



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.96 of 2025

An application under Section 482 of the Code of Criminal Procedure, 1973
read with Section 528 of BNSS, 2023

Victim/Informant

.....

Petitioner

Represented by Adv.-

M/s. Biplaba P.B. Bhalai,
Rakesh Kumar Routray

-versus-

State of Orissa & Another

.....

Opposite Parties

Represented by Adv.-

Mr.D. K. Sahoo, A.G.A
(For O.P. No.1)

Mr. Kuldeep Mohanty,
A. Dash & D. Mohapatra
(For the OP No.2)

CORAM:

THE HON'BLE MR. JUSTICE A.K. MOHAPATRA

Date of Hearing : 19.01.2026 | Date of Judgment:27.02.2026

A.K. Mohapatra, J. :

1. The present CRLMC application has been filed by the
Petitioner challenging the order dated 02.09.2024 passed by the AD
HOC ADJ-FTSC POCSO-II, Cuttack, along with an additional prayer



to direct the said AD HOC ADJ-FTSC POCSO-II, Cuttack to examine the Victim the means of Video Conferencing (VC) in the Special G.R. Case No.30 of 2023 corresponding to Salepur P.S. Case No.54 of 2023 which has been filed for commission of offences under Sections 363/ 344/ 366/ 376(3) of the I.P.C read with Section 6 of the POCSO Act, 2012.

FACTS OF THE CASE

2. The background of the case giving rise to the present application, is as follows; Earlier on the 16th of February 2023 at around 5:50 pm in the afternoon, telephonic information was received by the child-line (number 1098) from the victim, who happens to be the daughter of the present Petitioner, that she had been kidnapped, confined in a single room, and tortured (mentally and physically) by the Opposite Party No.2, Dipak @ Dillip Kumar Satapathy. Later, on the very same evening, members of the 'Tangi Choudwar Child Marriage Task Force Committee' rescued the Victim from the residence of the Opposite Party No.2. Consequently a written report of the incident was lodged at Japakuda OP, basing upon which the F.I.R, under Annexure-1 series, has been registered.

3. On perusal of the F.I.R and the Chargesheet at Annexure-1, it is revealed that the statement of the Victim under sections 161 and 164



Cr.P.C have been recorded. Although, the Victim has declined to undergo medical examination. Further, the IO has found out during investigation that the Victim is minor aged around 15years and 6 months during the registration of the F.I.R. Moreover, the Chargesheet also reveals that the Victim was allegedly kidnapped by the Opposite Party No.2 from her lawful guardianship when she was 15 years of age by inducing her to marry him. It has also been alleged in the Chargesheet that The OP No.2 kept repeated sexual relationship with the victim by keeping her at his house for around a year.

4. Meanwhile, in BLAPL No.1201 of 2024 filed by the Opposite Party No.2, a Co-ordinate Bench of this Court, vide order dated 15.05.2024, has allowed the bail application of the Accused-Opposite Party No.2 primarily on the ground of pre-trial detention of the Opposite Party No.2 and non-examination of the Victim. While allowing the bail application the Hon'ble Court had also requested the Trial Court to provide appropriate facilities for examination of the Victim through VC mode, if such a request was made on behalf of the Petitioner. Consequently, the Petitioner on behalf of the Victim filed a petition under section 36(2) of POCSO Act, 2012 (hereinafter "POCSO Act") for recording of evidence of the minor-Victim through VC mode. However, such application of the Victim has been rejected by the



learned Court in seisin over the matter vide order dated 02.09.2024, at Annexure-3 series. Aggrieved by such rejection, the Petitioner has approached this Court under section 528 of the BNSS.

CONTENTIONS OF THE PETITIONER

5. Heard Mr.Biplaba P. B. Bahali, learned Counsel appearing for the Petitioner. It is the Petitioner's primary allegation that that the Court at which the present case is proceeding is situated at a considerable distance from the village where she resides alone with only her minor daughter, i.e. the Victim, and no other male members. It was further contended that given her dire financial condition, she is unable to travel such long distances to appear before the trial court. Additionally, the Petitioner has also alleged that the principal accused- Opposite Party No.2, being an influential position in the area, has been constantly threatening the Victim and her mother of dire consequences in the event they depose against him.

