Law and/or Justice Departments of all the States and Union Territories. The Secretaries shall convene meetings of the Secretaries of the concerned departments and other senior officials. The object of holding such meetings is to ensure that appropriate directions are issued to all concerned to strictly implement the provisions of Section 19(6) of the POCSO Act and the relevant provisions of the JJ Act, which we have elaborated above. The State/Union Territories must create machinery to do so. The State/Union Territories shall also assist the victims in getting the benefits under the scheme of the Government of India and the scheme of NALSA, which we have referred to above. In the meetings, the issue of framing Rules by the States to give effect to the provisions of Section 46 of the JJ Act, shall also be considered. The Secretaries shall forward the compliance reports to the Secretary of the Ministry of Women and Child Development, Government of India, within a period of two months from today. The Secretary of the Ministry of Women and Child Development shall compile the reports and submit an exhaustive report before this Court within three months from today. A copy of this judgment shall also be forwarded to the Secretary to the Ministry of Women and Child Development, Government of India."

7. Broadly, there are three issues which we are considering. The first issue is of sentencing the accused. The second issue is about the rehabilitation of the victim and her child. The third issue is a wider issue about adopting measures for adolescent wellbeing and child protection which goes to the root cause of the problem in our changing society.

8. As far as sentencing is concerned, we cannot deal with the issue

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without understanding the reports of the Committee appointed by this Court. There are two reports of the Committee : preliminary report and final report. This Court interacted with the members of the Committee and the victim on 3rd April 2025. The order of this Court dated 3rd April 2025 reads thus:

> "We have interacted with the following members of the Committee of Experts:
>
> (1) Dr. Pekham Basu, Assistant Professor, Centre for Equity and Justice for Children and Families, School of Social Work, Tata Institute of Social Science, Mumbai - Expert Member,
>
> (2) Smt. Jayita Saha, Clinical Psychologist, Pavlov Hospital & COE, CNMCH, Kolkata, Health and Family Welfare Department, Government of West Bengal - Expert Member and
>
> (3) Mr. Sanjeeb Rakshit, District Social Welfare Officer, South 24 Parganas - Member Secretary.
>
> At the outset, we must compliment the role played by the three experts and the assistance they have rendered to the Court and to the learned senior counsel appointed as *amicus curiae*.
>
> We have heard the victim.
>
> We are not recording in detail what actually transpired, but we are of the view that the victim needs a financial help. After the victim completes her 10th Board Examination, we will have to explore the possibility of whether any vocational training can be given to her or whether part-time employment can be extended to her.
>
> On this aspect, we will need the help of the West Bengal State Legal Services Authority. We, therefore, issue notice to the Member Secretary of the West Bengal State Legal Services Authority, returnable on 1st May, 2025. To be listed at 2.00 p.m.
>
> We also request the Member Secretary to interact with the learned senior counsel appointed as *amicus curiae* and also the learned counsel for the State of West Bengal so that the Member Secretary can be made aware about the nature of help and assistance required from the State Legal Services Authority.
>
> The Registry is directed to forward a copy of this order directly to the Member Secretary of the West Bengal Legal Services Authority.
>
> We request the Member Secretary to remain present before the Court on the returnable date through video conference.
>
> The learned senior counsel appearing for the State of West Bengal was present today. We request him to take instructions from the officers of the State in what manner the State can extend the helping hand to the victim.
>
> We will consider the submissions of the learned counsel on that

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day. The learned counsel are free to file supplementary note. The State can also file its response well in advance."

9. The preliminary report of the Committee is dated 16th October 2024. The report recorded the victim's struggles while tackling the legal system for securing the release of the accused. The report further noted that the legal battle has resulted in the family suffering emotionally and financially, and accordingly the committee recommended financial assistance for the child and educational and financial rehabilitation for the victim.

10. This Court on 24th October 2024, perused the preliminary report submitted by the Committee. Upon examination, the Court ordered the Committee to inform the victim about educational/vocational training which can be extended to her at the cost of the State Government to ensure that she earns a better livelihood. The State Government was also directed to take all possible steps to provide good quality education to the child of the victim. This court further ordered the State Government to ensure that proper nutritious food is made available to the child.

