

**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY**

WRIT PETITION (PIL) No.178 OF 2020

ORDER: (Per Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

The petitioner has sought the following reliefs before this Court:-

- (a) To declare Section 376 and Section 376A of the Indian Penal Code, in so far as it does not award death penalty for the offence of rape on woman under the age of 16 years as being violative of Articles 14 and 21 of the Constitution of India and consequently declare the same as unconstitutional to that extent.
- (b) To alternatively declare Section 376 AB as unconstitutional to the extent of it not including woman under the age of 16 years as being violative of Articles 14 and 21 of the Constitution of India and consequently declare the same as unconstitutional.
- (c) To alternatively declare that Section 376A of the Indian Penal Code as unconstitutional and violation of Articles 14 and 21 of the Constitution of India and contrary to the intent of the legislature to the extent of the said section not including Sub-Section (3) of Section 376 and consequently declare that Section 376A includes Sub-Section (3) of Section 376 of the Indian Penal Code retrospectively with effect from 21.04.2018 and pass any other appropriate Order/s that this Hon'ble Court deems fit and proper in the circumstances of this case and the interest of the justice.
- (d) To direct the respondents to make the necessary amendments to the Indian Penal Code to include women under the age of 16 years in Section 376A and pass any other Order or Orders as this Hon'ble Court deems fit and proper in the circumstances of the case and in the interest of justice.

Mr. Dominic Fernandes, the learned counsel for the petitioner, submits that there is a grave loophole in the law, namely in Section 376, and 376A IPC. For, while dealing with a case of a woman under sixteen years of age, who is a victim of rape, Section 376(3) IPC prescribes a punishment of imprisonment "with a term of not less than twenty years", and "which may extend to life imprisonment", which means imprisonment for the remainder of that person's natural life. However, the said provision does not prescribe the capital punishment as one of the punishments. Moreover, according to Section 376A IPC, if the victim dies, or is reduced to a persistent vegetative state, the said provision does not prescribe the capital punishment as one of the punishments, which may be imposed upon the alleged offender, if

found guilty by the learned trial Court. According to the learned counsel, Section 376A IPC deals only with the circumstances covered by sub-section (1), and sub-section (2) of Section 376 IPC, but does not deal with the circumstances prescribed in subsection (3) of Section 376 IPC. Therefore, in case, a victim were under sixteen years, and the victim were to die, or to be in persistent vegetative state, such a case cannot be brought within the ambit of Section 376A IPC. For, 376A IPC does not mention sub-section (3) of Section 376 IPC. Hence, according to the learned counsel, a gaping hole has been left in the law dealing with rape, and dealing with the plight of the victim of such an offence.

Heard the learned counsel.

A bare perusal of the Public Interest Litigation clearly reveals that the PIL has raised an academic issue with regard to the loopholes left in the law. The PIL is not based on any factual matrix. Needless to say, an academic issue cannot be entertained, and should not be entertained by a Court of law. In case, the petitioner is aggrieved by any lacuna in the law, the petitioner is free to raise the grievance either before the Central Government, or before the Parliament. But judicial forum is not a place for raising an academic issue with regard to any alleged weakness in law.

Moreover, the petitioner has not pleaded that the petitioner has submitted any representation to the Central Law Ministry bringing to its notice the alleged weakness in the law.

Lastly, the enactment of a law is a legislative policy decision. If the Parliament, in its wisdom, was of the opinion that different

sets of provisions need to be enacted for dealing with different sets of circumstances, this Court is not empowered to direct the Parliament to amend the law. For, the legislative policy decision cannot be interfered lightly by the Courts.

Of course, the learned counsel submits that a woman under the age of sixteen years, who may be subjected to rape, and dies during the course of rape, or due to rape, the offender cannot be punished with capital punishment under the Indian Penal Code. However, the said stand is highly misplaced. For, in such a case, the offender would be charged both for offences under Section 376 IPC, and under Section 302 IPC. Section 302 IPC itself prescribes the capital punishment as one of the two punishments, which can be imposed upon an accused person. Therefore, the offender, who caused the death of a victim due to rape, can certainly be punished with capital punishment, if found guilty, by the learned Trial Court. Therefore, the position being taken by the learned counsel for the petitioner is clearly untenable.

For the reasons stated above, this Court does not find any merit in the Public Interest Litigation. Therefore, the writ petition is hereby dismissed. Miscellaneous petitions, pending if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

B. VIJAYSEN REDDY, J

10.08.2020
Pln