6. The learned counsel for the Petitioner, elaborating his contentions, submitted before this Court that the Petitioner and her minor daughter, the Victim, reside alone at Adipada village in the district of Nayagarh which is more than 120km from the trial court where the trial is presently underway. It was further submitted that the Petitioner is currently employed as a domestic help and is living in



severe financial distress, rendering her entirely unable to arrange for travel to such a distant place for recording of the evidence of her minor daughter and herself. The learned counsel submitted that denial of Video Conferencing facilities to the Petitioner and the Victim to record their evidences is bound to cause grave prejudice to the parties. The learned counsel for the Petitioner has, in support of his submission, placed reliance on a catena of decisions of the Hon'ble Supreme Court, including *In Re: Children in Street Situations*, bearing (2022) SCC OnLine SC 189.

7. At this juncture, learned counsel for the Petitioner also placed reliance upon the *High Court of Orissa Guidelines for Recording Evidence of Vulnerable Witnesses at Deposition Centres, 2024*, particularly Rules 3(r), 13, and 42. Inviting attention to Rule 3(r), learned counsel submitted that the Victim in the present case falls squarely within the definition of a “vulnerable witness”. It was further contended that Rule 13 expressly entitles a child victim under the POCSO Act to avail the assistance of legal counsel of her choice. In the present case, the Victim, through her chosen counsel, has invoked the statutory protection under Section 36(2) of the POCSO Act by filing the petition seeking examination through virtual mode. However, the learned trial court has rejected the said petition on grounds which,



according to learned counsel, are untenable in law. Additionally, drawing the attention of this Court to Rule 42 of the said Guidelines, learned counsel argued that where a minor victim does not reside proximate to the court conducting the trial, as in the present case, the Guidelines cast an obligation upon the Court to ensure adherence to the Standard Operating Procedure affirmed by the Hon'ble Supreme Court in *Children in Street Situations* (*supra*) when the minor victim is examined through virtual mode.

8. Next, drawing attention to the conduct of the Opposite Party No.2, the principal accused, in hindering the Petitioner from attending the trial court, the learned counsel for the Petitioner has vehemently argued that the Opposite Party No.2 is an influential person in Cuttack and has been persistently intimidating and threatening the Petitioner and the Victim, warning them of severe consequences in the event they depose against him. It was submitted that the threats escalated to such an extent that the Petitioner lodged another F.I.R against the Opposite Party No.2 bearing Lalbag P.S. Case No.204 of 2023, pending before the learned SDJM(S), Cuttack. A copy of the aforesaid F.I.R is available at Annexure-4 to the present CRLMC application.

9. Lastly, referring to the application under section 36(2) of the POCSO Act, 2012 and the impugned rejection order dated 02.09.2024,



under Annexure-3 series, the learned counsel for the Petitioner contended that the learned trial court has unfairly rejected the aforesaid petition primarily on the hyper-technical ground that the guardian of the Victim, i.e. the Petitioner, has not taken any prior permission under Section 302 Cr.P.C before filing such a petition to conduct the deposition of the parties over VC mode. Learned counsel submitted that the learned trial court, while rejecting the application under section 36(2) has also observed that the petition has not been filed through the Special Public Prosecutor, that no request has been made to the Special Public Prosecutor deputed to the Court in seisin over the matter for filing of the said petition. As such, the learned counsel submitted that the learned trial court has erroneously held that there is no instruction in the High Court's order dated 15.05.2024, under Annexure-2, to entertain the said petition and to record the evidence of the parties through VC mode. In such view of the matter, the learned counsel for the Petitioner submitted that the impugned rejection order dated 02.09.2024, at Annexure-3 series, being rife with illegalities and opposed to the spirit of the POCSO Act, be set aside and the Court in seisin over the matter be directed to allow the examination of the Victim and the Petitioner through VC mode as per the rules framed by this Court.



