
POSSESSION, PRESUMPTION, PUNISHMENT: CRIMINALISING THE INCHOATE UNDER SECTION 15 OF POCSO IN JUST RIGHTS FOR CHILDREN ALLIANCE V. S. HARISH (2024 INSC 716)

Dibyendu Mondal, Thakur Ramnarayan College of Law, Mumbai

Vedika Vijaypal Singh, Thakur Ramnarayan College of Law, Mumbai

ABSTRACT

This article analyses the Supreme Court's judgment in *Just Rights for Children Alliance v. S. Harish* (2024 INSC 716), which reversed the Madras High Court's decision quashing proceedings for possession of child sexual abuse material. It examines how the Court classified Section 15 of the POCSO Act as an inchoate offence, invoked the doctrine of constructive possession, and mandated the statutory presumption under Section 30. The article analyses that this purposive interpretation fortifies India's child protection framework against digital-era challenges.

Keywords: POCSO, Inchoate Offence, Constructive Possession, Child Sexual Abuse Material.

A) Introduction:

The proliferation of *child sexual exploitation and abuse material (CSEAM)* in the digital age poses an unprecedented threat to the dignity and safety of children. According to the *National Centre for Missing & Exploited Children (NCMEC)*, India accounted for **8.92 million** reports of child sexual abuse material in 2023, the highest of any country, a figure that has risen sharply over the past five years.¹ This deluge is not a victimless vice. As the Supreme Court in *Just Rights for Children Alliance v. S. Harish* observed, each image and video is a permanent record of abuse; its continued circulation perpetuates the violation of the child's dignity with every view or share, transforming a singular act of cruelty into a “*ripple of trauma*.”²

¹ Nat'l Ctr. for Missing & Exploited Children, *CyberTipline 2023 Report* (2024), <<https://www.missingkids.org/cybertipline>> (Last accessed on 24th September, 2026).

² *Just Rights for Children All. v. S. Harish*, 2024 INSC 716, ¶ 224.

It is against this backdrop that the Supreme Court reversed the Madras High Court's decision in *S. Harish v. State*, which had quashed proceedings against an individual found with CSEAM on his phone, reasoning that mere private possession or viewing, without transmission, did not constitute an offence under Section 15(1) of the POCSO Act, 2012, or Section 67B of the IT Act, 2000.³ The Supreme Court decisively rejected this narrow interpretation, holding that Section 15 is an inchoate offence that criminalises the intention behind the storage or possession of the material, as inferred from the failure to delete, destroy, or report it.⁴ By expanding “*possession*” through the doctrine of constructive possession⁵ and mandating the application of the statutory presumption of culpable mental state under Section 30,⁶ the Court has shaped a robust legal shield for the digital era, one that punishes the dangerous step of possession before it can culminate in further destruction.

B) Facts of the Case:

On 29 January 2020, the All-Women's Police Station, Ambattur, Chennai, received a letter from the *Additional Deputy Commissioner of Police (Crime Against Women and Children)*, which stated that, as per the Cyber Tipline Report of the *National Crimes Record Bureau (NCRB)*, the respondent, S. Harish, was an active consumer of pornography and had allegedly downloaded pornographic material involving children on his mobile phone.⁷ Acting on this information, the police registered an FIR, being *Crime No. 03 of 2020*, on the very same day for offences punishable under Section 67B of the Information Technology Act, 2000, and Section 14(1) of the Protection of Children from Sexual Offences Act, 2012.⁸

During the course of the investigation, the respondent's mobile phone was seized and sent to the Forensic Science Laboratory for analysis. The Computer Forensic Analysis Report dated 22 August 2020 revealed that the mobile phone contained more than one hundred pornographic video files, of which two video files were identified as child sexual exploitation and abuse material, depicting two underage boys involved in sexual activity with an adult woman.⁹ The report further indicated that the two videos had been stored under the path

³ *S. Harish v. State*, CrI.O.P. No. 37 of 2024, ¶¶ 9–11 (Madras High Court 11th January, 2024), *rev'd*, *Just Rights for Children All. v. S. Harish*, 2024 INSC 716.

⁴ *Just Rights for Children All. v. S. Harish*, 2024 INSC 716, ¶ 86.

⁵ *Id.* ¶ 122.

⁶ *Id.* ¶ 156.

