

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 5<sup>TH</sup> DAY OF JUNE 2023 / 15TH JYAISHTA, 1945

CRL.REV.PET NO. 433 OF 2022

AGAINST THE ORDER IN SC 696/2020 OF ADDITIONAL DISTRICT &

SESSIONS COURT (FOR THE TRIAL OF CASES RELATING TO

ATROCITIES AND SEXUAL VIOLENCE AGAINST WOMEN & CHILDREN) ,

ERNAKULAM

REVISION PETITIONER/ACCUSED:

XXX  
AGED 35 YEARS  
XXXX XXXX XXXX XXXX XXXX,  
BY ADVS.  
RENJITH B.MARAR  
LAKSHMI.N.KAIMAL  
ARUN POOMULLI  
AISWARYA THANKACHAN  
MEERA JOPPAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, PIN - 682031  
BY ADV SMT T V NEEMA PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 05.01.2023, THE COURT ON 05.06.2023 DELIVERED  
THE FOLLOWING:

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“C.R.”

**O R D E R**

Dated this the 5<sup>th</sup> day of June, 2023

*When you look into your mother's eyes, you know that is the purest love you can find on this Earth.*” — Mitch Albom.

‘My Body, My Choice’ – an iconic tagline coined by the pro-choice movement in the early ’70s to represent bodily autonomy and gender equality – continues to be an expression of the rights women deserve and is still consistently utilised by women right’s activists across the globe as a powerful retaliation to sexist societal ideas and archaic patriarchy. The body is the most fundamental space over which an individual shall have autonomy. Body autonomy that allows individuals the freedom to make their own choice about their bodies is a natural right and part of their liberty. Every individual is entitled to the autonomy of his/her body – this is not selective on gender. But we often find this right is diluted or denied to the fairer sex. The autonomy of the male body is seldom questioned, while the body agency and autonomy of women are under constant threat in a patriarchal structure.

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The women are bullied, discriminated against, isolated, and prosecuted for making choices about their bodies and lives. Here is a case where a mother who tried to challenge patriarchal stereotypes and spread a message that there needs to be nothing sexual or offensive about the naked female body by letting her kids be exposed to her semi-nude body was saddled with criminal prosecution alleging that she exploited her own children for sexual gratification. What started as a body art project for a mother with her kids with control of the narrative turned out to be a 'criminal act'.

2. The petitioner, a 33-year-old women's rights activist who made her mark in Kerala through her progressive stances, posted a video on her social media platforms showing her two minor children, a boy (aged 14) and a girl (aged 8), painting on her semi-nude torso carrying the hashtag 'Body Art and Politics'. The video, uploaded on YouTube and shared through her personal Facebook account, has triggered massive outrage, with several people slamming her for subjecting her children to what they considered to be an obscene and vulgar act and then posting the same for the world to see. The petitioner, on her part, defended

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her actions as a form of self-expression and an attempt to break free from social and cultural taboos that constrain women's bodies. The police registered a case against her, allegedly succumbing to the public outcry. After investigation, the final report was filed at the Additional Sessions Court (For the trial of cases relating to Atrocities and Sexual Violence against Women and Children), Ernakulam (for short 'the Court below') for the offences punishable under Sections 10 r/w 9(n), 14 r/w 13(b) and 15 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act"), Section 67B (a),(b),(c) of the Information Technology Act, 2000 (for short "IT Act"), and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "JJ Act").

3. The petitioner appeared at the Court below. She was released on bail. She filed an application for discharge under Section 227 of Cr.P.C. on the ground that there was no sufficient ground to proceed against her. The Court below, upon consideration of the records of the case and after hearing the submission of the petitioner and the prosecution, formed the opinion that there were grounds for presuming that the petitioner

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had committed the offence and, accordingly, dismissed the application as per the order dated 31/05/2022. The said order is under challenge in this revision petition.

4. I have heard Sri. Renjith B. Marar, the learned counsel for the petitioner and Smt. T.V. Neema, the learned Senior Public Prosecutor.

5. The learned counsel for the petitioner Sri. Renjith B. Marar, submitted that a close reading of the FIR, FIS, statement of the witnesses, and the documents on record would reveal that none of the offences alleged against the petitioner are made out. The learned counsel further submitted that the uploaded video could not be watched in isolation without understanding the message accompanying it, which makes it clear that the petitioner intended to normalize the female body and to spread a message to not allow distorted ideas of sexualization in the minds of children, besides challenging the double standard prevailing in society regarding the default sexualization of the female body as opposed to the male body. The learned counsel also submitted that since there are no sufficient grounds for proceeding against the petitioner, the Court below ought to have

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discharged her under Section 227 of Cr.P.C. According to the counsel, body art in the form of nudity is an expression protected under Article 19(1)(a), read with Article 21 of the Constitution of India.

