

**FATIMA RISWANA V. STATE REP. BY ACP., CHENNAI &
ORS [AIR (2005) 712]**

Court: Supreme Court of India

Decided On: January 11th, 2005

Bench: N. Santhosh Hegde, S. B. Sinha, J.J.

Relevant Section/Article: Section 67 of Information Technology Act, 2000 r/w Section 6 of Indecent Representation of Women (Prohibition) Act, 1986, u/s 5 & 6 of the Immoral Traffic (Prevention) Act, 1956, u/s 27 of Arms Act, 1959 and Section 120 (B), 506 (ii), 366, 306 and 376 of Indian Penal Code, 1860.

FACTS OF THE CASE¹:

The said trial relates to exploitation of certain men and women by one of the accused Dr. L. Prakash for the purpose of making pornographic photos and videos in various acts of sexual intercourse and thereafter selling them to foreign websites. The said sessions trial came to be allotted to the V Fast Track Court, Chennai which is presided over by a lady Judge. That court also happened to be the "Mahila Courts" constituted vide Government Notification G.O.Ms. No.556 Home (Courts II) Department of the Tamil Nadu Government, constituted to exclusively deal with offences against women and for speedy trial of cases of offences committed against women and also case under other Social Laws enacted by the Central and the Governments for the protection of women.

When the said trial before the V Fast Track Court was pending certain criminal revision petitions came to be filed by the accused against the orders by the said court rejecting their applications for supply of copies of 74 Compact Discs (CDs) containing pornographic material on which the prosecution was relying. The said revision petitions were rejected by the Madras High Court by its order dated 13th February, 2004 holding that giving all the copies of the

¹ [Fatima Riswana v. State Rep. by ACP., Chennai and Ors. \[AIR \(2005\) 712\]](#)

concerned CDs might give room for copying such illegal material and illegal circulation of the same, however the court permitted the accused persons to peruse the CDs of their choice in the Chamber of the Judge in the presence of the accused, their advocates, the expert, the public prosecutor and the Investigating Officer.

ARGUMENTS ADVANCED:

Learned Public Prosecutor and the Learned Counsel for the petitioners submitted that there will be some embarrassment for them to view the said C. Ds in the Chambers of the learned District Judge who is a lady Officer. It is true that there may be some embarrassment for the Presiding Officer of the said Court when she being a lady Officer.

The learned counsel for the respondents contended that the Appellant learned though arrayed as witness is for all purpose an accused herself and law officer appearing in the case had expressed their embarrassment in conducting the trial before a lady Presiding Officer and even though the Presiding Officer did not expressly record her embarrassment, it was apparent that she too wanted the case to be transferred to another court, therefore, this Court should not interfere with the order of transfer. Soon after coming to know of the transfer of the sessions trial from the V Fast Track Court to IV Fast Track Court, the appellant moved a criminal revision petition O.P. No. 9528 of 2004 contending that such transfer of the case from a court presided over by lady Judge to a court presided over by a male Judge would embarrass the appellant, she being a woman.

The High Court rejected the said prayer of the petitioner hence this appeal.

In this appeal the learned senior counsel appearing for the appellant contended the entire approach of the High Court in the instant case runs counter to the interest of the witnesses who are really in the shoes of victims. It is also contended that the concerned Presiding Officer having not expressed any embarrassment in conducting the trial herself the court could not have presumed such an embarrassment based on the fact that the Presiding Officer is a lady officer. It is submitted that the embarrassment arises from an attitude of mind of a person and the same cannot be confined to lady Officer alone. Hence, the High Court ought not to have transferred the case solely on the ground that the V Fast Track Court is presided over by a lady Officer. At any rate, it is contended that when the appellant brought to the notice of the court the problems faced by her in view of the transfer of the said case to a court presided over by a

male Presiding Officer the High Court ought to have appreciated her point of view and allowed the petition by re-transferring the trial to IV Fast Track Court.

Countering the above argument of the learned counsel for the respondents contended the law officer appearing in the case had expressed their embarrassment in conducting the trial before a lady Presiding Officer and even though the Presiding Officer did not expressly record her embarrassment, it was apparent that she too wanted the case to be transferred to another court, therefore, this Court should not interfere with the order of transfer. It is also submitted on behalf of the respondents that the appellant though arrayed as a witness, for all purposes was an accused herself being involved in the illegal activities of accused No. 1, hence re-transferring at her request should not be permitted. It is also submitted that the High Court has erred in not granting the copies of the CDs on which the prosecution based its case.

As contended by the learned counsel for the appellant embarrassment is a state of mind which is more individual related than related to the sex of a person. It is but natural that any decent person would be embarrassed while considering the evidence in a case like this but this embarrassment cannot be attributed to a lady Officer only. A Judicial Officer be it a female or male is expected to face this challenge when the call of duty required it. It is expected of a Judicial Officer to get over all prejudices and predilections when situation requires, hence in our considered opinion the High Court was not justified in presuming embarrassment to the Judicial Officer solely on the ground that she is a lady Officer even when the Officer concerned had not expressed any reservation in this regard. If situation requires the Presiding Officer may make such adjustments/arrangements so as to avoid viewing the CDs in the presence of male persons. This is a matter of procedure to be adopted by the Presiding Officer.

