

MOHD. FIROZ

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v.

STATE OF MADHYA PRADESH

(Review Petition (Crl.) No. 282 of 2022)

In

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(Criminal Appeal No. 612 of 2019)

OCTOBER 21, 2022

**[UDAY UMESH LALIT, CJI, S. RAVINDRA BHAT AND
BELA M. TRIVEDI, JJ.]**

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Review – Clarification sought on quantum of sentence – In judgment dated 19.04.2022 for which review is sought, the petitioner-accused was held guilty and punished for the offences was under ss.376(2)(i), 376(2)(m) and under s.376(A) of IPC as also under s.5 (i) and s.5 (m) read with s.6 of the POCSO Act – In judgment dated 19.04.2022, the Court, while commuting the sentence of death for the sentence of life imprisonment for the offence punishable under s.302 of IPC, and while imposing sentence to undergo imprisonment for 20 years and not imprisonment for the remainder of his natural life for the offence under s.376A, IPC tried to balance the scales of retributive justice and restorative justice – If the sentence of life imprisonment was imposed by the Sessions Court and confirmed by the High Court, and also by this Court, then the life imprisonment would mean imprisonment for the remainder of the petitioner's (original appellant's) natural life – The Court had consciously imposed the sentence of 20 years for the offence under s.376A – Therefore appellant-petitioner shall undergo rigorous imprisonment for a period of 20 years for the offence – The sentence imposed for the offence under ss.376(2)(i) and 376(2)(m) of IPC and for the offence under ss.5(i) and 5(m) read with s.6 of the POCSO Act is modified, so as to commensurate the said sentences with the sentence imposed for the offence under s.376(A) of IPC, and accordingly sentence is imposed directing the petitioner to undergo imprisonment for a period of twenty years instead of life imprisonment for the said offences – The judgment and order dated 19.04.2022 is accordingly corrected and modified to that extent.

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A CRIMINAL APPELLATE JURISDICTION: Review Petition (Crl.) No. 282 of 2022 in Criminal Appeal No. 612 of 2019.

[From the Judgment and Order dated 15.07.2014 of the High Court of Madhya Pradesh, Jabalpur Bench in Criminal Appeal No.2920 of 2013 and Criminal Reference No. 9 of 2013]

B B. H. Marlapalle, Sr. Adv., (AC), Ms. Trisha Chandran, Bhavesh Seth, Ms. Harini Raghupathy, Ramnesh Kumar Sahu, Satya Mitra, Advs. for the Petitioner.

C P. V. Yogeshwaran, Pashupathi Nath Razdan, Ms. Ayushi Mittal, Vipul Abhishek, Advs. for the Respondent.

The Order of the Court was passed by

BELA M. TRIVEDI, J.

D 1. The instant application has been filed by the applicant-appellant seeking the following prayers:

E (a) Pass an order clarifying that pursuant to the Judgment of this Hon'ble Court dated 19.04.2022 in Criminal Appeal No.612 of 2018, the sentence to be served by the Applicant is life imprisonment simplicitor for the offence under Section 302, 5(m),(i) and 6 of the Protection of Children under Sexual Offences Act, 2012 (POCSO), imprisonment for a term of 20 years for the offence under Section 376A, IPC, rigorous imprisonment for 10 years for the offence under Section 366, IPC and rigorous imprisonment for 7 years for the offence under Section 363, IPC.

F (b) Pass an order clarifying that the sentence imposed by the Ld. Sessions Judge, Seoni under Sections 376(2)(m) and 376(2)(i), IPC has been substituted/subsumed by this Hon'ble Court in Judgment dated 19.04.2022 in Criminal Appeal 612 of 2018 by imposing a sentence of imprisonment for 20 years under Section 376A, IPC.

G (c) Pass an order clarifying that the sentence to be served by the applicant for the offence under Sections 5(m) and (i), 6, POCSO is life imprisonment and not life imprisonment for the reminder of natural life.

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- (d) Pass an order directing the Ld. Sessions Judge Seoni to modify the order of supersession in accordance with the Prayers A to C. A
- (e) Pass any other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

2. The Court after hearing the learned counsel for the parties passed the following order on 19.10.2022: B

“Instant Miscellaneous Application is treated as Review Petition and be registered as one by the Registry.

Oral hearing in the matter is permitted. C

Mr. B.H. Marlapalle, learned Senior Advocate, who has been assisting this Court as Amicus Curiae on behalf of the accused submits that-

- (A) In paragraph 43 of the Order, this Court (i) modified the sentence of death for the offence punishable under Section 302 of the Indian Penal Code (for short, 'IPC') to that of imprisonment for life; (ii) awarded sentence of twenty years instead of imprisonment “for remainder part of his life” for the offence punishable under Section 376A of the Indian Penal Code; and (iii) affirmed the conviction and sentence recorded by the Courts below for the other offences under the IPC and Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') D E
- (B) The other offences, referred to above, comprised of offences punishable under Sections 376 (2)(i) and 376 (2)(m) of the IPC as well as under Section 6 of the POCSO Act. In respect of these three offences, the punishment awarded to the appellant- accused on each count was life imprisonment with the qualification that “it shall be for the remainder part of his natural life”. F G
- (C) Though, the amendments to Section 376 were brought in force before the offence was committed by the appellant-accused, the amendment to the provisions of POCSO Act was brought into force, well after the offence was committed. H

- A **(D) In the circumstances, the sentence of life imprisonment with qualification for “remainder of his natural life” could not have been awarded in respect of offence punishable under Section 6 of the POCSO Act.**
- B **(E) Having granted benefit of reduction of sentence to term sentence of twenty years instead of imprisonment for the “remainder of his natural life” for the offence under Section 376A of the IPC, the case of the appellant be considered on same lines with respect to offences punishable under Section 376 (2) (i) and**
- C **376 (2) (m) of the IPC.**

D **Mr. P.V. Yogeshwaran, learned Advocate appearing for the State, has fairly accepted the submission with respect to the punishment to be awarded for the offence punishable under Section 6 of the POCSO Act, but has left the matter to the discretion of this Court with respect to the punishment for the offences punishable under Sections 376(i) and 376(m) of the IPC are concerned.**

Heard learned counsel for the parties. Order reserved.”

