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JUST RIGHTS FOR CHILDREN ALLIANCE VS S. HARISH

-Khyati Oraon

Citation: 2024 INSC 716

Court: Supreme Court of India

Bench: Hon'ble Chief Justice Dr D.Y. Chandrachud and Hon'ble Justice J.B. Pardiwala

Date of Judgement: September 23, 2024

1. INTRODUCTION

In India, the intersection between child protection legislation and digital technology has seen an enormous amount of legal uncertainty.¹ In the case of *Just Rights for Children Alliance v. S. Harish* (2020) the Supreme Court of India made a ground-breaking ruling that altered how digital possession of CSAM will be interpreted under POCSO thus overturning an earlier ruling on this matter by the Madras High Court.² In doing so, the Supreme Court of India also ruled that downloading, streaming or saving CSAM qualifies as a form of criminal "possession" such that the definition of "possession" in the POCSO Act (2012) includes not only things you have physically in your possession, but also includes things you download, stream or save.³ This commentary on the case will examine the legal reasoning behind the ruling, its socio-legal consequences, and its impact on cyber-forensics and civil rights.⁴

2. BACKGROUND AND FACTS OF THE CASE

In January of 2020, a First Information Report (FIR) was filed against S. Harish by police in Tamil Nadu after receiving a Cyber Tipline Report from the National Centre for Missing & Exploited Children (NCMEC) via NCRB, which indicated that he downloaded and stored several videos showing the sexual abuse of infants and children.⁵ Harish filed a petition with

¹ Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, § 15 (India)

² *Just Rights for Children Alliance v. S. Harish*, 2024 INSC 716,

³ POCSO Act, § 2(1)(d) (defining "possession")

⁴ *Id.* at 3.

⁵ *Just Rights for Children Alliance*, 2024 INSC 716, ¶ 4.

the Madras High Court to void the FIR.⁶ The High Court found that simply possessing or viewing child pornography did not create a case for prosecution under Section 15 of POCSO or Section 67B of IT Act.⁷ For this reason, child pornography cannot be charged unless there is intent to publish, sell or distribute the images or video.⁸ Therefore, both the State of Tamil Nadu and the non-profit Just Rights for Children Alliance found the Madras High Court ruling too restrictive and filed an appeal with the Supreme Court of India.

3. LEGAL ISSUES RAISED

The Supreme Court dealt with three main issues.

- First, is possession and viewing of material under Section 15 of the POCSO Act only a criminal act if the material has been either transmitted, published or commercially consumed?⁹
- Second, did the Madras High Court incorrectly interpret Section 67B of the IT Act and Section 15 of the POCSO Act in such a way that there is now a loophole for consumers of abusive material?¹⁰
- Third, whether or not the concept “child pornography” in Indian law accurately reflects the violence perpetuated on children through sexual exploitation.¹¹

4. ARGUMENTS OF THE PARTIES

Appellants (Just Rights for Children Alliance & State)

- **The Dual Demand & Supply:** The appellant claimed that the act of consuming digital content creates a demand as a direct result of viewing and downloading digital content. This creates a direct demand for child abduction, abuse, and filming.¹²
- **Intent of Efficient Interpretation:** The appellant argued that the POCSO Act is a piece of welfare legislation and is designed for the welfare of children. A literal interpretation that excludes the consumer would defeat the purpose of the POCSO Act, which was designed to end the industry of child abuse.¹³

⁶ *Id.* at 5

⁷ *Id.* At 6; POCSO Act, § 15; Information Technology Act, 2000, No. 21 of 2000, § 67B (India)

⁸ *Just Rights for Children Alliance*, 2024 INSC 716, ¶ 7

⁹ *Id.* at 10; POCSO Act, § 15.

¹⁰ *Just Rights for Children Alliance*, 2024 INSC 716, at 11; IT Act, § 67B; POCSO Act, § 15.

¹¹ *Just Rights for Children Alliance*, 2024 INSC 716, at 12.

¹² *Just Rights for Children Alliance*, 2024 INSC 716, at 13.

¹³ *Id.* ¶ 14; *see* POCSO Act, Statement of Objects and Reasons.

- **Nature of Digital Storage:** The appellant claimed that the act of downloading files onto one's personal device creates a possession of that material under the defined legal possession of that term, that possession creates full, exclusive, and conscious control over the downloaded material.¹⁴

Respondent (S. Harish)

- **No Mens Rea:** The respondent contended that he is a passive consumer who did not intend to share, sell, distribute, or provide publicity with the material that he viewed online.¹⁵

- **Strict Interpretation of Statutes:** The respondent contended that statutes have a strict interpretation, that is, they are strictly constructed and interpreted according to the literal meaning of the words used. Therefore, since Section 15 of the POCSO Act and the Penal Code did not specifically criminalise the private viewing of streamed material that was not stored, the Respondent's conduct would not fall within the definition of the above-referenced Penal Code Section 15.¹⁶

