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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
DR DHANANJAYA Y CHANDRACHUD; SURYA KANT, JJ.

January 11, 2022

Miscellaneous Application No 1852 of 2019 in Criminal Appeal No 1101 of 2019

Smruti Tukaram Badade Versus State of Maharashtra & Anr.

Criminal Trial - Vulnerable Witnesses - The fairness of the process of trial as well as the pursuit of substantive justice are determined in a significant measure by the manner in which statements of vulnerable witnesses are recorded - Creation of a barrier free environment where depositions can be recorded freely without constraining limitations, both physical and emotional - Directions issued. (Para 3-5)

Constitution of India, 1950; Article 21 - The dignity of person, which is an intrinsic element of Article 21 of the Constitution, cannot be left to the vagaries of insensitive procedures and a hostile environment. Access to justice mandates that positive steps have to be adopted to create a barrier free environment. These barriers are not only those which exist within the physical spaces of conventional courts but those which operate on the minds and personality of vulnerable witnesses. (Para 3)

Guidelines for recording evidence of vulnerable witnesses in criminal matters' of the High Court of Delhi - The definition of "vulnerable witness" contained in Clause 3(a) expanded. (Para 5 (i))

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J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1. The need for and importance of setting up facilities which cater to the need for creating a safe and barrier free environment for recording the evidence of vulnerable witnesses has engaged the attention of this Court over two decades. In **Sakshi v Union of India**,

(2004) 5 SCC 518 this Court issued directions in addition to those which were contained in the decision in **State of Punjab v Gurmit Singh, (1996) 2 SCC 384**. The relevant extract from the decision in **Sakshi** (supra) reads thus:

“34. [...]

(1) The provisions of sub-section (2) of Section 327 CrPC shall, in addition to the offences mentioned in the sub-section, also apply in inquiry or trial of offences under Sections 354 and 377 IPC.

(2) In holding trial of child sex abuse or rape:

(i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;

(ii) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.”

2. More recently, in **State of Maharashtra v Bandu @ Daulat, (2018) 11 SCC 163** directions were issued by this Court for setting up “special centres for examination of vulnerable witnesses” in criminal cases so as to facilitate a conducive environment for recording the statements of vulnerable witnesses. This Court dwelt on the guidelines which have been issued by the High Court of Delhi for recording the evidence of vulnerable witnesses in criminal matters and noted that special centres have been set up in Delhi for that purpose. While observing that the direction of the High Court of Delhi for setting up special centres for vulnerable witnesses is consistent with the earlier decisions of this Court and supplement the principles which have been laid down, this Court issued the following directions:

“12. [...] all High Courts can adopt such guidelines if the same have not yet been adopted with such modifications as may be deemed necessary. Setting up of one centre for vulnerable witnesses may be perhaps required almost in every district in the country. All the High Courts may take appropriate steps in this direction in due course in phases. At least two such centres in the jurisdiction of each High Court may be set up within three months from today. Thereafter, more such centres may be set up as per decision of the High Courts.”

3. The fairness of the process of trial as well as the pursuit of substantive justice are determined in a significant measure by the manner in which statements of vulnerable witnesses are recorded. The dignity of person, which is an intrinsic element of Article 21 of the Constitution, cannot be left to the vagaries of insensitive procedures and a hostile environment. Access to justice mandates that positive steps have to be adopted to create a barrier free environment. These barriers are not only those which exist within the physical spaces of conventional courts but those which operate on the minds and personality of vulnerable witnesses. There is a pressing need to facilitate the salutary purpose underlying the creation of a barrier free environment where depositions can be recorded freely without constraining limitations, both physical and emotional. This requires not just the creation of infrastructure but sensitizing all stakeholders.

4. This Court issued notice to all the High Courts in pursuance of which they have appeared through Counsel. Based on the material which has been placed before the Court, Ms Vibha Datta Makhija, *amicus curiae*, has prepared a tabulated statement of the position of infrastructure in various High Courts as of 25 October 2021. A copy of the tabulated statement is annexed as a broad indicator at Annexure 'A' to this order. Based on the deliberations which have taken place during the course of proceedings in the Court, the suggestions which have been proposed by the *amicus curiae* and the responses of some of the Counsel who have appeared on behalf of the High Courts, the following directions are issued under Article 142 of the Constitution in furtherance of the earlier decisions of this Court. These are intended to facilitate the implementation of the directions which were rendered on 24 October 2017 in **Bandu** (supra) and earlier in other decisions.

5. The directions are enumerated below:

(i) The definition of "vulnerable witness" contained in Clause 3(a) of the 'Guidelines for recording evidence of vulnerable witnesses in criminal matters'⁴ of the High Court of Delhi shall not be limited only to child witnesses who have attained the age of 18 years and should be expanded to include, *inter alia*, the following categories of vulnerable witnesses:

⁴ "VWDC Scheme" available at http://delhihighcourt.nic.in/writereaddata/upload/notification/notificationfile_lcwcd2x4.pdf.

(a) Age neutral victims of sexual assault read with Sections 273 and 327 of the Code of Criminal Procedure 1973 and Section 354 of the Indian Penal Code 1860 ("IPC");

(b) Gender neutral victims of sexual assault read with Section 2(d) of the Protection of Children from Sexual Offences Act 2012;

(c) Age and gender neutral victims of sexual assault under Section 377 of the Indian Penal Code 1860 read with paragraph 34(1) of the decision in **Sakshi** (supra);

(d) Witnesses suffering from "mental illness" as defined under Section 2(s) of the Mental Healthcare Act 2017 read with Section 118 of the Indian Evidence Act 1872;

(e) Any witness deemed to have a threat perception under the Witness Protection Scheme 2018 of the Union Government as approved by this Court in **Mahender Chawla v Union of India, (2019) 14 SCC 615**;

(f) Any speech or hearing impaired individual or a person suffering from any other disability who is considered to be a vulnerable witness by the competent court; and

(g) Any other witness deemed to be vulnerable by the concerned court.