It is also to be seen that the High Court has considered only the embarrassment that may be caused to the lawyers and Judges and has failed to take into consider the embarrassment that may be caused to the lady witnesses like the appellant herein who have been summoned in this case to appear before a court presided over by a male Judge to give evidence more where their own acts are part of the prosecution evidence. Therefore, if at all, there was a question of avoiding the embarrassment caused to any of the people involved in the case, in our opinion, the court ought to have considered the embarrassment that would be caused to the witness who are actually in the nature of victims while giving evidence of their acts before a male Judge.

The learned counsel for the appellant, in our view, was justified in this context in relying upon the judgment of this court in the case of *State of Punjab Vs. Gurmit Singh*²

It was neatly contended on behalf of the respondent that even the prosecution counsel and the defence counsel would feel embarrassed to appear before the court presided over by a lady Officer in a trial like this. But we think this cannot be a ground for transfer of the case. So far as the lawyers are concerned they have accepted the brief knowing very well the facts of the case, it is left to them to decide whether to continue in or not. Their embarrassment cannot be a ground for transfer of the case in a situation like this.

ANALYSIS:

The Hon'ble Supreme Court held that in a case alleging exploitation of certain men and women by one of the accused, a Doctor, for the purpose of making pornographic photos and videos in various acts of sexual intercourse, High Court was not justified in transferring the trial by presuming embarrassment to the Judicial Officer solely on the ground that she is a lady officer. The order for transfer was passed and the justification for this was that the "said trial would be about the exploitation of women and their use in sexual escapades by the accused, and the evidence in the case is in the form of CDs. and viewing of which would be necessary in the course of the trial, therefore, for a woman Presiding Officer it would cause embarrassment. "It is also to be seen that the High Court has considered only the embarrassment that may be caused to the lawyers and Judges and has failed to take into consider the embarrassment that may be caused to the lady witnesses like the appellant herein who have been summoned in this case to appear before a court presided over by a male Judge to give evidence more where their own acts are part of the prosecution evidence.

Therefore, if at all, there was a question of avoiding the embarrassment caused to any of the people involved in the case, in our opinion, the court ought to have considered the embarrassment that would be caused to the witness who are actually in the nature of victims while giving evidence of their acts before a male Judge. The Indian courts are squeamish and culturally still shy of confronting the issue of pornography. This is a rather obvious case of the squeamishness of the court when confronted with explicit and pornographic material; perhaps

² [State of Punjab v. Girmitt Singh \[\(1996\) AIR \(1393\)\]](#)

gesturing towards the larger complicity that allows society and law to create a ruckus about Richard Gere and Shilpa Shetty's kiss, HBO English movie channels, dance bars and other such aspects of the sleazy modernity that we inhabit, but simultaneously remaining comfortably oblivious to circulation of pornography, both online and offline. Such secretive/covert consumption does not disturb the heteronormative familiar and familial, in fact probably reaffirms it since the access to most of these spaces is gendered in rather obvious ways.

CONCLUSION:

The literal meaning of the expression 'Pornography' is "relating or presentation sexual acts in arrange to cause sexual stimulation through books, films, etc. "This would comprise pornographic websites; pornographic matter produced using computers & use of the internet to download & transmit pornographic videos, writings, pictures, photos, etc.

Everyone is involved in immoral sexual activity, infidelity & premarital Sex - Pornography Addiction Dr. Victor Cline, an authority on Sexual Addiction, bring into being that there is a four step progression among many who put away pornography.

Addiction:

- 1.Pornography provides a commanding sexual stimulant or aphrodisiac effect, follow by sexual release
 - 2.Escalation: Over time addicts have need of more explicit & deviant matter to meet their sexual "needs."
 - 3.Desensitization: What was first supposed as gross, shocking & disturbing, in time becomes common & acceptable.
 - 4.Acting out sexually: There is an increasing inclination to act out behaviors view in pornography.
- 3Watching pornography no offence: IPC and IT Act Expenditure of pornography is no offence.

All so as to the law forbids its journal or transmission. If the railway police in Mumbai could motionless terrorize an IIT student, just by claim that his mobile phone store pornographic video, they were ride roughshod over his human being rights. Cyber pornography is in easy words defined as the act of by means of cyberspace to generate, display, import, distribute, or

obscene materials or publish pornography. With the coming on of cyberspace, traditional pornographic comfortable has now been for the most part replaced by online/digital pornographic comfortable. Cyber pornography is forbidden in many countries & legalized in some. In India, In the Information Technology Act, 2000, this is a grey region of the law, where it is not illegal but not legalized either. Moreover, the Indian courts are squeamish and culturally still shy of confronting the issue of pornography. The courts should deal with these matters just like they deal with other matters.



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