- **Right to Privacy:** The Respondent advanced a more subtle point regarding monitoring, if applicable, the private digital consumption by individuals who do not distribute the digital material would create an avenue for governmental over-reach and violation of the right to privacy as established in Article 21 of the Constitution.¹⁷

5. THE JUDGEMENT (RATIO DECIDENDI)

The appeal was granted, the Madras High Court judgment was set aside, and the Court restored the criminal proceedings against the Respondent. The Supreme Court based its decision upon three main pillars:

I. Redefining Digital Possession

The High Court had a very narrow definition of digital possession, but the Supreme Court ruled that "conscious possession" included digital custody of material.¹⁸ A person who knows they have downloaded, stored or retained child abuse material on their phone, computer or in cloud

¹⁴ *Just Rights for Children Alliance*, 2024 INSC 716, at 15.

¹⁵ *Just Rights for Children Alliance*, 2024 INSC 716, ¶ 15.

¹⁶ *Id.* ¶ 17; POCSO Act, § 15; Indian Penal Code, 1860, No. 45 of 1860

¹⁷ *Just Rights for Children Alliance*, 2024 INSC 716, ¶ 18; INDIA CONST. art. 21; see *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

¹⁸ *Id.* at 20.

storage is in actual possession of that material.¹⁹ Moreover, the Supreme Court expanded upon this by holding that a person who views child abuse material through a digital stream knows they are doing so; therefore, when they can access that material via a link, they are guilty of constructive possession of that material.²⁰

II. Eliminating the Consumer Base

Justice J.B. Pardiwala stated, "Consumers constitute the lifeblood of the child abuse business"²¹ He continued, "The production of these types of materials exists only because of the financial and digital traffic generated by the consumption of these types of materials."²² Therefore, to eradicate production, the consumption must also be criminalised.²³

III. Developing a New Vocabulary: CSEAM

The Supreme Court issued an order that the word "child pornography" must no longer be used within the confines of Indian Legal Language and must be replaced by the term "Child Sexual Exploitation and Abuse Material (CSEAM)".²⁴ The Supreme Court found that the term "pornography" means that someone has consented to have sex, whereas the sexually abusive material involving children unlawfully depicts violent and torturous acts, carried out against a child.²⁵

6. CRITICAL ANALYSIS

The Merits: Plugging the Digital Loophole

The Supreme Court's judgment is a masterclass in **purposive statutory interpretation**.²⁶ Had the Madras High Court's ruling been allowed to stand, it would have created a safe haven for consumers of CSEAM in India.²⁷ In the modern web ecosystem, content is consumed instantly via streaming, temporary caches, and encrypted messaging apps. By bridging the gap between

¹⁹ *Id.* at 21.

²⁰ *Id.* at 22.

²¹ *Id.* at 23 (quoting Justice J.B. Pardiwala).

²² *Id.*

²³ *Id.* at 24.

²⁴ *Id.* at 25.

²⁵ *Id.* at 26.

²⁶ *Just Rights for Children Alliance*, 2024 INSC 716, ¶ 27.

²⁷ *Id.* at 28.

physical possession and temporary digital storage, the Supreme Court updated Indian child protection jurisprudence for the internet age.²⁸

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- **The Enforcement Dilemma:** Accidental Downloads and Auto-Caching. Although the Supreme Court's ruling is sound based on the existing law, the practical realities of how to put into practice the ruling will create several challenges for law enforcement and digital forensics.²⁹
 - **The Automation Trap:** Many modern messaging apps, such as WhatsApp, use an "auto-download" feature when someone sends a file to another user. If someone is added to a malicious group without consent, or forwards a file to someone, and it is auto-downloaded to the person's device gallery, the person receiving the file has technically received "possession" of the file.³⁰
 - **Evidentiary Safeguards:** To avoid wrongful convictions, prosecution must prove to the lower court that the user was, in fact, in lawful possession of the file with the requisite mens rea, versus being just a passive recipient of unsolicited spam.³¹ The prosecution must prove beyond a reasonable doubt that the user had control over the file, i.e., demonstrable knowledge on the user's part of the nature of the file, the user had knowledge and/or intent to keep the file, and the user sought to gain possession of the file.
- **Parental/educational guidance,** another aspect of the SC's decision is the Court's recognition that the law cannot operate in isolation and therefore recommended that the union government establish age-appropriate sex education and digital literacy as a part of the school curriculum. Thus, addressing the root cause of the issue by educating youth on digital consent and the severe legal consequences of handling CSEAM.

²⁸ *Id.* at 29.

²⁹ *Id.* at 30.

³⁰ *Id.* at 31.

³¹ *Id.* At 32.

7. CONCLUSION

This case is a monumental step forward for child rights in India. It firmly establishes that digital consumption is an active harm against children, successfully shifting the legal focus from physical distribution to digital custody. While the ruling equips law enforcement with the teeth required to dismantle the domestic consumer market for abuse material, its ultimate success will depend on how carefully the police and lower judiciary handle digital evidence to distinguish between malicious intent and accidental digital footprints.