11. The Committee submitted its final report on 28th January 2025. The final report provides details of all the interviews conducted by the Committee, including those of the victim, the accused, their respective families, teachers and management personnel at the school of the victim, investigating police officers, personnel at the welfare home—Sanlaap Sneha Home, and other relevant stakeholders.

12. The final report highlights the inadequate, inefficient implementation of the POCSO Act. In particular, the final report emphasizes the "collective failure of the systems that are there to protect a girl child". It states that the loopholes are glaring, and that the elopement, the living in/marriage of the victim, the birth of a child—all were preventable. The final report specifically highlights:

a) the failure of the Child Protection Committees at the village level;

b) the inadequate implementation of the State of West Bengal's "Kanyashree Prakalpa Scheme";

c) the inaction of the designated Child Welfare Officer at the local police station;

d) lack of provision of free legal aid;

e) lack of sufficient and effective counsellors from both genders in schools and even welfare homes;

f) high frequency of elopements by children in class 8 and above;

g) stigmatisation of girls in similar situations as the adolescent victim in the present case;

h) irregularities and delays in the investigation of such crimes;

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i) inadequate accessibility to judicial fora and corruption and financial exploitation by touts, members of the Bar etc.; and

j) lack of awareness and sensitisation among family, and public officials in respect of the POCSO Act and the sexual, emotional, and mental well-being of children.

13. The final report concludes that in this particular case, it was not the legal crime which caused trauma on the victim, rather it was the legal battle which ensued consequent to the crime that is taking a toll on the victim. In the light of this, the final report recommended that it would be in the best interest of the victim and her child that the family unit stays intact, so that the accused father may be able to participate in the child's upbringing. Further, the report also recommended providing financial, legal and educational support to the victim and her child.

SUBMISSIONS

14. Very detailed submissions were made by Ms. Madhavi Divan and Ms. Liz Mathew, the learned senior counsel appointed as *amicus curiae*. The learned *amici* have submitted that the sentencing of the accused would have to be examined in light of the findings in the final report, as well as the interaction with the victim, which has conclusively shown that the victim wishes to continue residing with the accused, and has expressed her fervent desire for preservation of his liberty.

15. The learned *amici curiae* have, therefore, recommended three alternatives in relation to sentencing the accused, which are as under:

a) Firstly, learned *amici* submitted that this Court can consider exercising its powers under Article 142 to remit, reduce or suspend the sentence. This court in *Shilpa Sailesh* v. *Varun Sreenivasan*[1] delineated the contours of the power under the said Article, stating that as long as "complete justice" required by the "cause or matter" is achieved without violating fundamental principles of general or specific public policy, the exercise of the power and discretion under Article 142(1) is valid and as per the Constitution of India. The learned *amici* submitted that, in the present case, the minimum sentencing provisions under POCSO Act must be considered in the light of the evolving welfare interests of both the victim and her child. The learned *amici* have reiterated that this Court has exercised this power in similar cases of conviction under the POCSO Act including in *K. Dhandapani* v. *State*[2], *Sankar* v. *State of Tamil Nadu*[3] and *Elumalai* v. *Inspector of Police*[4].

b) Secondly, the learned *amici* have submitted that this court can consider remitting the sentence of the accused by the State of West Bengal under Section 432 CrPC (Section 473 BNSS).

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However, in the facts of the present case the *amicus curiae* were of the opinion that this Court ought to exercise its jurisdiction under Article 142 to reduce the sentence of the accused to the sentence already served in order to do complete justice between the parties.

