

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (CrI) No 356/2003

Date of Decision : July 28, 2004

MRS. X

..Petitioner
through Mr.D.C.Mathur, Sr.Advocate
with Ms.Rebecca M.John, Ms.Vrinda
and Mr.Vishal Gosain, Advocates

Versus

State & Another

..Respondents
through Mr.Akshay Bipin for the State,
Mr.Kailash Gambhir for UOI
Mr.Harish Gulati for respondent No.3

CORAM :

HON'BLE MR.JUSTICE R.C.CHOPRA

- (i) Whether the Reporters of Local Papers may be allowed to see the judgement? Yes
- (ii) To be referred to the Reporter or not? Yes
- (iii) Whether the judgement should be reported in the Digest? Yes

R.C.CHOPRA, J.

The petitioner in this Writ petition, under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, is the mother of a child, aged about 6 years, who is alleged to be a victim of an offence under section 377 read with Section

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511 of the Indian Penal Code at the hands of his teacher-respondent No.3. FIR No.938/2002 was registered at P.S. Malviya Nagar, New Delhi against respondent No.3. The trial is pending.

According to the petitioner, the child complained of sexual abuse on 25.10.2002 and on inquiries, revealed that he was a victim of sexual abuse by respondent No.3 on many occasions and at different locations in the school. The child was examined by Ms.Achla Bhagat, a consultant psychiatrist and psycho therapist at Apollo Hospital, New Delhi. She categorically opined that it would be in the best interest of the child not to expose him to the perpetrator of the crime which may compound the impact of the abuse. She opined that the child was showing signs of Post Trauma Stress Disorder and was likely to suffer further psychological trauma if he was confronted with the accused. In these premises, the petitioner, who is the mother of the child victim, prays that the trial be conducted in a child friendly environment outside the Court room so that the child can give his evidence without fear, apprehension or intimidation. It is also prayed that the testimony of the child be recorded with the help of a close circuit live television link to avoid confrontation and eye contact between the child and the accused-respondent No.3 and at the time of the examination of the child a support person, preferably the mother of the child, be allowed to remain present. She also seeks permission for the use of testimonial aids so that child may freely express himself in ways other than oral testimony.

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The State has no objection to the issuance of appropriate directions by this Court to ensure that the testimony of the child victim is recorded in a friendly and congenial atmosphere and the child does not suffer any mental trauma.

Learned counsel for respondent No.3 also does not oppose the prayer made by the petitioner but has two reservations. First is that the support person should not be a prosecution witness. He agrees that the father may be allowed to remain present at the time of the examination of the child as a support person. His second objection is in regard to the mode and method of the cross-examination. He submits that while issuing directions, this Court must ensure that the valuable right of the accused to cross-examine the child witness is not frustrated or defeated.

The issues raised in this petition and the directions sought are squarely covered by the recent Apex court judgement in "*Sakshi Vs. Union of India & Ors.*" reported in 2004 (2) JCC Page-892. This judgement was given in a Public Interest Litigation filed by a Social Organization "Sakshi". The relief claimed in the said petition was primarily in regard to the enlargement of the definition of "sexual intercourse" as contained in Section 375 of the Indian Penal Code and directions to the Union of India and others for registration of cases falling within the broadened interpretation of "sexual intercourse". Their Lordships, after in-depth examination of the question of enlargement of the definition of "rape" as contained in Section 375 of the Indian Penal

Code came to the conclusion that it would not be in the larger interests of the State or the people to alter the definition by a process of judicial interpretation.

However, in para 27 of the judgement, their Lordships considered certain suggestions made by the petitioner for the protection of a victim of sexual abuse at the time of recording of his statement in Court. These suggestions read as under :

" (i) Permitting use of a videotaped interview of the child's statement by the judge (in the presence of a child support person).

(ii) Allow a child to testify via closed circuit television or from behind a screen to obtain a full and candid account of the acts complained of.

(iii) The cross examination of a minor should only be carried out by the judge based on written questions submitted by the defence upon perusal of the testimony of the minor.

(iv) Whenever a child is required to give testimony, sufficient breaks should be given as and when required by the child."

After examining the various implications of the suggestions, the Apex Court disposed of the writ petition with the following directions as contained in para 34 of the judgement :

"34. The writ petition is accordingly disposed of with the following directions:-

(1) The provisions of sub-section (2) of the section 327 Cr.PC shall, in addition to the offences

mentioned in the sub-section, would 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, in so far 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. These directions are in addition to those given in State of Punjab V. Gurmit Singh."