6. Per contra, Smt. T.V. Neema, the learned Senior Public Prosecutor, submitted that in the final report, there are materials to presume that the petitioner has committed the alleged offences. In the video, the petitioner is seen semi-nude wearing half trousers exhibiting the body above the navel, and the minor son, aged 14, was caused to touch her breast and other parts of the body to draw a picture on it. *Prima facie*, it is a sexually explicit act involving a child. Her posture, gestures, etc., indicates her sexual intention and gratification. The content in the video is evidently obscene and pornographic material involving a child. The truthfulness or falsity of allegations are questions of fact and matters of evidence to be led at the time of trial and cannot be prejudged at this stage. When statute prohibits specific use of children in a certain manner, it cannot be violated under the shield of protest, argued the learned Senior Public Prosecutor. There is no illegality or impropriety in the impugned order

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warranting interference by this Court under the exercise of jurisdiction under Section 397 of Cr. P.C, added the learned Prosecutor.

7. The main offences charged against the petitioner is under the POCSO Act. They are under Sections 10 r/w 9(n), 14 r/w 13(b) and 15. The offence under Section 9(n) r/w 10 is attracted when a person, being a relative of the child, commits sexual assault on the child. "Sexual assault" has been defined under Section 7. It is attracted when a person with sexual intent touches the vagina, penis, anus, or breast of the child or makes the child touch the vagina, penis, anus, or breast of that person or any other person with sexual intent and without penetration. Thus, sexual intent is *sine quo non* for the applicability of Section 7 of the POCSO Act and, consequently, Section 9.

8. I viewed the video in the open Court. The two-minute video shows the petitioner's son carefully, with utmost professional concentration, painting the image of a phoenix in the upper part of her body, starting from between the breasts and flowers around both nipples. A little girl is also seen in the video

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painting on paper. The petitioner admits this act. The crucial question is whether there was any sexual intent on the part of the petitioner in the said act.

9. The petitioner has given a detailed message below her video, where she argues that the naked body is the response to a controlling, sexually frustrated society. The petitioner claims that she is an activist and has been fighting against body discrimination. She urges there needs to be openness in the discussion on body and body parts, and there is nothing to be hidden within and outside the family about the same. According to her, no child who has grown up seeing his mother's nakedness and body can abuse another female body. She believes children will mature to view the body as a different medium altogether rather than seeing it as a sexual tool alone. She asserts that body art was meant as a political statement against the default view of society that the naked upper body of the female is sexualized in all contexts, whereas the naked male upper body is not treated to this default sexualization. She wanted to challenge this double standard prevailing in society. She claimed that she uploaded the video with these intentions



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which are clear from the detailed message attached to the video.

10. The petitioner has a long history of battling the patriarchy and hyper-sexualization of women in society. She was part of the 'Kiss of Love' movement in 2014, along with her partner. This was a movement in Kochi, allegedly against moral policing. She also challenged the male-dominated annual Onam tiger dance (PuliKali), a popular event in Thrissur. She was the only female in the Ayyanthol PuliKali group, which is a traditional Onam tiger dance mostly performed by all-male troupes. She participated in it as she wanted to "perform in a space dominated by men". She has acted in a movie about intersex people- 'Eka'. In 2018, she tried to enter the Sabarimala temple along with a woman journalist. This was after the Apex Court allowed women of menstruating age to enter the temple. But 500 metres away from the temple's main sanctum sanctorum, she had to turn back after a mob blocked her entry. Her act of defiance was seen as an attempt to challenge the patriarchy and gender discrimination that allegedly underpinned this discriminatory practice. In her autobiography, 'Body, Struggle and Presence', the

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petitioner challenges the patriarchy that controls women's body and subjects it to scrutiny. These facts addressed at the Bar are not in dispute. The contents in the video must be appreciated in the backdrop of these facts and considering the message accompanying it. Going by the message accompanying the uploaded video, body painting was done as an artistic form of protest against the sexualised portrayal of the naked upper body of a woman and to express her views on bodily autonomy and the emancipation of women. The statement of the children (CW2 and CW3) also points to this fact. The children do not have a case that they were sexually exploited in any manner or that the petitioner was permitting body art on her body for any sexual motive. The boy (CW2), in his statement, stated that he found the art of body painting to be fascinating, and out of his childlike fascination, he requested his mother to paint on her body; she agreed to this request and let her torso be painted on. There is nothing on record to even remotely indicate that the petitioner did the said act with any sexual intent.