⁷ *Just Rights for Children All. v. S. Harish*, 2024 INSC 716, ¶ 4.

⁸ *Id.*; in also Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, § 14(1) (India); Information Technology Act, 2000, No. 21 of 2000, § 67B.

⁹ *Id.* at ¶ 7.

"*MotorolaGSM_XT1806MotoG5SPlus.zip/sdcard/ProgramData/Android/Language/fr/Videos/wat_up_pono*," and that the files were last modified on 5 September 2016 and 14 June 2019, respectively.¹⁰

Upon completion of the investigation, a chargesheet dated 19 September 2023 was filed against the respondent. Although the FIR had been registered under Section 14(1) of the POCSO Act, the chargesheet was ultimately filed for the offence punishable under Section 15(1) of the POCSO Act and Section 67B of the IT Act.¹¹

Aggrieved by the chargesheet and the criminal proceedings arising therefrom, the respondent preferred a quashing petition under Section 482 of the Code of Criminal Procedure, 1973, before the High Court of Madras, being Criminal Original Petition No. 37 of 2024.¹² The High Court, vide its judgment and order dated 11 January 2024, quashed the criminal proceedings in *Special Sessions Case No. 170 of 2023*. The High Court held that to constitute an offence under Section 14(1) of the POCSO Act, a child must have been used by the accused for pornographic purposes, and that mere watching of child pornography would not fall within the ambit of the said provision.¹³ It further held that Section 67B of the IT Act only penalises the publication, transmission, or creation of material depicting children in sexually explicit acts, and does not cover a case where a person has merely downloaded child pornography on his electronic gadget and watched the same without doing anything more.¹⁴

The appellants before the Supreme Court, Just Rights for Children Alliance and another, were not parties to the proceedings before the High Court. However, having regard to the serious issue of public importance involved in the matter, they sought leave of the Supreme Court to challenge the impugned judgment of the High Court.¹⁵ The Supreme Court, vide its judgment dated 23 September 2024, set aside the impugned judgment and order of the High Court and restored the criminal proceedings in *Special Sessions Case No. 170 of 2023* to the court of the Sessions Judge, Mahila Neethi Mandram (Fast Track Court), Tiruvallur District.¹⁶

¹⁰ *Id.* at ¶ 195.

¹¹ *Id.* at ¶ 8.

¹² *S. Harish v. State*, CrI.O.P. No. 37 of 2024 (Madras High Court Jan. 11, 2024), *rev'd*, *Just Rights for Children All. v. S. Harish*, 2024 INSC 716.

¹³ *Id.* at ¶ 9.

¹⁴ *Id.* at ¶ 10.

¹⁵ *Just Rights for Children All. v. S. Harish*, 2024 INSC 716, ¶ 3.

¹⁶ *Id.* ¶ 261.

C) Identification of Issues:

- i) The High Court examined whether mere watching or downloading child pornography, without transmission, falls under Section 14(1) of the POCSO Act; whether Section 67B of the IT Act punishes only publication or transmission; and whether criminal proceedings should be quashed absent any evidence of sharing.
- ii) The Supreme Court reframed the issues to consider the scope of Section 15 of the POCSO Act and its three sub-sections; whether mere possession or viewing of child pornography is punishable; the true scope of Section 67B of the IT Act; the foundational facts required to invoke the presumption under Section 30 of the POCSO Act; and whether that presumption can be applied at the stage of a quashing petition.

D) Arguments of both the Sides:

The appellants argued that the High Court's interpretation threatened child welfare by allowing proliferation of child pornography, and that it erroneously applied Section 14(1) without considering Section 15(1) of the POCSO Act.¹⁷ They submitted that a conjoint reading of Section 67B of the IT Act, Section 15, and Section 30 of the POCSO Act clearly established the culpability of persons in possession of such material.¹⁸

The NCPCR submitted that mere possession of child pornography is itself an offence under Section 15(1), and the High Court failed to appreciate that Section 30 raises a presumption of culpable mental state, shifting the burden onto the accused.¹⁹ It further argued that reporting to NCMEC does not absolve social media platforms of their liability under Section 21 of the POCSO Act.²⁰

The respondent contended that since the FIR was registered under Section 14(1), the High Court committed no error, and that the videos were automatically downloaded by WhatsApp without any intention to share.²¹ He pleaded bona fide ignorance of law, relying on **Chandi Kumar Das Karmarkar** and **Motilal Padampat Sugar Mills**, claiming he was unaware that

¹⁷ *Just Rights for Children All. v. S. Harish*, 2024 INSC 716, ¶ 14.

