

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SSUO MOTU WRIT PETITION (C) NO(S). 3/2023

IN RE: RIGHT TO PRIVACY OF ADOLESCENT

(FOR ADMISSION)

Date : 08-12-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) By Courts Motion

For Respondent(s) Ms. Astha Sharma, Standing Counsel/AOR
(For the State of West Bengal)
Mr. Sanjeev Kaushik, Adv.
Mr. Shreyas Awasthi, Adv.
Ms. Anvita Dwivedi, Adv.UPON hearing the counsel the Court made the following
O R D E R

The Registry is directed to procure a soft copy of the CRA (DB) No.14 of 2023 from the High Court of Calcutta and place printed version thereof on record.

The Registry to issue notice to the appellant in the aforesaid Criminal Appeal as well as to the victim girl. The notice is made returnable on 4th January, 2024.

The learned counsel appearing for the State of West Bengal accepts notice, who is personally present in the Court.

We have carefully perused the impugned judgment dated 18th October, 2023 passed by the Division Bench of the High Court. The

issue before the High Court was about the legality and validity of the judgment and order dated 19th/20th September, 2022, by which the appellant before it was convicted for the offences punishable under Sections 363 and 366 of the Indian Penal Code, 1860 as well as Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

As per the order of the Hon'ble the Chief Justice of India, suo motu writ petition under Article 32 of the Constitution of India has been initiated mainly due to sweeping observations/findings recorded by the Division Bench of the High Court of Calcutta in the impugned judgment. Only by way of an illustration, we are reproducing the observations made in paragraph 30.3 as under:

"30.3. It is the duty/ obligation of every female adolescent to:
(i) Protect her right to integrity of her body.
(ii) Protect her dignity and self-worth.
(iii) Thrive for overall development of her self transcending gender barriers.
(iv) Control sexual urge/urges as in the eyes of the society she is the looser when she gives in to enjoy the sexual pleasure of hardly two minutes.
(v) Protect her right to autonomy of her body and her privacy."

(underline supplied)

In the appeal against conviction, the High Court was called upon to adjudicate only on the merits of the appeal and nothing else. But we find that the High Court has discussed so many issues which were irrelevant. *Prima facie*, we are of the view that while writing a judgment in such appeal, the Hon'ble Judges are not expected to express their personal views. They are not expected to preach.

After having carefully perused the impugned judgment, we find that many parts thereof including paragraph 30.3 are highly objectionable and completely unwarranted. *Prima facie*, the said observations are completely in violation of the rights of the adolescents guaranteed under Article 21 of the Constitution of India.

The learned counsel appearing for the State seeks time to ascertain whether the State has preferred any appeal against the said judgment or the State intends to do so.

We appoint Ms. Madhavi Goradia Divan, learned Senior Advocate, as Amicus Curiae to assist this Court. Ms. Liz Mathew, learned Advocate, will assist Ms. Madhavi Goradia Divan.

The Registry is directed to provide a complete set of this suo motu writ petition along with a copy of the appeal filed before the High Court to the learned Amicus Curiae.

(ASHISH KONDLE)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)