- E 3. At the outset, it may be noted that though the applicant/appellant had filed the application seeking clarification of the judgment dated 19.04.2022 passed in the captioned appeal, the applicant had in fact sought a review of the said judgment as regards the sentences imposed by the court for the offences under Sections 376(2)(i) and 376(2)(m) of
- F IPC and Section 5 (i) and 5 (m) read with Section 6 of the POCSO Act. Having regard to the submissions made by the learned counsel for the parties, the application was treated as Review Petition by the Court and the Registry was directed to register as such, vide the aforesaid Order dated 19.10.2022.
- G 4. Mr. B.H. Marlapalle, the learned Senior Advocate appearing as an amicus curiae on behalf of the petitioner has drawn the attention of the Court to the provisions contained in Section 376(2) of the IPC and Section 6 of the POCSO Act to submit that the punishment prescribed for the offence under Sections 376(2)(i) and 376(2)(m) of IPC is rigorous
- H imprisonment for a term which shall not be less than 10 years and for

the offence under Section 6 of the POCSO Act shall not be less than 20 years, but in both cases it may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life. According to him, this Court consciously imposed punishment for twenty years and not for life imprisonment for the offence under Section 376(A) of IPC, which otherwise would have meant imprisonment for the remainder of the appellant's natural life, for the reasons stated in the judgment, and therefore the said purpose would be frustrated if the sentences of imprisonment for life confirmed by this Court for the offence under Sections 376(i) and 376(2)(m) of IPC and under Section 5 (i) read with Section 6 and Section 5 (m) read with Section 6 of POCSO ACT are not suitably modified.

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5. Mr. P.V. Yogeshwaran, learned Advocate appearing for the State of Madhya Pradesh has fairly accepted the said submissions, however has left the matter to the discretion of the Court.

6. Having given anxious consideration to the submissions made by the learned counsels for the parties and to the punishments prescribed for the offences under Sections 376(2)(i), 376(2)(m) and under Section 376(A) of IPC as also for the offence under Section 5 (i) and Section 5 (m) read with Section 6 of the POCSO Act, for which the petitioner-accused has held guilty and punished, and to the observations made by this Court in the judgment dated 19.04.2022, it appears that the Court, while commuting the sentence of death for the sentence of life imprisonment for the offence punishable under Section 302 of IPC, and while imposing sentence to undergo imprisonment for 20 years and not imprisonment for the remainder of his natural life for the offence under Section 376A, IPC, had tried to balance the scales of retributive justice and restorative justice. The Court, at the same time had confirmed the conviction and sentence recorded by the Courts below for the other offences under the IPC and the POCSO Act which included offence under Sections 376(i) and 376(m) of IPC and Section 5 (i) and 5 (m) read with Section 6 of POCSO Act. Hence, as rightly submitted by the learned Senior Advocate Mr. Marlapalle, if the sentence of life imprisonment imposed by the Sessions Court and confirmed by the High Court, is also confirmed by this Court for the offence under Sections 376(2)(i) and 376(2)(m), IPC and for the offence under Section 5 (i) and 5 (m) read with Section 6 of POCSO Act, then the life imprisonment would mean imprisonment for the

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- A remainder of the petitioner's (original appellant's) natural life, and in that case, the very purpose of the court in not imposing the sentence of life imprisonment for the remainder of petitioner's life for the offence under Section 376(A) of IPC, would be frustrated. The Court had consciously imposed the sentence of twenty years for the offence under Section 376A for the reasons stated in the judgment. The Court
- B therefore is inclined to accept the submissions of Mr. Marlapalle, and to modify the sentence imposed for the offence under Sections 376(2)(i) and 376(2)(m) of IPC and for the offence under Section 5 (i) and 5 (m) read with Section 6 of the POCSO Act, so as to commensurate the said sentences with the sentence imposed for the offence under
- C Section 376(A) of IPC, and accordingly imposes sentence directing the appellant/petitioner to undergo imprisonment for a period of twenty years instead of life imprisonment for the said offences.

7. The upshot of this order would be that the appellant-petitioner shall undergo rigorous imprisonment for a period of 20 years for the
- D offence under Sections 376(2)(i) and 376(2)(m) of IPC, and for a period of 20 years for the offence under Section 5 (i) and 5 (m) read with Section 6 of the POCSO Act. The judgment and order dated 19.04.2022 passed by this Court in Criminal Appeal No. 612 of 2019 stands corrected and modified to the aforesaid extent. The rest of the judgment shall
- E remain unchanged.

8. The review petition stands allowed accordingly.

Devika Gujral
(Assisted by : Mahendra Yadav, LCRA)

Petition allowed.