

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th NOVEMBER, 2022

IN THE MATTER OF:

+ **W.P.(C) 5434/2017**

R.K. TARUN

..... Petitioner

Through: Mr. R. K. Tarun, Advocate,
Petitioner-in-Person

versus

UNION OF INDIA &ORS.

..... Respondents

Through: Mr. Anil Soni, CGSC with Mr. Rahul
Mourya, Advocate for R-1 and R-3.

Mr. Ajay Diggpaul, CGSC with Mr.
Kamal Diggpaul and Ms. Swati
Kwatra, Advocates for NCPCR.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant writ petition under Article 226 of the Constitution of India, 1950, styled as a Public Interest Litigation has been filed seeking application of Item III of Part II of Schedule I of the Code of Criminal Procedure, 1973, (*hereinafter referred to as "CrPC"*) to offences under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (*hereinafter referred to as the "POCSO Act"*).

2. The Petitioner, a practising Advocate, who is appearing in person, by way of the instant PIL, had sought to bring attention of this Court to the ambiguity revolving around the classification of Section 12 of the POCSO, which provides for the punishment for committing sexual harassment of a child, as a bailable or a non-bailable offence. However, today, i.e. 22.11.2022, during the course of the hearing, a Judgement dated 20.05.2022 rendered by the Supreme Court in Knit Pro International v. State of NCT of Delhi and Anr., 2022 SCC OnLine SC 668, was presented to this Court which has supposedly laid the issue raised by the Petitioner herein to rest.

3. For this Court to proceed in this matter, it is imperative for the relevant provisions to be replicated in order for a holistic understanding of what is being sought by way of the instant PIL:

“Section 12. Punishment for sexual harassment [POCSO Act]

Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.”

[Part II of Schedule I of CrPC]

Classification of Offences against other laws.

Offences Under Other Laws			
Description of Offence	Cognizable	Bailable	TriableBy
If punishable with death, imprisonment for life, or imprisonment for more than 7 years	YES	NO	Session
If punishable with imprisonment for 3 Years, and upwards but not more than 7 Years	YES	NO	JMIC
If punishable with imprisonment for less than 3 Years or with Fine only	NO	YES	Magistrate

4. Section 12 of the POCSO stipulates that whoever commits sexual harassment upon a child shall be punished with imprisonment which may extend to three years. A perusal of Part II of Schedule I of the CrPC enumerates that if an offence is punishable with imprisonment for 3 years and upwards, but not more than 7 years, then it will be a cognizable and non-bailable offence, and shall be triable by a Magistrate of the first class (*second category*). However, if an offence is punishable with imprisonment for less than 3 years or with fine only, then it will be a non-cognizable and bailable offence that shall be tried by any Magistrate (*third category*).

5. The issue that has arisen is that as Section 12 of the POCSO Act specifies for a term of imprisonment that can extend up to 3 years, it falls on the cusp of legislative ambiguity that can make it either a cognizable and non-bailable offence or a non-cognizable and bailable offence. It is this ambiguity which has led to the birth of the instant PIL.

6. In Anurag Sanghi v. State of Ors., **W.P.(Crl) 3422/2018**, a similar controversy had arisen before this Court with respect to the classification of Section 63 of the Indian Copyright Act, 1957, and whether the punishment stipulated thereunder would fall within the scope of cognizable offences as set out in Part II of the First Schedule of the CrPC. A Single-Judge Bench of this Court, *vide* Judgement dated 25.11.2019, held that the offence under Section 63 of the Copyright would be a non-cognizable offence and bailable offence and therefore, would fall within the scope of the third category. This decision was taken in view of the decision of the Supreme Court in Avinash Bhosale v. Union of India, **(2007) 14 SCC 325**.

7. This Judgement of the High Court was challenged before the Supreme Court, and *vide* Judgement dated 20.05.2022 in Knit Pro International v. State of NCT of Delhi and Anr. (supra), the Supreme Court set aside the Judgement dated 25.11.2019 and held that offence under Section 63 would be a cognizable and non-bailable offence. The relevant portion of the said Judgement has been reproduced as follows:

“14. Thus, for the offence under Section 63 of the Copyright Act, the punishment provided is imprisonment for a term which shall not be less than six months but which may extend to three years and with fine. Therefore, the maximum punishment which can be imposed would be three years. Therefore, the learned Magistrate may sentence the accused for a period of three years also. In that view of the matter considering Part II of the First Schedule of the Cr.P.C., if the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence. Only in a case where the offence is punishable for imprisonment for less than three years or with fine only the offence can be said to be non-cognizable. In view of the above clear position of law, the decision in the case of Rakesh Kumar Paul (supra) relied upon by learned counsel appearing on behalf of respondent no. 2 shall not be applicable to the facts of the case on hand. The language of the provision in Part II of First Schedule is very clear and there is no ambiguity whatsoever.

15. Under the circumstances the High Court has committed a grave error in holding that the offence under Section 63 of the Copyright Act is a non-cognizable offence. Thereby the High Court has committed a grave error in quashing and setting aside the criminal proceedings and the FIR. Therefore, the impugned judgment and order passed by the High Court quashing and setting aside the criminal

proceedings/FIR under Section 63 of the Copyright Act deserves to be quashed and set aside.

16. In view of the above discussion and for the reason stated above, it is observed and held that offence under Section 63 of the Copyright Act is a cognizable and non-bailable offence. Consequently, the impugned judgment and order passed by the High Court taking a contrary view is hereby quashed and set aside and the criminal proceedings against respondent no. 2 for the offence under Sections 63 & 64 of the Copyright Act now shall be proceeded further in accordance with law and on its own merits treating the same as a cognizable and non-bailable offence.”

8. A comprehensive reading of the above demonstrates that a similar rationale will be applicable to the instant case and that Section 12 of the POCSO Act will also fall within the scope of the second category of Part II of Schedule I of the CrPC. In light of this, this Court finds no reason to pass Orders in the instant PIL when the Supreme Court has already settled the matter and nothing survives in this Writ Petition.

9. Consequently, the instant PIL is disposed of, along with pending application(s), if any, in terms of the Supreme Court order.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

NOVEMBER 24, 2022

Rahul/RR