¹⁸ *Id.* ¶ 21.

¹⁹ *Id.* ¶¶ 22–24.

²⁰ *Id.* ¶ 25.

²¹ *Id.* ¶¶ 27–30.

storage of such material was punishable.²²

The State argued that the High Court proceeded on an erroneous footing that Section 14 was alleged, even though the chargesheet clearly mentioned Section 15(1) of the POCSO Act.²³ It submitted that more than one hundred pornographic videos were found, and the accused admitted to watching such material with friends, indicating an intention to share.²⁴ The State further contended that under Section 30, the onus was on the accused to prove absence of culpable mental state.²⁵

The Supreme Court correctly rejected the High Court's narrow interpretation, which had rendered Section 15 virtually redundant. The Court rightly held that Section 15 is an inchoate offence criminalising the intention behind storage or possession, and by invoking constructive possession and the presumption under Section 30, it has ensured the POCSO Act remains a potent tool for protecting children in the digital age.

E) Critical Analysis:

The Madras High Court's judgment in *S. Harish v. State* rested on a fundamentally flawed premise: that the POCSO Act punishes only the *act* of transmission, not the *intention* behind possession.²⁶ The Court held that since the two videos were "***neither published nor transmitted to others and it was within the private domain of the petitioner,***" no offence could be made out under Section 15(1) or Section 67B.²⁷ This interpretation, however, ignores the legislative intent behind the 2019 Amendment, which introduced Section 15 precisely to criminalise the preparatory stages of child sexual exploitation.²⁸ As *INTERPOL's International Child Sexual Exploitation (ICSE)* database reveals, over **2.4 million** reports of child sexual abuse material were recorded in 2024 alone, underscoring the urgent need for preventive legal frameworks rather than reactive ones.²⁹

The Supreme Court's reversal in *Just Rights for Children Alliance v. S. Harish* correctly

²² *Id.* ¶ 31.

²³ *Id.* ¶ 32.

²⁴ *Id.* ¶ 35.

²⁵ *Id.* ¶ 36.

²⁶ *S. Harish v. State*, CrI.O.P. No. 37 of 2024, ¶¶ 8–9 (Madras High Court Jan. 11, 2024).

²⁷ *Id.* ¶ 8.

²⁸ Protection of Children from Sexual Offences (Amendment) Act, 2019, Statement of Objects and Reasons.

²⁹ INTERPOL, *International Child Sexual Exploitation Database* (2024), <<https://www.interpol.int/Crimes/Crimes-against-children/International-Child-Sexual-Exploitation-database-ICSE>> (Last accessed on 24th September, 2026)

identified Section 15 as an *inchoate offence*, one that penalises conduct preparatory to a substantive offence.³⁰ The Court held that the *actus reus* under Section 15(1) is the "*failure to delete, destroy or report*" the material, not its actual transmission.³¹ This interpretation aligns with the global trend of criminalising possession of child sexual abuse material as a standalone offence, recognising that demand fuels production. As the Court observed, "*the demand for such material will always incubate a corresponding production and distribution.*"³²

The Court's invocation of the *doctrine of constructive possession* represents a significant doctrinal advancement. By holding that even viewing child sexual abuse material online without downloading it amounts to "*possession*" if the person exercises control over it, the Court has closed a critical loophole exploited by offenders.³³ This is particularly vital in the Indian context, where NCRB data reveals that nearly nine out of every ten cybercrimes against children involve sexually explicit content, with *1,87,702 cases* recorded in *2024*, a *5.8%* increase from the previous year.³⁴

The High Court's reliance on Section 292 of the IPC was misplaced, as it failed to distinguish between adult pornography and child sexual abuse material.³⁵ The Supreme Court rightly noted that while private viewing of adult pornography may fall within an individual's right to privacy, child sexual abuse material "*falls outside this circle of freedom*" because its very creation involves the exploitation of a child.³⁶ The Court's direction to replace the term "*child pornography*" with "*child sexual exploitation and abuse material*" (CSEAM) further reflects this nuanced understanding, as the former term "*trivializes the crime*" by suggesting consensual participation.³⁷

The statutory presumption under Section 30 of the POCSO Act was another crucial aspect that the High Court completely overlooked. By failing to apply this provision, the High Court effectively placed the entire burden on the prosecution to prove *mens rea*, ignoring the legislative mandate that once foundational facts are established, the court *shall presume*

³⁰ *Just Rights for Children All. v. S. Harish*, 2024 INSC 716, ¶ 86.