11. Every parent tries their best to teach their children all about life. Every parent has the right to raise their children in the

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manner they wish. Children do not inherently grow up thinking that any action is right or wrong unless it is impressed upon them as such. There is nothing wrong with a mother allowing her body to be used as a canvas by her children to paint to sensitise them to the concept of viewing nude bodies as normal and thinking about them as more than just sexual objects only. Such an act cannot be termed to be one which is done with sexual intent. Therefore, the basic ingredients of the offence under Section 9(n) r/w 10 of the POCSO Act are not attracted. The presumption under Sections 29 and 30 cannot be drawn unless the foundational facts constituting the offence are established.

12. The offence under Section 13(b) made punishable under Section 14 is attracted when a person uses a child in any form of media for the purpose of sexual gratification, which includes the usage of the child in real or simulated sexual acts (with or without penetration). These provisions require that the child should have been used for the acts complained of for sexual gratification. As stated already, the core allegation is that the petitioner made her two children paint on her naked upper body, videographed the same and then uploaded on to the internet

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video platform YouTube. From the said allegation, it is not possible for anyone to infer or impute that the children were used for any real or simulated sexual acts, that too for sexual gratification. The petitioner only allowed her body to be used as a canvas for her children to paint on. The right of a woman to make autonomous decisions about her body is at the very core of her fundamental right to equality and privacy. It also falls within the realm of personal liberty guaranteed by Article 21 of the Constitution. In *Joseph Shine v. Union of India*<sup>1</sup>, the Apex Court underlined women's autonomy as a facet of human dignity. In *K.S. Puttaswamy v Union of India*<sup>2</sup>, a nine-judge Bench of the Apex Court, while unanimously recognising the right to privacy as a fundamental right under the Constitution, declared that bodily autonomy is an integral part of the right to privacy.

13. Painting on the upper body of a mother by her own children as an art project cannot be characterised as a real or simulated sexual act, nor can it be said that the same was done for the purpose of sexual gratification or with sexual intent. To term this innocent artistic expression to be 'usage of a child in

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<sup>1</sup>AIR 2018 SC 4898

<sup>2</sup>AIR 2017 SC 4161

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real or simulated sexual act' is harsh. There is nothing to show that the children were used for pornography. There is no hint of sexuality in the video. In the accompanying message, the petitioner has declared the purpose of the video as to make a political point against the default sexualisation of women's body. Therefore, the offence under Section 13(b) r/w 14 is not made out.

14. Section 15 deals with punishment for the storage of pornographic material involving the child. It is attracted when pornographic material in any form involving a child is stored or possessed for transmitting or propagating or displaying or distributing in any manner or with the intention to share or transmit child pornography or for commercial purposes. In the video, the children are not naked; not only are they farthest from passive. They were participating in a harmless and creative activity. They do not look at anything else but the figure they paint. The petitioner herself does not gaze outside. There is nothing in the video that could be called pornographic. Hence, the offence under Section 15 also would not lie.

15. The next offences charged against the petitioner are

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under Sections 67B(a)(b) and (c) of the IT Act, which criminalises the publishing or transmitting of material depicting children in sexually explicit acts. Sub-section (a) is attracted only when the said material depicts children engaged in sexually explicit acts. As stated already, no sexually explicit act has taken place in the facts and circumstances of the case. No evidence for the same exists anywhere. Painting on the naked upper body of a person, whether a man or a woman, cannot be stated to be a sexually explicit act. Sub-section (c) cannot have application at all since the prosecution does not have a case that there is any cultivation or enticement or inducing of children into an online relationship with one or more children for any sexually explicit act. Sub-section (b) is attracted when the said material depicts children in an obscene or indecent, or sexually explicit manner. Let me consider in detail whether the video in question depicts the children of the petitioner in an obscene or indecent manner as alleged.