CONTENTION OF THE STATE-OPPOSITE PARTIES

10. Heard Mr. D. K. Sahu, AGA along with Mr. Kuldeep Mohanty and Mr. A. Dash, learned counsel for the Opposite Party No.2. At the very outset, the learned counsel for the State-Opposite Parties has supported the impugned order dated 02.09.2024 passed by the trial Court and opposed the Petitioner's prayer on the ground that the Petitioner has not approached this Court with clean hands. It has been contended that the Petitioner has not been honest and has deliberately suppressed her actual residential address while seeking the relief as prayed for in the present petition. To bolster his contentions, the learned counsel for the State-Opposite Parties stated that earlier on 10.09.2024, a different application bearing CRLMC No.3527 of 2024 was filed on behalf of the Victim seeking a direction from this Court for early disposal of the case pending before the learned trial court. In the said CRLMC application the Petitioner disclosed her residential address as "C/o- P.C Sejpada, S/o- Rajkishore Sejpada, at Srivihar Colony, P.O:- Tulasipur, P.S:- Bidanasi, Dist-Cuttack, Pin-753008". It was contended by the learned counsel for the State-Opposite Parties that the aforesaid address is clearly inconsistent with the residential address disclosed by the Petitioner in the petition dated 19.06.2024 filed before the trial court and in the present CRLMC application, filed



on 03.10.2024, wherein she has stated that she resides at Nayagarh. Learned counsel for the State-Opposite Parties submitted that such contradictory disclosures regarding her residence clearly amounts to deliberate suppression of material facts and constitutes an abuse of the judicial process, ultimately disentitling the Petitioner from availing any relief from this Court.

11. It was further contended by learned counsel for the State-Opposite Parties that the application filed by the Petitioner under section 36(2) before the learned trial court is a deliberate attempt to delay the trial. It was submitted that such dilatory tactics employed by the Petitioner are evident from the fact that despite issuance of several summons by the learned trial court, the Victim has not appeared for recording of her evidence. Moreover, during the pendency of the trial, an affidavit was also filed by the mother of the victim, i.e. the present Petitioner, with a prayer to examine the Victim only after the examination of all other witnesses was completed, further indicating the intention of the Petitioner to prolong the trial. Learned counsel submitted that, on account of such conduct of the Petitioner and the Victim, the trial has been repeatedly delayed and, as of now, except the Victim, her mother (the present Petitioner) and the Investigating Officer, all other witnesses have already been examined.



12. To lend further credence to his submissions, the learned counsel for the State-Opposite Parties has also placed reliance on sections 36(2) and 40 of the POCSO Act, 2012 along with section 301 of the Cr.P.C. Referring to section 36(2) of the POCSO Act, 2012, learned counsel for the State-Opposite Parties submitted that the learned trial court has rightly observed that such application by the Petitioner should instead have been filed by the Prosecution, after getting instruction from the Petitioner and the Victim. Similarly, with respect to section 40 of the Act, learned counsel for the State-Opposite Parties stated that although it is true that the provision entitles the family or guardian of a child Victim to be assisted by a legal counsel of their choice for any offence under the POCSO Act. However, such right is subject to the proviso to Section 301 of Cr.P.C which means that the counsel appointed by the Victim shall only assist the Public Prosecutor and can only file written arguments with the permission of the trial court. Likewise, referring to Section 301 of Cr.P.C, learned counsel for the State-Opposite Parties submitted that although a private individual like the Victim can hire a counsel/pleader to prosecute her case and such private pleader, with the permission of the Court below, can submit written arguments after presentation of evidence in the case, however it is the Public Prosecutor/ Special Public Prosecutor alone



who remains in charge of the prosecution and directs the actions of the private pleader. Therefore, learned counsel for the State-Opposite Parties contended that the court below has not committed any illegality in rejecting the application of the Petitioner under section 36(2) of the POCSO Act.