c) Thirdly, the learned *amici* have submitted that the power of High Court's to quash ongoing criminal proceedings under Section 482 of the CrPC needs to be examined. In *Gian Singh* v. *State of Punjab*[5], this court has cautioned that such power may only be exercised to secure the ends of justice or to prevent abuse of the process of any court. The learned *amici* have highlighted the different approaches taken by High Courts. The Delhi High Court in *Ajay Kumar* v. *State (NCT of Delhi)*[6] and the Madras High Court in *Vijayalakshmi* v. *State*[7] have interpreted the statement of objects and reasons of the POCSO Act as not intending to criminalize consensual romantic relationships between adolescents. The Madras High Court, in several cases has adopted a legal interpretation that consensual acts do not fulfil the requirement of 'assault' in the offence of 'penetrative sexual assault.' Similarly, the Calcutta High Court in *Ranjit Rajbanshi* v. *State of West Bengal*[8] has held that the POCSO Act defines "penetration" as a unilateral act by the accused, and therefore in cases of consensual intercourse, the act of penetration may not solely be attributed to the accused. Various High Courts have also considered the impact such prosecution has on the victim and have proceeded to quash the proceeding if pursuing the case would harm the victim. Similarly, the impact of prosecution on the accused has also been considered. In these cases, the learned *amici* have submitted that it will be pertinent to determine whether the victim has given 'informed consent', which must be done by interacting with the victim, considering compromise memos and examining the statements given by the victim under Sections 161 and 164 of the CrPC. Further, in this light, the learned *amici* have stressed on the need to identify relevant factors to be considered by High Courts while quashing proceedings under the POCSO Act, in order to curtail inconsistent approaches towards the same.

16. Broadly, the learned *amici* in relation to sentencing of the accused have submitted that the underlying rationale in the present case should be to prevent the disruption of an existing family unit, mitigate further hardship to the victim and her child/children, and to balance strict statutory mandates with the principles of proportionality and complete justice. The learned *amici* contended that while the

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POCSO Act serves an essential purpose in protecting minors from sexual exploitation, its rigid application in cases of adolescent relationships can lead to outcomes that may not align with the best interests of the prosecutrix and her dependents. In light of this jurisprudence, this Court was requested to consider adopting a similarly nuanced approach in the present case to ensure that justice is served in both letter and spirit.

17. The learned *amici* have also sought supplementary directions to the effect that the facilities that have been made available to the victim by the State Government be continued till the child of the victim attains majority, and the victim attains education till the level of graduation, whichever is later. Further, learned *amici* have sought a direction to the Child Welfare Committee at the local level to apprise the victim of her rights as a married woman, and the options available to her in the unfortunate event of a marital discord.

18. In light of the experience gained in the present case, the learned *amici curiae* have also sought broader directions for ensuring that such cases can be prevented or dealt with in a better manner in the future:

a) The first direction pertains to the overall adolescent well-being and comprehensive sexuality education. The learned *amici* have drawn our attention to various government and nongovernmental initiatives that have been introduced to enhance adolescent wellbeing, provide access to crucial health information, and ensure child protection. These initiatives focus on emergency assistance, digital education, peer-led awareness, and community -driven outreach programs. Some programs, such as Childline India, provide immediate rescue and support services for children in distress, while digital platforms like Saathiya Salah and Hello Saheli aim to bridge the gap in sexual and reproductive health education. Other efforts, such as Project X, emphasize comprehensive sexuality education through structured classroom interventions. Despite these initiatives, the learned *amici* have highlighted that the UNESCO, The Journey Towards Comprehensive Sexuality Education : Global Status Report (2021) points out that in India, education policies on life-skills-based HIV and sexuality education is at secondary education-level only. In light of this, the learned *amici* have advocated for comprehensive sex education in India, stating that without systematic policy reforms, improved teacher training, and a more inclusive curriculum, India will continue to struggle in addressing rising adolescent health issues, misinformation, and the stigma surrounding sexual and reproductive health education.

b) The second direction sought for by the learned *amici* relates to the implementation of a data collection mechanism for improving

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institutional accountability. The learned *amici* have submitted that to ensure effective policy making, real-time accountability, and targeted interventions, it is crucial to establish a structured data collection mechanism at the state level. The absence of comprehensive, standardized data has often led to fragmented policy implementation, making it difficult to track progress and address gaps in enforcement. By collecting real-time data on key indicators—including sex education implementation, counselling services, POCSO case tracking, and child marriage monitoring—governments can enhance transparency and responsiveness in tackling these critical issues. Further, the learned *amici* have submitted that integrating this data into a real-time dashboard will provide a publicly accessible, transparent mechanism for monitoring progress, holding institutions accountable, and making informed policy decisions.