16. The word 'obscene' or 'indecent' is not defined under the IT Act, POCSO Act, or IPC. Black's Law Dictionary defines the word 'obscene' as "extremely offensive under contemporary

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community standards of morality and decency; grossly repugnant to the generally accepted notions of what is appropriate". The word 'obscenity' has been explained in it as "the character or state of being morally abhorrent or socially taboo, esp. as a result of referring to or depicting sexual or excretory functions". The New Webster's Dictionary defines the word 'indecent' as "offensive to modesty and good taste; immodest; lacking propriety; vulgar; unseemly". According to Black's Law Dictionary, the word 'indecent' means the state or condition of being outrageously offensive, esp. in a vulgar or sexual way". The Apex Court has time and again dealt with the issue of obscenity and laid down the broad principles to judge obscenity. The Constitution Bench of the Apex Court in the year 1965 in ***Ranjit D. Udeshi v. State of Maharashtra***<sup>3</sup> highlighted the delicate task to be discharged by the Courts in judging whether the word, picture, painting, etc., would pass the test of obscenity under Section 292 of IPC. The Court took a rather restrictive view of what would pass muster as not being obscene. The Court followed the 'Hicklin test' laid down in the old English judgment in ***Hicklin's case***<sup>4</sup>. The test

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<sup>3</sup> 1965 (1) SCR 65

<sup>4</sup> *R v. Hicklin* (1868) LR 3 QB 360

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is 'whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall'. In *Aveek Sarkar v. State of West Bengal*<sup>5</sup>, the Apex Court, while considering the issue of obscenity and indecent representation, moved away from the 'Hicklin test' and applied the 'contemporary community standards test' which postulated that 'obscenity' should be gauged with respect to contemporary community standards that reflect the sensibilities as well as the tolerance levels of an average reasonable person. That was a case where a German magazine by the name "STERN" having worldwide circulation, published an article with a picture of Boris Becker, a world-renowned Tennis player, posing nude with his dark-skinned fiancée by the name Barbara Feltus, a film actress, which was photographed by none other than her father. The article states that, in an interview, both Boris Becker and Barbaba Feltus spoke freely about their engagement, their lives and future plans and the message they wanted to convey to the people at large for posing for such a photograph. The article picturises Boris

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5 (2014) 4 SCC 257



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Becker as a strident protester of the pernicious practice of "Apartheid". Further, it was stated that the purpose of the photograph was also to signify that love champions over hatred. "Sports World", a widely circulated magazine published in India, reproduced the article and the photograph as cover story with the caption "Posing nude dropping out of tournaments, battling Racism in Germany. Boris Becker explains his recent approach to life -- Boris Becker Unmasked". "Anandabazar Patrika", a newspaper having wide circulation in Kolkata, also published the above - mentioned photograph as well as the article that appeared in the "Sports World". A lawyer practising in Kolkata, claimed to be a regular reader of "Sports World", as well as "Anandabazar Patrika", filed a complaint under Section 292 of IPC against the Editor, the Publisher and the Printer of the newspaper as well as against the Editor of the "Sports World" at the Sub-Divisional Magistrate at Alipore alleging that the nude photograph appeared in the "Anandabazar Patrika", as well as in the "Sports World", would corrupt young minds, both children and youth of this country, and is against the cultural and moral values of our society. The learned Magistrate took the complaint on file and

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issued process to the accused. The accused filed a petition to quash the proceedings under Section 482 of Cr.P.C., but the High Court dismissed the same. In appeal, the Apex Court quashed the proceedings. It was held that while judging whether a particular photograph, an article or a book is obscene, regard must be had to the contemporary mores and national standards and not the standard of a group of susceptible or sensitive persons. It was further held that a picture of a nude/semi-nude woman, as such, cannot *per se* be called obscene unless it has the tendency to arouse feeling or reveal an overt sexual desire. The picture should be suggestive of a depraved mind and designed to excite sexual passion in persons likely to see it, which will depend on the particular posture and the background in which the nude/semi-nude woman is depicted. Only those sex-related materials which have a tendency of "exciting lustful thoughts" can be held to be obscene, but the obscenity has to be judged from the point of view of an average person by applying contemporary community standards. The Court went on to observe that the question of obscenity has to be examined in the context in which the photograph appears and the message it

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wants to convey. In *Samaresh Bose and Another v. Amal Mitra and Another*<sup>6</sup>, the Apex Court observed the duty of the Court to eschew its morality while deciding the act of obscenity. In *Bobby Art International v. Om Pal Singh Hoon and Others*<sup>7</sup>, the Apex Court took the view that the depiction of nudity and sexual violence in the film 'Bandit Queen' did not amount to obscenity as a representation of the same was to underscore a social reality. It was observed that the so-called objectionable scenes in the film must be considered in the context of the message that the film was seeking to transmit in respect of the social menace of torture and violence against a helpless female child which transformed her into a dreaded dacoit. In *Ajay Goswami v. Union of India and others*<sup>8</sup>, it was held that the consideration of obscenity would be based on the common sense of an ordinary and prudent man and not an out-of-the-ordinary or hypertensive man. In *Director General, Directorate General of Doordarshan v. Anand Patwardhan*<sup>9</sup> it was held that a material may be regarded as obscene if the average person applying contemporary