13. Lastly, to substantiate his contentions, the learned counsel for the State-Opposite Parties has relied on *Shiv Kumar v. Hukam Chand and Ors.*, in *Criminal Appeal No.1048 of 1998* via judgement dated 30.08.1999; along with a few other decisions of the Hon'ble Supreme Court bearing *(2020) 2 SCC 166*, *(1999) 7 SCC 467*, *(1988) 1 OCR 269*, *(1999) 17 OCR 579 (SC)*, and *70 (1990) CLT 6*. In such view of the matter, the learned counsel for the State-Opposite Parties submitted that the present CRLMC application filed by the Petitioner, lacking merit, ought to be dismissed forthwith.

ANALYSIS OF THE COURT

14. Heard learned counsel for the respective parties and perused the documents available on record along with the submissions of the respective counsels. The present writ petition has been filed assailing the order dated 02.09.2024 passed by the learned Additional District Judge-cum-Special Court under the POCSO Act, Cuttack, wherein a petition under section 36(2) of the POCSO Act, 2012, filed by the



mother of the Victim, who is the Petitioner in the present CRLMC application, for allowing the recording the evidence of herself and the victim, has been rejected by the trial court.

15. On a perusal of the impugned order of rejection dated 02.09.2024, at Annexure-3 series, it appears that the Court below has rejected the Petition filed by the present Petitioner primarily on the ground that the petition under section 36(2) of the POCSO Act, 2012 has not been filed thorough the special Public Prosecution, that the Petitioner has not taken any prior permission under section 302 Cr.P.C to conduct the prosecution, that despite several summons the being issued to the Petitioner and her daughter-Victim they have not appeared for the recording of their evidence, and that as per the order of this Court dated 15.05.2024 in BLAPL No.1201 of 2024 no request for arranging appropriate facilities for conducting examination of the Victim through VC mode has been made by the Petitioner to the Special P.P deputed to the trial court. This Court is thus called upon to assess the relief sought by the Petitioner vis-à-vis the impugned rejection order passed by the learned trial court, in the backdrop of the settled principles of law governing the examination of a minor victim in prosecutions under the POCSO Act, 2012.



16. Since the present application has been filed under Section 528 of the BNSS, it is apposite to note that the foundational principle underlying the said provision is rooted in the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest*—that is, when the law grants a power or right, it is deemed to grant all incidental powers necessary for its effective exercise. Consequently, the High Court is vested with inherent powers, inter alia, to give effect to any order under the Code, to prevent abuse of the process of any Court, and to otherwise secure the ends of justice (see ***Dinesh Dutt Joshi v. State of Rajasthan***, reported in (2001) 8 SCC 570). The section has been incorporated in the code to cover the lacunae which might at times emerge in the procedural aspect of a law. However, given the extraordinary nature of such inherent powers, such power has to be exercised sparingly.

17. Before proceeding further, it would be apt to once again underline the scope of the exercise and the primary objective of the inherent powers of this Court under section 528 of BNSS (erstwhile section 482 of the Cr.P.C). In ***State of Karnataka v. M. Devendrappa***, reported in (2002) 3 SCC 89, the Hon'ble Supreme Court, while elucidating the scope and contours of the inherent powers of the Court



to act *ex debito justitiae* so as to secure real and substantial justice, observed that;

*“6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. **It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.** It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, **all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist).** While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. **It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It***



would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice....”

(Emphasis supplied)

18. In fact, in *Shiji @ Pappu & Ors. v. Radhika & Anr.*, reported in (2011) 10 SCC 705, the Hon’ble Supreme Court while cautioning against the exercise of the profusion of power at the disposal of the High Courts under Section 482 Cr.P.C (in paragraph 18 thereof), has clarified that although Section 482 Cr.P.C confers wide inherent powers on the High Court, such powers must be exercised with great care and circumspection. The Court stressed that it is neither feasible nor appropriate to provide an exhaustive list of circumstances justifying interference by a High Court in exercise of its inherent powers. Rather, the guiding test is whether intervention is necessary to secure the ends of justice and to prevent misuse of judicial proceedings. More recently, in *Ajay Malik v. State of Uttarakhand*, reported in 2025 SCC OnLine SC 185, the Hon’ble Apex Court has once again clarified that;

“8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers



are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.”