CONSIDERATION

19. The preliminary report of the Committee indicates that in 2017, the victim met the accused through her neighbour who happened to be the sister of the accused. At that time, their ages were 13 and 25 years respectively. It is claimed that over a period of time they fell in love and on 20th May 2018, the victim left her home. She married the accused at a temple. Within nine days, on 29th May 2018, the victim's mother lodged a police complaint. As a result of registration of the FIR, the police placed the victim in Narendrapur Sanlaap home. She was there for a month, and thereafter, she was sent back to her parents. She resumed her education at school and was promoted to class 10. While she was studying in class 10, she once again left her parental home and started living with the accused. Perhaps this period was very crucial in her life as she felt stigmatised and humiliated, as recorded in the preliminary report. She noticed that the entire village was discussing her case. Her siblings were taunting her. She was subjected to the vigilance of her mother, who accompanied her to school and tuition classes. Given these circumstances, the victim might have felt compelled to leave her home.

20. The victim continued to stay with the extended family of the accused, which consists of his parents, uncle, aunts, his five brothers and one sister. In May 2021, the victim gave birth to a daughter. After her delivery, she stayed with her parents for about two weeks, and thereafter, she went back to the house of the accused. When the daughter was seven months old, the police arrested the accused. The Committee noted that the arrest shattered both the victim and her daughter. For days, her daughter cried due to the absence of her father. The Committee recorded that the daughter remains traumatised due to

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separation anxiety. As can be seen from the report of the Committee, the two year period when the accused was in custody, was the toughest period for the victim. She had to run from pillar to post to defend the accused. She spent large amounts by way of payment of fees to lawyers for his release. The figures of the amount she spent as noted in the final report of the Committee are startling. At different stages, she paid a total amount of Rs. 40,000/- to the advocates. In addition, she claims to have paid a sum of Rs. 10,000/- to an advocate "for winning the case". She spent a sum of Rs. 20,000/- to get copies of the chargesheet and Rs. 7,000/- for getting duplicate copies of the court papers. Shockingly, she paid Rs. 18,000/- to a tout who promised to get bail for her husband. Thus, she ended up spending more than Rs. 2 lakhs by incurring debt for defending the accused. She has borrowed a sum of Rs. 2 lakhs and now, she is in a debt trap. In fact, the Committee records that the indebtedness has become vicious. The only redeeming feature is that during the period of imprisonment of the accused, her marital family took care of her and her daughter.

21. Now, we come to the economic condition of the victim and the accused. The family of the accused is very poor. At present, the victim, the accused and her daughter are staying in a temporary shelter enclosed by brick walls, but the roof is of tarpaulin. This house has no door. The accused is uneducated and is working as a daily wage labourer. Apparently, he is working very hard. It is noted by the Committee that both the victim and her husband are very keen on ensuring that their daughter gets education. They are taking precautions to ensure that they do not have another child. Now, there is improvement in the relationship between the victim and her parents. The victim's parents looked after her when she was unwell.

22. The final report of the Committee is more elaborate. It describes the huge burden placed on the victim in dealing with her family's responsibilities. The final report records that the economic status of the victim's family is marginally better than that of her husband. The Committee has noted that the relationship of the victim with her husband follows the triangular theory of love, which states that intimacy, passion and commitment are the main criteria for consummate love. Initially, passion and intimacy may have taken the center stage, but now, the Committee notes that without any coercion from her husband, the victim is deeply committed to him. The Committee notes that now the victim is different. She is ably looking after her responsibilities as a wife and mother. It also notes the victim's apprehension to save her husband from punishment. The figures of the money spent by her, which we have quoted earlier, were only in relation to the trial stage. The final report records that she has almost spent Rs. 1,35,000/-. The figures stated make it obvious that she has

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been exploited. This is evident from the fact that she had to pay Rs. 60,000/- for grant of bail, Rs. 25,000/- for securing acquittal, Rs. 15,000/- for filing a case in this Court and Rs. 25,000/- towards air fare, to enable her husband's advocate to appear before this Court. Now, the victim is showing signs of maturity. She actively engages with adolescent girls in the area and encourages them to study and think rationally about relationships.