(ii) The High Courts shall adopt and notify a Vulnerable Witnesses Deposition Centres ("VWDC") Scheme within a period of two months from the date of this order unless a scheme is already notified. The High Courts which already have existing VWDC Schemes in place may consider making suitable modifications in conformity with the guidelines which are indicated in the present order. In formulating the VWDC Scheme, the High Courts shall have due regard to the scheme which has been formulated by the High Court of Delhi, which has been duly approved in the judgment of this Court in **Bandu** (supra);

- (iii) Every High Court should set up an in-house permanent VWDC Committee for continuously supervising the implementation of the present directions and making a periodic assessment of the number of VWDCs required in each district proportionate to the time required for recording evidence of vulnerable witnesses and to coordinate the conduct of periodic training programmes;
- (iv) Every High Court is requested to make an estimation of costs towards manpower and infrastructure required to set up at least one permanent VWDC in every establishment of the District Court (or additional Sessions Court establishments) and estimate the optimal number of VWDCs required for the entire State within a period of three months;
- (v) Having due regard to the importance of conducting periodic training programmes for manning and managing the VWDCs and sensitizing all stake holders, including judicial officers, members of the Bar and the staff of the court establishment, we constitute a Committee chaired by Justice Ms Gita Mittal, former Chief Justice of the Jammu and Kashmir High Court. The Committee shall devise and implement an All India VWDC Training Programme, besides engaging with the High Courts on the creation of infrastructure for VWDCs. The initial tenure of the Chairperson shall be for a period of two years. All High Courts or concerned role assignees shall facilitate and give full cooperation in conducting training programmes in terms of the module which may be prepared by the Chairperson;
- (vi) Upon the estimation of costs prepared by the VWDC Committee of each High Court, the State Government shall expeditiously sanction the requisite funds within a period of three months from the date of the submission of the proposal or the end of the financial year, whichever is earlier, and disburse the funds to the High Court in accordance with the project plan. The State Government shall nominate a nodal officer of the Finance Department who shall be associated *ex officio* with the work of the VWDC Committee of the High Court, to facilitate the implementation of the proposal submitted by the High Court in terms of these directions;
- (vii) The High Courts shall ensure that at least one permanent VWDC is set up in every District Court establishment (or additional Sessions Court establishments) within a period of four months. The Registrars General of the High Courts shall file compliance reports before this Court;
- (viii) In many States, ADR Centres have been set up by the High Courts in close proximity to the court establishments in the districts. Where such ADR Centres are in place, the High Courts would be at liberty to ensure that the VWDC is made available within the premises of the ADR Centre so as to secure a safe, conducive and barrier free environment for recording the depositions of vulnerable witnesses;
- (ix) The National Legal Services Authority (“**NALSA**”) as well as the State Legal Services Authorities (“**SLSAs**”) have a vital stake and role, particularly in devising and implementing sensitization and training programmes. The Chairperson of the Committee appointed by this Court is requested to engage with NALSA and SLSAs (subject to the directions which may be issued by the Hon’ble Executive Chairperson of NALSA) so as to provide an effective interface for implementing the scheme for training;

(x) The Hon'ble Chief Justices of the High Courts would be at liberty to take all appropriate steps either on the administrative side or on the judicial side in furtherance of the present directions and to monitor compliance on a periodic basis;

(xi) The Chief Justice of the High Court of Delhi is requested to make available a work space/room for the office of the VDWC Committee Training Centre and requisite staff, preferably personnel who have previously assisted in the development and implementation of the Training Modules of the Delhi High Court and to designate a Coordinator of the programme in consultation with the Chairperson. Appropriate secretarial and logistical support staff and equipment may be made available to the Committee on a reasonable remuneration as fixed by the Chairperson. The expenses in that regard, including the honorarium payable to the Chairperson shall be defrayed by the Ministry of Women and Child Development to the Director of the Delhi Judicial Academy. The Chairperson may fix a reasonable honorarium for the work assigned to her under the terms of this order. In the event that any further directions are necessary, the Chairperson may seek them before this Court and any communication in that regard shall be placed for further directions; and

(xii) The Ministry of Women and Child Development of the Union Government shall designate a nodal officer for coordinating the implementation of these directions and for providing all logistical support to Justice Ms Gita Mittal, the Chairperson of the Committee appointed by this Court. This would include the payment of honorarium to the Chairperson in terms as fixed by the Chairperson and meeting the expenses, including those towards engaging domain experts for training programmes. The Union Ministry of Women and Child Development and all Ministries of Women and Child Development in the States shall coordinate with the Chairperson and extend logistical support. The High Courts shall, in consultation with the Chairperson of the Committee, enlist experts in the field to facilitate proper training and development of all stake holders.

6. A copy of this order shall be forwarded by the Secretary General of this Court to the Secretary, Ministry of Women and Child Development of the Union Government and to the Secretaries of the Ministries of Women and Child Development of all the State Governments for compliance. A copy of this order shall also be emailed to Justice Ms Gita Mittal for information and also to the Registrars General of all the High Courts for implementation by the High Courts.

7. We conclude by recording our appreciation of the dedicated effort of the *amicus curiae*.

8. The Miscellaneous Application is accordingly disposed of.

9. Pending application, if any, stands disposed of.