(Emphasis supplied)

19. Upon a consideration of the factual matrix, it emerges that the Petitioner and the Victim reside in a village in Nayagarh which is situated at an approximate distance of 100 km from the court in seisin of the matter. It has been averred that the Petitioner is in severe financial distress and that, the Victim being a minor, they are facing substantial difficulty in attending court on the scheduled dates. The State-Opposite Parties have sought to controvert the aforesaid assertion by questioning the conduct of the Petitioner, particularly on the ground that the Petitioner has disclosed a different place of residence in the present CRLMC application as compared to an earlier CRLMC application. As regards the said contention, this Court is of the considered view that the adjudication of the present CRLMC application must proceed on the factual foundation pleaded in the present proceedings. In the present CRLMC application, as also in the petition filed before the Court below under Section 36(2) of the POCSO Act, 2012, the rejection whereof forms the subject matter of the present challenge, the Petitioner has consistently disclosed her place of residence as Village Fatehgarh, in the district of Nayagarh. In



the absence of any cogent material adduced by the State-Opposite Parties to dislodge the said factual position, this Court is inclined to accept the same.

20. Upon further scrutiny of the factual background, another significant impediment preventing the Petitioner and the Victim from appearing before the trial court, for recording of their evidence, is the threat of physical harm allegedly extended by the principal accused. It has been averred that the principal accused, being an influential person in the locality, has been continuously threatening the Petitioner and her minor daughter. So much so that the Petitioner was constrained to lodge an FIR bearing Lalbaug P.S. Case No. 204 of 2023 for offences punishable under Sections 323, 34, 506, and 507 of the IPC against the principal accused. A copy of the said FIR is annexed as Annexure-4 to the present petition. The FIR alleges that the principal accused, along with another person, assaulted the Petitioner and issued threats of dire consequences. On a prima facie consideration of the aforesaid material, this Court is satisfied that there exists a credible and subsisting threat which reasonably impedes the Petitioner and the Victim from appearing before the trial court.

21. Since the controversy in the present case is revolves around the POCSO Act and involves a minor victim, it would be apposite, at



the threshold, to advert to the fundamental object and child-centric orientation of the statutory scheme of the Act. The POCSO Act has been enacted in furtherance of the constitutional mandate under Article 15(3), which empowers the State to make special provisions for children, and Article 39(f) of our Constitution, which directs the State to ensure that children are afforded opportunities and facilities to develop in a healthy manner, in conditions of freedom and dignity, and are protected against exploitation and moral and material abandonment. The Statement of Objects and Reasons of the Act unequivocally underscores the legislative intent to curb child abuse and to protect children from offences of sexual assault, sexual harassment, and allied crimes. The statutory scheme, vis-à-vis sections 19, 24, 25, 26, 33, 36 and others, manifests a clear legislative mandate requiring the State and its instrumentalities to adopt a child-centric framework to ensure the protection of the child at every stage of the criminal process and to regulate the conduct of trial in a manner consistent with such objective. Further, Section 37 of the Act clearly mandates that the trial be conducted in-camera and in the presence of the parents of the child or any person in whom the child reposes trust and confidence. Section 36 further casts an obligation upon the Special Court to ensure that the child is not exposed to the accused while recording evidence, while



simultaneously safeguarding the accused's right to hear the testimony and communicate with his/her counsel. Thus, it is manifest that the overarching objective of the POCSO Act is to shield the child from intimidation, trauma, and secondary victimisation, and to ensure a child-friendly environment for conducting the trial and recording the testimony of the minor Victim, all the while preserving her dignity and psychological well-being.