23. The facts of this case are an eye opener for everyone. It highlights the lacuna in our legal system. The final report concludes that though the incident was seen as a crime in law, the victim did not accept it as one. The Committee records that it was not the legal crime that caused any trauma to the victim, but rather, it was the consequences that followed, which took a toll on her. What she had to face as a consequence was the police, the legal system and the constant battle to save the accused from punishment. At the same time, she took care of her daughter to the best of her abilities, notwithstanding the huge financial burden she carried. In fact, the final conclusion in the report is an eye opener. The relevant part of the final report reads thus:

> "In conclusion, a heinous crime causes trauma in the psyche of the victim. In this case, the law saw it as a crime, the victim did not. Hence, the legal crime did not cause any trauma on this particular victim. It was the consequences thereafter - the police personnel, the legal system, the battle to save her husband and do the best for her daughter while having a financial burden, which is taking its toll on her. A young woman, who refuses to be called a "Victim", fighting for her husband needs all the support that can be made available. It would be in the best interest of the child if the family structure can be restored."

24. What troubles us is the issue of sentencing. The reports of the Committee stare at our faces. Though the victim did not treat the incident as a heinous crime, she suffered because of it. This was because at an earlier stage, the victim could not make an informed choice due to the shortcomings of our society, our legal system and her family. In fact, she did not get any opportunity to make informed choice. The society judged her, the legal system failed her, and her own family abandoned her. Now, she is at a stage where she is desperate to save her husband. Now, she is emotionally committed to the accused and has become very possessive of her small family.

25. After having read the reports and having interacted with the Committee as well as the victim, we are of the view that if we send the accused to jail, the worst sufferer will be the victim herself. As compared to the situation in 2018, she is better placed today. Now she is comfortable with her small family. She along with the accused, is

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concentrating on their daughter and they want to ensure that she gets quality education. At the same time, as recorded in the final report, the victim is attending school and is desperate to complete her school education. Though the State has offered to enroll her in some vocational course, she is keen on completing her education, at least up to graduation.

26. In law, we have no option but to sentence the accused and send him to jail for undergoing the minimum punishment prescribed by the Statute. However, in this case, the society, the family of the victim and the legal system have done enough injustice to the victim. She has been subjected to enough trauma and agony. We do not want to add to the injustice done to the victim by sending her husband to jail. We as Judges, cannot shut our eyes to these harsh realities. Now, at this stage, in order to do real justice to the victim, the only option left before us is to ensure that the accused is not separated from the victim. The State and the society must ensure that the family is rehabilitated till the family settles down in all respects.

27. Ultimately, this Court is bestowed with extraordinary jurisdiction under Article 142 for the sole object of ensuring that the highest Court of the land is in a position to do substantial justice in its truest sense. In the context of this situation, sadly, true justice lies in not sentencing the accused to undergo imprisonment. This case is not going to be a precedent and should not be a precedent. This case is an illustration of the complete failure of our society and our legal system. All that the system can do for the victim now, is to help her fulfil her desire of completing her education, settling down in life, providing a better education to her daughter and ensuring overall better living conditions for her family.

28. This year we have completed 75 years of the Constitution on 26th January. The Constitution contemplates the State to be a welfare state. The Constitution guaranteed social and economic justice to all the citizens. In this case, there is a failure to provide both social and economic justice to the victim. The facts of the case indicate failure of the concept of welfare state. To remedy the situation in this case, it is the obligation of the State Government to act as the true guardian of the victim and her child and ensure that they settle down in life and lead a happy, healthy and constructive life ahead.

