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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

“THE VOICE OF THE UNHEARD: REFLECTION ON THE JUST RIGHTS FOR CHILDREN ALLIANCES & ANRS VS. S. HARISH & ORS.”

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ABSTRACT:

The landmark Supreme Court judgement “Just Rights for Children Alliances & Anrs Vs. S. Harish & Ors.” (Crl.A. No. 2161-2162/2024) addressed the modern world challenges faced with the rise in the digital media with the critical questions arising in the legal interpretation concerning child pornography. “Child pornography is not only a violation of innocence; it is a stain on our humanity. We must fight to eradicate it,” while in this caselaw, the key issue revolves around whether mere possession or downloading of child pornographic material without proof of transmission or publication constitutes an offence under the Protection of Children from Sexual Offences Act,2012(POSCO) and the Information Technology Act,2000 (IT ACT).

Keywords: Legal Interpretation, Child Pornography, innocence, caselaw, transmission, publication, offence, POSCO, IT ACT.

Case Law: JUST RIGHTS FOR CHILDREN ALLIANCE & ANR vs. S. HARISH & ORS.

Court: The Supreme Court Of India

Jurisdiction: The Criminal Appellate Jurisdiction

Appeal: 2161-2162 OF 2024

Arising out: SPECIAL LEAVE PETITION

(Crl) Nos: 3665-3666 OF 2024

Judge: J.B. PARDIWALA, DR. DHANANJAYA Y. CHANDRACHUD.

As quoted by Harriet Jacobs, “**There are wrongs which even the grave does not bury.**”¹

¹https://essays.quotidiana.org/jacobs/free_at_last/#:~:text=I%20cannot%20say%2C%20with%20truth,did%20not%20diminish%20my%20danger

Certainly, the landmark case of Just Rights for Children Alliances & Anrs Vs. S. Harish & Ors” (Crl.A. No. 2161-2162/2024), the Supreme Court interpreted the quote's literal meaning. The case revolves around the laws governing child pornography under the Protection of Children from Sexual Offences Act,2012(POSCO) and the Information Technology Act,2000 (IT ACT), aiming at the scope of criminal liability. In the said case, the Supreme Court took a firm stance on whether mere possession or downloading of child pornography constitutes an offence under these laws, even when there is no sharing, transmitting or publishing the material.

Background:

On January 29, 2020, the All-Women police station in Ambattur, Chennai, received a cyber tip that Harish had been consuming child pornography on his mobile device. Further during the investigation forensic analysis of his mobile, incited 100 pornographic videos including underage boys engaging in sexual activities with adult women. A chargesheet was subsequently filed against Harish. Thereafter Harish filed a petition before the High Court of Madras to quash the charges². The High Court ruled in favour of Harish, leading to the root behind this appeal, the High Court judgment that directed the abashment of the criminal proceeding against the respondent. The respondent was accused of the possession of child pornography under section 15(1) of POSCO³ and Section 67B of the IT Act. Despite the forensic indication leading to the respondent's possession of child pornography on his Mobile phone, the High Court of Madras directed the quashing of charges interpreting the section as follows: “*mere possession or viewing of child pornography did not constitute an offence without transmission or publication of same.*” This judgment of the high court was challenged by a Just Rights for Children Alliance and another NGO, Seeking a stricter interpretation of the child protection laws as the High Court has weakened legal protection for children and had misinterpreted the relevant provisions.

Issues:

Whether mere possession or downloading of child pornographic material without proof of transmission or publication constitutes an offence under these laws?

Whether the high court erred in considering section 30 of POSCO, which presumes criminal intent when someone is found in the possession of child pornography.

² <https://indiankanoon.org/doc/37078038/>

³ <https://www.indiacode.nic.in/bitstream/123456789/2079/1/AA2012-32.pdf>

Does the interpretation of provisions mentioned in section 15 of POSCO and section 67B of IT ACT need to be considered more strictly?