22. So far as the legitimacy of the mode of video conferencing for recording evidence of the parties is concerned, the matter has been comprehensively put to rest by the Hon'ble Supreme Court in *State of Maharashtra v. Praful B. Desai*, reported in (2003) 4 SCC 601, wherein the Hon'ble Court clarified that 'presence' under Section 273 Cr.P.C includes constructive presence through ones counsel and that evidence, including via video conferencing, is statutorily permissible. While setting aside the impugned judgement of the High Court the Hon'ble Supreme Court observed that;

*"13. One needs to set out the approach which a court must adopt in deciding such questions. **It must be remembered that the first duty of the court is to do justice.** As has been held by this Court in the case of Nageshwar Shri Krishna Ghobe v. State of Maharashtra [(1973) 4 SCC 23 : 1973 SCC (Cri) 664] courts must endeavour to find the truth. It has been held that there would be failure of justice not only by an unjust conviction but also by acquittal of the guilty for unjustified failure to produce*



available evidence. Of course the rights of the accused have to be kept in mind and safeguarded, but they should not be overemphasized to the extent of forgetting that the victims also have rights.

22. ...Thus in cases where the witness is necessary for the ends of justice and the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case would be unreasonable, the court may dispense with such attendance and issue a commission for examination of the witness...Thus in cases where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience, the court could consider issuing a commission to record the evidence by way of video-conferencing.

(Emphasis Supplied)

23. In *Alakh Alok Srivastava v. Union of India*, reported in (2018) 17 SCC 291, the Hon'ble Supreme Court, while dealing with systemic failures in the implementation of the POCSO framework, underscored that the statutory safeguards under the POCSO Act are not merely ornamental, but substantive mandates intended to accomplish child-centric justice. The Court, in paragraph 25, issued directions to the Union and States to ensure effective institutional mechanisms, infrastructure, and compliance with victim-friendly procedures, thereby reinforcing that procedural guidelines under the POCSO Act must be effectuated in their true spirit to secure the welfare, dignity, and psychological safety of child victims, and cannot be reduced to mere



technical formalities. In *Eera v. State (NCT of Delhi)*, reported in *(2017) 15 SCC 133*, the Hon'ble Apex Court, analysing the Statement of Objects and Reasons and the Preamble of the POCSO Act, made the following observation:

“20. ...the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognises the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well-being are regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child....There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POCSO Act.”

(Emphasis supplied)

24. In *Sakshi v. Union of India*, reported in *(2004) 5 SCC 518*, the Hon'ble Supreme Court, while entertaining a writ petition filed by way of a public interest litigation raising the concern of a dramatic increase in sexual violence against women, reaffirmed the principle that the rules of procedure are meant to advance justice and not to obstruct it. With regard to recording of the deposition of a Victim in matters



involving sexual offences, the Hon'ble Court, taking into consideration section 273 of the Cr.P.C, observed that;

“31. The whole inquiry before a court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 CrPC merely requires the evidence to be taken in the presence of the accused. The section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by way of video-conferencing vis-à-vis Section 273 CrPC has been held to be permissible in a recent decision of this Court in State of Maharashtra v. Dr. Praful B. Desai [(2003) 4 SCC 601 : 2003 SCC (Cri) 815] . There is major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are handmaiden of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the parties.

32. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused...”

(Emphasis Supplied)



After making the aforesaid observations, the Hon'ble Apex Court disposed of the writ petition with certain directions in paragraph 34 thereof. Primarily, it was directed that;

“34....(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.

These directions are in addition to those given in State of Punjab v. Gurmit Singh [(1996) 2 SCC 384 : 1996 SCC (Cri) 316].”

(Emphasis supplied)

25. Now, shifting focus to the impugned order of rejection, which is at the heart of the issue involved in the present Writ Petition, it is evident that the rejection order emanates from a petition filed by the present Petitioner under section 36(2) POCSO Act, 2012. Section 36 of the Act states that;



“36. Child not to see accused at the time of testifying.—(1) The Special Court shall ensure that the child is not exposed in anyway to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.”