³¹ *Id.* ¶ 87.

³² *Id.* ¶ 231.

³³ *Id.* ¶ 122.

³⁴ National Crime Records Bureau, *Crime in India 2024* (2025), <<https://ncrb.gov.in>> (Last accessed on 24th September, 2026)

³⁵ *S. Harish*, CrI.O.P. No. 37 of 2024, ¶ 11.

³⁶ *Just Rights for Children All.*, 2024 INSC 716, ¶ 11; *Sam Infant Jones v. State*, 2021 SCC OnLine Mad 2241.

³⁷ *Id.* ¶ 226.

culpable mental state.³⁸ The Supreme Court's holding that this presumption can be invoked even at the quashing stage is a vital safeguard against premature termination of criminal proceedings.³⁹ This is particularly important given the clandestine nature of such offences, where direct evidence of intention is rarely available.

The Supreme Court's judgment represents a watershed moment in India's fight against child sexual exploitation. By interpreting Section 15 purposively and invoking the doctrine of constructive possession, the Court has ensured that the POCSO Act remains a living instrument capable of addressing evolving challenges in the digital age. The judgment also sends a clear message that addiction, whether to pornography or otherwise, cannot be a defence for possessing material that perpetuates the abuse of children. Pornography addiction can lead to "*intense urges or cravings*" and "*damages relationships*," but such psychological factors cannot override the statutory presumption of culpable mental state.⁴⁰ The Supreme Court's emphasis on counselling and rehabilitation for the accused, alongside stringent legal consequences, reflects a balanced approach that prioritises child protection while acknowledging the complexity of addiction.

F) Conclusion & Implications:

The Supreme Court's judgment in *Just Rights for Children Alliance v. S. Harish* marks a decisive shift from the High Court's narrow, act-based interpretation to a purposive, intent-based reading of Section 15 of the POCSO Act. By classifying the offence as inchoate and invoking constructive possession and the Section 30 presumption, the Court has ensured that mere storage or viewing of CSEAM, without deletion or reporting, attracts criminal liability, closing a critical enforcement gap.

It further directed that the term "*child pornography*" be replaced by "*child sexual exploitation and abuse material*" in all judicial orders. This judgment fortifies the POCSO Act against digital-era challenges by criminalising possession without proof of transmission. It prioritises child dignity over misplaced sympathy.

³⁸ *Id.* ¶ 156.

³⁹ *Id.* ¶ 193.

⁴⁰ WebMD, *Porn Addiction: Symptoms, Signs, and Treatment*, <<https://www.webmd.com/mental-health/addiction/porn-addiction-possible>> (Last accessed 25th September, 2026).

References:**Primary Sources**

- *Just Rights for Children Alliance v. S. Harish*, 2024 INSC 716.
- *S. Harish v. State*, CrI.O.P. No. 37 of 2024 (Madras High Court, Jan. 11, 2024).
- *Sam Infant Jones v. State*, 2021 SCC OnLine Mad 2241.
- *Chandi Kumar Das Karmarkar* — mentioned in the article; full citation not provided.
- *Motilal Padampat Sugar Mills* — mentioned in the article; full citation not provided.

Statutes

- Code of Criminal Procedure, 1973.
- Indian Penal Code, 1860.
- Information Technology Act, 2000, No. 21 of 2000.
- Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012.
- Protection of Children from Sexual Offences (Amendment) Act, 2019.

Secondary Sources and Reports

- INTERPOL, *International Child Sexual Exploitation Database* (2024), <https://www.interpol.int/Crimes/Crimes-against-children/International-Child-Sexual-Exploitation-database-ICSE>.
- National Center for Missing & Exploited Children, *CyberTipline 2023 Report* (2024), <https://www.missingkids.org/cybertipline>.
- National Crime Records Bureau, *Crime in India 2024* (2025), <https://ncrb.gov.in>.
- WebMD, *Porn Addiction: Symptoms, Signs, and Treatment*, <https://www.webmd.com/mental-health/addiction/porn-addiction-possible>.