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6(1985) 4 SCC 289

7(1996) 4 SCC 1

8(2007) 1 SCC 143

9(2006) 8 SCC 433

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community standards would find that the subject - matter taken as a whole appeals to the prurient interest and that taken as a whole it otherwise lacks serious literary artistic, political, educational or scientific value. In *S.Khushboo v. Kanniammal and Another*<sup>10</sup> again, it was held that obscenity has to be decided in accordance with community standards reflecting the tolerance and sensibilities of the average reasonable person. In *Devidas Ramachandra Tuljapurkar v. State of Maharashtra and Others*<sup>11</sup>, the Apex Court reiterated that it is the community standard test which has to be looked into for deciding the question of obscenity. The High Court of Andhra Pradesh in *B. K. Adarsh v. Union of India*<sup>12</sup> observed that decency or indecency of a particular picture, sequence or scene could not depend upon the nature of the subject - matter, but the question is one of the manners of handling of the subject - matter and sociological or ethical interest or message which the film conveys to the reasonable man. It was also observed that the sense of decency or indecency must be kept in view in adjudging whether the motion picture would stand to the test of satisfying a reasonable man in the

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10(2010) 5 SCC 600

11(2015) 6 SCC 1

12AIR 1990 AP 100

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society that it would not deprave or debase or corrupt his moral standards or induce lewdness, lasciviousness, or lustful thoughts.

17. According to the prosecution, the naked upper body of the petitioner is exposed in the video, and hence it is obscene and indecent. Nudity and obscenity are not always synonymous. It is wrong to classify nudity as essentially obscene or even indecent or immoral. This is a State where women of certain lower castes had once fought for the right to cover their breasts. We have murals, statues, and art of deities displayed in the semi-nude in ancient temples run all over the country. Such nude sculptures and paintings freely available in public spaces are considered art, even holy. Even though the idols of all Goddesses are bare-chested, when one prays at the temple, the feeling is not of sexual explicitness but of divinity. Body painting on men is an accepted tradition during 'Pulikali' festivals in Thrissur, Kerala. When 'Theyyam' and other rituals are performed at the temple, painting is conducted on the bodies of male artists. The male body is displayed in the form of six-pack abs, biceps etc. We often find men walking around without wearing shirts. But these acts are never considered to be obscene or indecent. When the

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half-nude body of a man is conceived as normal and not sexualised, a female body is not treated in the same way. Some people are so used to considering a woman's naked body as an overly sexualised one or just an object of desire. There is another dimensional view about female nudity- that is, female nudity is taboo because a naked female body is only meant for erotic purposes. The intention of the petitioner in making and uploading the video was to expose this double standard prevailing in society.

18. Nudity should not be tied to sex. The mere sight of the naked upper body of the woman should not be deemed to be sexual by default. So also, the depiction of the naked body of a woman cannot *per se* be termed to be obscene, indecent, or sexually explicit. The same can be determined to be so only in context. The context here shows that the said depiction is one of political expression of the petitioner and artistic expression of the children. In ***Ranjit D. Udeshi v. State of Maharashtra*** (supra), the Apex Court, while deciding on the meaning of the term 'obscenity' in Section 292 of IPC, has laid down that mere sex and nudity in art and literature cannot be regarded as evidence of

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obscenity. A video that was made to protest against the default sexualisation of the female naked upper body must necessarily show that naked body to convey the intention in making and uploading the video. Such a depiction of nudity cannot make the material legally obscene or indecent. There is absolutely no reason to believe that an ordinary man viewing the video would become depraved, debased and encouraged to lasciviousness. In the strict sense, the petitioner did not show her bare chest, as the body paint covered her breast. It can never arouse any sexually explicit feeling in the mind of a prudent man. That apart, the video must be appreciated in the background in which it was made and in the light of the message it wanted to convey, that is, there needs to be nothing sexual or offensive about the naked female body. When viewed from that angle, it cannot be said that the video is obscene or indecent merely because it depicts the naked upper female body of the petitioner. As rightly reasoned by the petitioner in the write up attached to the video, just as beauty is in the eyes of the beholder, so is obscenity.