In view of the directions issued by the Apex Court as quoted above, there is hardly any scope for this Court to issue any additional directions or guidelines for the protection of a child victim of sex abuse or a witnesses to such an incident. The prayer made by the petitioner in *Sakshi Vs. Union of India & Ors.* (supra) for permitting use of a videotaped interview of the child's statement by the Judge did not find favour. However, the prayer for allowing the child or witness to testify via closed circuit television or from behind a screen to obtain a full and candid account of the acts complained of, received approval in Sub-Clause 2(i) of para 34 of the judgement. The words "or some such

arrangements" used in this sub-para cover examination through close circuit television also. Regarding cross-examination also, the procedure prescribed by the Apex Court is that the questions to be put in cross-examination on behalf of the accused, in so far 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 witness in a language, which is clear and not embarrassing. The apprehension of learned counsel for respondent No.3 that sometimes a further question may have to be put to a witness in view of the answer to a question put in the cross-examination which may not be possible by this procedure, is misconceived inasmuch as after the questions given in writing to the Presiding Officer are put to the witness, the defence counsel may give some further questions in writing to the presiding officer, which may also to be put to the witness by the presiding officer of the Court, if deemed fit and relevant.

The presence of a support person with the victim of child abuse or rape at the time of his testimony in Court with sufficient breaks as and when required is fully justified. In the absence of a support person, a child of tender age may not be able to say anything. The objection of learned counsel for the respondent No.3-accused that the support person should not be a prosecution witness himself has some substance and as such in the present case, instead of the mother, who is a prosecution witness, the father of the child can be permitted to be a support person. The question as to whether the child witness in the present case should be

allowed to be examined by keeping him behind a screen or through closed circuit television can be left to the discretion of the Trial Judge inasmuch at times the equipment required for examination of witness through closed circuit television may not be readily available and returning the witness without examination may not be deemed fit by Trial Judge.

In view of the facts and circumstances of the case and in the light of the Apex Court judgement in *Sakshi Vs. Union of India & Ors.*(supra), this Court has no hesitation in concluding that the time has now come when the Courts should firmly step in to prevent harassment and humiliation of the witnesses and victims of sexual abuse in the course of their cross-examination in Courts. The spate of questions put to them in cross-examination which sometimes cross the limits of decency even make them re-live the whole incident. This appears to be a major factor which prompts numerous victims of such crimes to resile from their statements for fear of humiliation. It happens in spite of holding of a trial in-camera because the presence of the prosecutor, defence counsel, accused as well as staff is unavoidable.

The directions given by the Apex Court in *Sakshi Vs. Union of India* (supra) have to be applied not only to the victims of child sex abuse or rape but some witnesses also who may be equally vulnerable like a child victim. In appropriate cases, the Courts may apply these directions to the victims or witnesses of other sexual offences also if it appears that

they are vulnerable to mental pressure of Court proceedings. In the case of "*State of Maharashtra Vs. Dr.Praful B.Desai &Anr.*" reported in JT 2003(3) SC P-382, the recording of evidence through video conferencing stands approved. It has been clearly held that evidence so recorded meets the requirements of Section 273 Cr.PC so long as the accused and/or his pleader are present when evidence is recorded by video conferencing. The ratio of the said judgement can be applied to the victims and witnesses of sex abuse and rape cases also. However, a child victim has to be provided additional protections also as contained in *Sakshi Vs. Union of India & Ors.* (supra).

The petition accordingly stands disposed of with the directions to Trial Judge to examine the child witness in FIR No.938/2002 registered at P.S. Malviya Nagar, New Delhi in terms of the directions issued by the Apex Court in *Sakshi Vs. Union of India & Ors.* (supra) and the observations made by this Court. The father of the child would be the support person who will remain present at the time of the examination/cross-examination of the child. The questions to be put by the defence counsel in cross-examination would be handed over to the learned presiding Judge, who would put them to the child witness in his own language ensuring that the child does not suffer any further trauma. Further questions may also be allowed to both the sides after the cross-examination of the child is over so that the clarifications, if required, are obtained. The testimonial aids may also be permitted so that the child can

express himself freely and meaningfully.

The learned Trial Judge may also consider the feasibility of examining the child witness in his Chamber so that the child is not overawed by the Court atmosphere. The presiding Judge must ensure that the child victim is examined in a congenial, cordial and friendly atmosphere. It would be better if the evidence is recorded in post-lunch session at the end of Board when other cases are over and Court is less crowded. This Court need not say that necessary equipment/gadgets for compliance of directions have to be arranged by the prosecution.

The petition stands disposed of accordingly.

A copy of this order be circulated to all the officers of District Judiciary so that these directions are followed while examining the victims/witnesses of sex abuse or rape and especially when the victim or witness is a child.

July 28, 2004
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R.C.CHOPRA, J.