On a plain reading of the provision, it is plainly manifest that Section 36 embodies a clear legislative mandate that the evidentiary process must be structured around the psychological safety and dignity of the minor Victim. Sub-section (1) casts a statutory obligation upon the Special Court to ensure that, while testifying, the child is not exposed to the accused in any manner whatsoever. Sub-section (2) further expressly authorises the Court to record the child’s statement through video conferencing or any other means that obviate such exposure. This Court is, therefore, of the considered view that although the permissive expression “may” employed in Section 36(2) appears discretionary in form, it must be construed purposively in light of the child-centric objective of the statute, namely, to shield the child from intimidation, trauma, and secondary victimisation during trial. Consequently, where the minor victim seeks to depose through video conferencing due to legitimate and *bona fide* reasons, such request



directly effectuates the statutory mandate under Section 36 and advances the legislative intent of ensuring a safe, dignified, and non-hostile testimonial environment for the minor Victim while simultaneously preserving the right of the accused to hear the testimony and communicate with his/her counsel.

26. Proceeding along similar lines, the impugned rejection order under Annexure-3 series divulges that the Court in seisin over the matter has relied on the express provision under section 302 of the Cr.P.C to reject the Petitioner's application under section 36(2) of the POCSO Act. Section 302 of the Cr.P.C, along with section 32 of the POCSO Act, reaffirm the public prosecutor's right to conduct the prosecution. Section 302 of the Cr.P.C states as follows;

“302. Permission to conduct prosecution.—(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.”

Section 32 of the POCSO Act states;



“32. Special Public Prosecutors.—(1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and provision of that Code shall have effect accordingly.”

27. A conjoint reading of the aforesaid provisions indicates that the Special Public Prosecutor is statutorily empowered, and ordinarily expected, to conduct the prosecution in cases involving offences under the POCSO Act. In the present matter, the learned trial court has reasoned that since the application under Section 36(2) of the POCSO Act was filed by the Petitioner in her own capacity, and not through the Special Public Prosecutor deputed to the Court, the same was not maintainable. At first blush, the reasoning of the learned Court below appears to be consistent with the statutory scheme and is ostensibly supported by the provisions quoted hereinabove. At the same time, it is also trite that procedural pathways prescribed by the legislature are to be adhered to with due rigor. However, that said, it is equally well settled that rules of



procedure must operate in furtherance of, and in harmony with, the overarching objective of the legislation, particularly when a special statute such as the POCSO Act is concerned. After all, procedural requirements are ultimately intended to facilitate the administration of justice and not to obstruct it. The question, therefore, is not whether the Special Public Prosecutor alone is competent to conduct the prosecution, to the exclusion of the Petitioner's counsel, but whether the victim or her guardian-the Petitioner, is denuded of the locus to invoke a statutory protection intended for the child, particularly where such invocation furthers the legislative mandate of the Statute.

28. In *Shreenath & Anr. v. Rajesh & Ors.*, reported in (1998) 4 SCC 543, the Hon'ble Supreme Court observed that procedural law is always subservient to, and in aid of, justice, and that any interpretation which eludes the advancement of justice ought not to be adopted. The Court further emphasised that procedure must be just, fair, and reasonable, and cannot be applied in a pedantic manner so as to frustrate the object of furthering the ends of justice. So far as the contours of procedural fairness are concerned, it is no longer *res integra* and has been well settled in a long line of decisions following *Maneka Gandhi v. Union of India*, reported in AIR 1978 SC 597.



29. In a Criminal trial, a procedural irregularity is not regarded as fatal, unless it has occasioned in prejudice to the accused in his defence. Law is settled on the point (see *Willie (William) Slaney v. State of M.P.*, reported in (1955) 2 SCC 340) that if there is substantial compliance with the procedure and the accused is not prejudiced and has got a fair opportunity to defend himself, the trial is not vitiated unless the accused can show substantial non-compliance leading to prejudice to his defence. In *William Slaney's* case (*supra*) it was held that;

“5. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.”

