

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C).No. 23900 of 2009 (S)

PETITIONER(S):

**DR.VINCENT PANIKULANGARA, LAWYER,
GENERAL SECRETARY, PUBLIC INTEREST LAW SERVICE
SOCIETY, COCHIN JYOTHIRGAMAYA, PO ATHANI-683 585,
ALUVA, ERNAKULAM DISTRICT DISTRICT, KERALA.
91/484/2477178, 91/9447858612, drvipani@gmail.com.**

BY DR. VINCENT PANIKULANGARA, (PARTY IN PER)

RESPONDENT(S):

- 1. UNION OF INDIA,
MINISTRY OF LAW AND JUSTICE, SHASTRI BHAVAN,
NEW DELHI-110 001.**
- 2. NATIONAL COMMISSION FOR WOMEN, REP:BY THE
CHAIRPERSON, NCW # 4, DEEN DAYAL UPADHYAYA MARG,
NEW DELHI - 110 002.**

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-09-2015 THE COURT ON 28-10-2015, DELIVERED THE FOLLOWING:**

msv/

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.P.C.No.23900 of 2009

Dated this the 28th day of October 2015

J U D G M E N T

Shaffique, J

This public interest litigation has been filed by a lawyer practising before this Court pointing out certain inconsistencies in the statutory provisions especially the punishment imposed for committing sexual intercourse with minor female. Petitioner points out that the writ petition is filed to protect and uphold the honour of Indian minor women in so far as a provision has been made under Section 375 of the Indian Penal Code which indicates that sexual intercourse or sexual acts by a man with his own wife, she not being under 15 years age, is not rape. The contention urged by the petitioner is that as per the Child Marriage Restraint Act, 1929, which is replaced by Prohibition of Child Marriage Act, 2006 (hereinafter referred to as '2006 Act'), child is defined as a person, if a male who has not completed 21 years of age and in case of female, if she has not completed 18 years of age. Child marriage is prohibited and after the 2006 Act coming into force,

identical provisions had been incorporated regarding child marriage and the age of the contracting parties. The contention of the petitioner is that there cannot be any Indian female below the age of 18 years who can be legally described as wife.

2. Section 375 of the Indian Penal Code defines commission of rape. A sexual intercourse committed against a woman with or without her consent when she is under 18 years of age is rape. An exception to the said provision is made which takes out of the penal provision, sexual intercourse or sexual acts of a man with his own wife, she being above 15 years of age. The contention is that when commission of rape against a female with or without consent below 18 years is made punishable and when all statutes permit legal marriage only if the female is above the age of 18 years, an exception carved out under Section 375 of I.P.C is arbitrary, illegal and against Articles 14, 15 and 21 of the Constitution of India. Hence the petitioner has prayed for striking down the exception to Section 375 and for other consequential reliefs.

3. Though no counter affidavit has been filed in this case, the learned ASGI submits that the legislature had consciously

provided for an exception to Section 375 of the Indian Penal Code, on account of the different custom and practices prevailing in the country, especially with reference to the marriages between children below the age of majority. It is argued that though there is prohibition for child marriages, being a country of such diversity, child marriages are still happening which can be curbed only by creating awareness among the public at large. Most of the villagers in and around the country are illiterate people who are not even aware of the restrictions imposed under various statutes. They continue with the custom and practices that are being followed over a long period of time and provisions being made under various statutes to prevent child marriages cannot be treated in comparison with an offence of rape.

4. The petitioner, who had appeared in person, was pointing out such an infirmity in the Indian Penal Code which carves out an exception to the definition of rape. A person who had married a girl and had sexual intercourse with her, if she is above the age of 15, is not treated to be rape. Whereas, sexual intercourse with or without the consent of a girl aged below 18 years is considered to be rape. It is true that various statutes

prohibit marriages in respect of male having not attained the age of 21 and female having not attained the age of 18 years. Such marriages are considered to be legal marriages or marriages that has the force of law. But, while coming to a penal provision especially regarding an offence which has very grave penal consequences as well as repercussions in the society, the legislature had consciously excluded child marriage from the penal consequences of rape, if the wife is above the age of 15. We are of the view that the restrictions imposed under the 2006 Act or the statutes in this regard which legalises the marriage between the male and female, only if the male is 21 years and female is 18 years of age, cannot be related to an offence of rape. In other words, the restrictions imposed by the statute for a legal marriage cannot be equated with a penal provision under the I.P.C. The drafters of Indian Penal Code were conscious about the customary practices, the religious rituals and the ground reality in such a vast country where people live in diverse situations having different cultural and social background and had consciously created an exception to the general rule in regard to rape. That apart, 2006 Act has also provided appropriate penal provisions for

violating the said provisions. The wisdom of Legislature to enact such statutory exceptions, therefore, cannot be termed as arbitrary. Such exceptions, in the light of the legislative competence of the parliament, cannot be considered to be in violation of Articles 14, 15 or 21 of the Constitution of India.

Under such circumstances, we do not find any merit in the grounds raised in the writ petition and accordingly this writ petition is dismissed.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)
(sd/-)
(A.M.SHAFFIQUE, JUDGE)

True Copy

PA to Judge

jsr