19. The learned Senior Public Prosecutor submitted that the video in question, which exposes the bare chest, including

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the breast of the petitioner, is against the public notions of morality and would have a morally corruptive effect on the minds of people who watch it. It was further submitted that the constitutional protection for speech and expression is not absolute and is subject to reasonable restrictions based on considerations of 'public order', 'defamation', 'decency and morality', among other grounds.

20. The notions of social morality are inherently subjective. Morality and criminality are not coextensive. What is considered as morally wrong is not necessarily legally wrong. Adultery was a crime and punishable offence in India till the Apex Court in *Joseph Shine v. Union of India* (supra) decriminalised it. Similarly, till a five-judge Bench of the Apex Court in *Navtej Singh Johar v. Union of India*<sup>13</sup> struck down Section 377 of the IPC to the extent that it criminalised same-sex relations between consenting adults, consensual carnal intercourse among adults, be it homosexual or heterosexual, in private places was a crime. But still, adultery and homosexuality are considered morally

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13AIR 2018 SC 4321



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wrong and unethical. In *Lata Singh v. State of U.P. and Another*<sup>14</sup>, the Apex Court held that a live-in relationship between two consenting adults of heterogenic sex does not amount to any offence, even though it may be perceived as immoral. Thus, adultery, consensual same-sex relations and live-in relationships can continue to be scrutinised on a moral ground by certain people as much as one wants, but they are legal because law and morality are not equivalent to each other. Society's morality and some people's sentiments cannot be the reason for instituting a crime and prosecuting a person. An action is permissible if it does not violate any of the laws of the land.

21. No doubt, Article 19 of the Constitution, which guarantees complete freedom of speech and expression to every citizen, also makes an exception in favour of laws which imposes a restriction on the exercise of the right in the interest of public decency or morality. Section 67 B of the IT Act was introduced with the object of prohibiting, publishing or transmitting material in electronic form depicting children in an obscene or indecent, or sexually explicit manner. Thus, it falls

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14AIR 2006 SC 2522

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within the words 'public decency and morality' and thus embodies such a restriction. However, I have already found that the video uploaded by the petitioner was neither obscene nor indecent. The petitioner was only propagating her views on the default sexualisation of the female naked body. It is trite that the freedom of speech and expression includes freedom of propagation of one's thoughts, ideas, opinions, and views. The State cannot, by any legislative or executive action, interfere with the said right except insofar as permissible under Article 19 (2). An expression of an opinion, with no overtones of obscenity or vulgarity, should not be a cause of action for criminal action.

22. What remains is Section 75 of the JJ Act. A close look at the said provision shows that to attract the offence, the accused needs to assault, abandon, abuse, expose or wilfully neglect or cause or procure the child to be assaulted, abandoned, abused, exposed or wilfully neglected in a manner likely to cause such child unnecessary mental or physical suffering. Admittedly there is no assault or abandonment of the child. It cannot also be said that the act alleged is abuse or exposition, or neglect of the child. The charge of exposition would hold only when the child

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has been deprived of shelter or care. Therefore, none of the acts contemplated in the above provision have taken place at all. That apart, the child's perspective of unnecessary mental or physical suffering is necessary to constitute the offence which is lacking in this case. There is no such allegation in the statements given by the children. Hence, the offence under Section 75 of the JJ Act also is not attracted.

23. Mother is the name of God in the lips and hearts of little children. The mother is the one who nurtures and guides the child through every defining moment of life. She is the nucleus of a child's life. A mother-child relationship is one of the earth's most solemn and pious relationships. There is no bond stronger and more sincere than the one between a mother and her child. The essence of motherhood is pure and serene love. The statement of the children shows that they are in loving care of the petitioner. The children are exposed to prosecution against their own mother contrary to their wishes. No doubt, the prosecution of the petitioner will have torture and adverse effect on the children. Hence, in the best interest of the victims also, the prosecution cannot be allowed to be continued.

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In conclusion, I have no hesitation in holding that the final report does not support or even draw a *prima facie* case for any of the statutory offences as alleged. The Court below completely overlooked the context in which the video was published and the message it had given to the public at large. There is no sufficient ground for proceeding against the petitioner. The impugned order is, accordingly, set aside and the petitioner is discharged. The Criminal Revision Petition stands allowed.

Sd/-

DR. KAUSER EDAPPAGATH  
JUDGE

Rp