(Emphasis supplied)



30. Likewise, in in *State (NCT of Delhi) v. Shiv Kumar Yadav*, reported in (2016) 2 SCC 402 the Apex Court, while discussing the provisions under the Cr.P.C relating to the recall of witness, re-affirmed the idea of fair trial as a part of the guarantee under Article 21 of the Constitution of India and, observed that it is further well settled principle of law that fairness of trial is to be viewed not only from the point of view of the accused, but also from the point of view of the victim and the society. Similar sentiments were echoed by the Hon'ble Apex Court in *Zahira Habibullah Sheikh Vs. State of Gujarat*, reported in (2006) 3 SCC 374, wherein it was observed that;

*“37. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact of relevant facts which may lead to the discovery of the fact in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. **Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty.** The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.*

38. *Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and*



pretence. *Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an over hasty stage-managed, tailored and partisan trial.*

39. *The fair trial for a criminal offence consists not only in technical observance of the frame, and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.*

(Emphasis supplied)

31. Given the central issue involved in the case is with regard to examination of the Victim over video conferencing, it seems pertinent to also refer to the ‘Orissa High Court Video Conferencing for Courts Rules, 2020’, (hereinafter “VC Rules, 2020”) which were floated vide notification No.1206/R dated 02.11.2020. Rule 3(1) of the said rules, ‘General Principles Governing Video Conferencing’, states that video conferencing facilities can be used at all the stages of judicial proceeding. This implies that there is no restriction to conduct video conferencing at the evidence stage in a proceeding. Similarly, Rule 6(1) therein states that any party to the proceeding or even a witness, except where proceedings are initiated at the instance of the Court, is empowered to move the Court to request for video conferencing. In the present case, the victim being a party to the proceeding, can be considered to be well within her rights to move an application for video conferencing. Moreover, the Rule does not contemplate the



requirement of any Public Prosecutor or Special Public Prosecutor for filing such application/ request for video conferencing. Rule 6(4) again states that once such request for video conferencing is moved, the court will first ascertain that the application/ request has not been made with an intention to impede fair trial or to delay the proceeding and, upon being satisfied, the court shall pass appropriate orders therein. Rule 8 of the VC Rules, 2020 titled 'Examination of Persons' provides at sub-rule (17) that the Court conducting the proceeding may, on its own motion or at the request of the person to be examined, take appropriate measures to protect the privacy of the person seeking to be examined, by taking into account the 'best interests' of such person and considering several aspects like the age/gender/physical condition and recognized customs and practices.

32. Having heard the learned counsel for the respective parties and on a conspectus of the factual matrix of the present case, it is abundantly clear that the minor Victim and her desolate mother-the Petitioner are facing genuine hardships and impediments in appearing before the Court in seisin over the matter for recording of their evidence. So far as the impugned order dated 02.09.2024 under Annexure-3 series is concerned, this Court observes that the learned trial court has passed such orders without realising the gravity and



seriousness of the issue. Moreover, the VC Rules, 2020 has not been taken into consideration by the learned trial court while passing the impugned orders. In view of the foregoing discussion and in furtherance of the victim-centric objectives underlying the POCSO Act, 2012, as also to secure the larger interests of justice, this Court, in exercise of its inherent jurisdiction under Section 482 of the Cr.P.C (now Section 528 of the BNSS), deems it proper to set aside the impugned order dated 02.09.2024 under Annexure-3 series. Accordingly, the said order is hereby set aside.

It is further directed that the Petitioner shall approach the learned Special Public Prosecutor deputed to the Court in seisin of the matter, who shall move a fresh application under Section 36(2) of the POCSO Act. Upon such application being filed, the learned Additional District Judge-cum-Special Court under the POCSO Act, Cuttack shall consider the same in accordance with law, keeping in view the broader spirit and the objective of the Act as well as the Video Conferencing Rules, 2020 framed by this Court. Subject to there being no further legal impediment, the trial court shall ensure that necessary logistical arrangements are made for enabling the Victim and her mother-the Petitioner to record their evidence through video conferencing mode. Moreover, given that the trial has been pending for some time, the



learned trial court is directed to make every endeavour to expedite the trial, and the parties are directed to cooperate with the court in seisin over the matter for an early conclusion of the trial.

33. With the aforesaid observations and directions, the CRLMC application is allowed. However, there shall be no order as to costs.

(A.K. Mohapatra)
Judge

Orissa High Court, Cuttack
The 27th February, 2026/D. Aech, Secretary.