29. In furtherance of the aforementioned, this Court by order dated 24th October 2024 directed the State of West Bengal to extend educational facilities and ensure the provision of proper and nutritious food for the child of the victim. Furthermore, by order dated 3rd April 2025, this Court directed the State to look into the feasibility of imparting vocational training or offering part-time employment to the

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victim, upon completion of her 10th Board Examination. In compliance with the aforesaid orders, the State has taken the following steps:

a) The victim has been offered enrollment under various welfare schemes aimed at ensuring better nutrition and education for herself and her child vide Memo No. 1806/SWD(S24P) dated 18.11.2024.

b) As per the desire of the victim, she has been admitted to Bhadrapara Gilarchat High School on 31st December 2024 and is currently studying in the 10th standard.

c) The child of the victim has been enrolled at the local Anganwadi Centre and is receiving cooked food under the Supplementary Nutrition Programme of the Integrated Child Development Services.

d) The child of the victim has been enrolled under the Sponsorship Programme of Mission Vatsalya with effect from January 2025, vide Order dated 17th January 2025. Under the said scheme, an amount of Rs. 4,000/- is transferred to the beneficiary's account in the first week of every month until the child attains the age of 18 years.

The State has further submitted that since the victim has expressed her desire to complete her graduation, following the successful completion of her Board Examination, and subject to her consent, appropriate arrangements can be made to enroll the victim in a vocational training course of her choice at a suitable institution.

30. The learned senior counsel appointed as *amicus curiae* have come out with very important suggestions which we have highlighted in the earlier part of this judgment. This Court cannot leave this case by simply making an attempt to take care of the family of the victim. This Court will have to carry it further by taking forward the suggestions of the learned *amici curiae*. For carrying forward the suggestion of the learned *amici*, we propose to implead the Union of India through the Ministry of Women and Child Development, so that more effective orders can be passed.

31. Hence, we pass the following order:

a) We exercise our extraordinary jurisdiction under Article 142 of the Constitution of India and hold that though the accused stands convicted, he will not undergo sentence for the reasons stated earlier;

b) We direct the State to take following measures:

i) To act as a true guardian of the victim and her child;

ii) To provide a better shelter to the victim and her family within a period of few months from today;

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iii) To bear the entire expenditure of the education of the victim till Xth standard examination and if she desires to take up education for a degree course, till the completion of degree course. After she passes her Xth standard examination, the State can offer her vocational training, obviously, at the cost of the State;

iv) To bear the entire expenditure of the education of the child up to Xth standard and ensuring that she is educated in a very good school in the vicinity of the place of residence of the victim; and

v) To endeavour to take the assistance of NGOs or public-spirited citizens for the purpose of securing the debts incurred by the victim as a one-time measure.

c) We direct the State to file compliance report giving details of the implementation of the directions contained in clause (b) above. The first compliance report shall be filed by 15th July 2025. Thereafter, compliance reports shall be filed after the interval of every six months. The first compliance report will be considered on 25th July 2025. We direct the Registry to list the case on 25th July 2025.

d) Issue notice to the Union of India through the Secretary of the Ministry of Women and Child Development. The notice is made returnable on 25th July 2025. A copy of the judgment dated 20th August 2024 and this judgment shall accompany notice;

e) Immediately on service of notice, the Secretary of the Ministry of Women and Child Development shall appoint a Committee of experts to deal with the suggestions of the learned *amici curiae*. Senior officers of the State shall be a part of the Committee. If necessary, the Committee can also consult the learned senior counsel appointed as *amici curiae*. Immediately on service of notice, the Secretary shall constitute a Committee. The members of the Committee constituted by this Court shall be permanent invitees to the said Committee; and

f) The Committee will submit a detailed report before the returnable date to this Court. To consider the implementation of the suggestions of the learned *amici curiae* based on the said report, this Court will pass further directions from time to time;

32. We were immensely benefitted by the reports of the Committee appointed by this Court. We must acknowledge the contribution of the Committee members. We record our appreciation for the service rendered by Ms. Madhavi Divan and Ms. Liz Mathew, the learned *amici curiae*. We must also record that Shri Huzefa Ahmadi, the learned

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senior counsel appearing on behalf of the State, has ably assisted the Court as the Officer of the Court.

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[1] (2023) 14 SCC 231

[2] 2022 SCC OnLine SC 1056

[3] Curative Petition (Criminal) 3/2023

[4] Crl. Appeal No. 674 of 2018

[5] (2012) 10 SCC 303

[6] (2022) 6 HCC (Del) 530

[7] 2021 SCC OnLine Mad 317

[8] 2021 SCC OnLine Cal 2470

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