Supreme Court Analysis:

1. **Board or Narrow Interpretation:** The Supreme Court was of the view that the High Court in the said case had a narrow interpretation when section 15(1) of the POSCO act, the Supreme Court was of an opinion that the section went beyond the limit of interpretation mentioned by the High Court.
2. **Squaring section 67B of the IT Act⁴:** The section not only penalizes the act of publication or transmission of such materials but also punishes acts like downloading, browsing and possession of such material.
3. **Leading role of section 30:** The Supreme Court is of the view that the presumption of culpable mental state plays a crucial role, which revolves around section 30 of the POSCO Act. The court highlights that the intention to share could certainly be inferred from the failure to delete the material, especially in the case of a prolonged period of storage leading towards the intention to share or transmit the material even if it has not been distributed.
4. **Upholding the Rights of the Children:** The stress towards the need to protect vulnerable groups like children establishes a need to balance personal liberty with societal interest. In matters involving children, a boarder view is essential for the welfare and protection of children.

Few Cited Case Law supporting a broader approach of the current case:

1. **Independent Thought Vs. Union Of India & Anr. (2017 INSC 1030)⁵:** This case was instrumental in regards to validating the paramount importance of the protection of children's rights and their well-being. In the said case law, the court emphasized upholding the POSCO Act while it should be interpreted in the best interest of every child at any stage of the judicial proceedings.
2. **Impact on the case:** The case instance, "Just Rights for Children Alliances & Anrs Vs. S. Harish & Ors." Also, it stresses safeguarding the children's rights and the need for a broader interpretation of POSCO focusing on safeguarding children's exploitation.

⁴ <https://www.indiacode.nic.in/bitstream3/123456789/131>

⁵ <https://indiankanoon.org/doc/87705010/>

3. ***Attorney General for India v. Satish***⁶ reported in **2021 INSC 762**: this case helped to examine the legislative intent behind the POSCO Act, highlighting the need for a holistic and child-centric interpretation of the act. Stating that any narrow and pedantic interpretation of the provision which would defeat the object of the provision, cannot be accepted.

Impact on the current case: The court relied on the reasoning from this case, rejecting the narrow interpretation given by the High Court of Madras for Section 15(1) of the POSCO Act.

4. ***Eera through Dr Manjula Krippendorf v. State (Govt. of NCT of Delhi)***⁷ & Anr. reported in 2017 INSC 658: This case underscored that there is a long-lasting impact of abuse on children, therefore, any act dealt with stringently and leniency should not be shown to the offenders who harm the children.

Impact On the Current Case: Therefore, considering the case mentioned above, the court emphasised that child pornography in any form should be treated as a serious crime. This justifies the broader interpretation of the law and its emphasis on protecting children from the growing menace of digital exploitation.

Fundamental rights are not shielded from wrongful acts: The Supreme Court's⁸ decision is both a timely and essential step leading in the digital era, where child exploitation through the means of online platforms has become an increasing menace. While the court's view rightly broadens the scope of these laws to address the evolving challenges of online child pornography.

The court clarified that mere possession or storage of child pornography constitutes an offence, and the court has certainly closed the loopholes on the end of the offenders. While the right to privacy is a fundamental right it cannot be a shield for the wrong actions, especially when it involves abuse towards vulnerable groups, especially children, such rights should be curtailed. Section 30 of the POSCO Act played a strong role in putting the burden on the accused to prove their innocence.

⁶ <https://indiankanoon.org/doc/123392914/>

⁷ <https://indiankanoon.org/doc/69624144/>

⁸ https://api.sci.gov.in/supremecourt/2024/8562/8562_2024_1_1501_56073_Judgement_23-Sep-2024.pdf

Conclusion:

This judgment is a progressive step towards upholding justice for children. It deals in 2folds: Stricter legal interpretations and the importance of the presumption of a culpable mental state in vulnerable group cases. It has not only strengthened legal protection for children but also sent a message to the world that child exploitation in any manner will not be tolerated in India. By rejecting the narrow interpretation and balancing individual rights with societal interest, the Supreme Court of India reaffirmed its commitment to protecting vulnerable groups like children.

