

No.Q-1/139176/2017/PHQ.

Police Headquarters,
Thiruvananthapuram,

Dated, 25-08-2017.

Circular No. 22/2017

Sub:- Sexual offences against women and children – legal provisions and Supreme Court guidelines to be strictly complied with by the Police in investigation – directions issued - reg.

Ref:- Judgment of the Hon'ble Supreme Court of India dated 25-04-2014 in SLP (Crl.) No. 5073/2011 [*State of Karnataka by Nonavinakere Police V. Shivanna @ Tarkari Shivanna*].

The crimes against women and children are on the rise, especially sexual offences. There are also notable flaws in the investigation of such offences as there have occurred some instances of violation of established legal norms in the investigation of rape cases. It is, therefore, instructed that the guidelines issued by the Hon'ble Supreme Court of India vide reference cited shall be scrupulously adhered to in the investigation of rape cases by all Investigating Officers in addition to the compliance of the legal provisions relating to rape. The judgment contains the following procedure:

(i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C. A copy of the statement under Section 164 Cr.P.C. should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C. should not be disclosed to any person till charge sheet/report under Section 173 Cr.P.C. is filed.

(ii) The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.

(iii) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.

(iv) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

(v) Medical Examination of the victim: Section 164 A Cr.P.C. inserted by Act 25 of 2005 in Cr.P.C. imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C.

02. It is also brought to the notice of all officers that the *age of the victim of rape* is having special significance in making applicable the provisions of the Protection of Children from Sexual Offences Act, 2012 (POCSO). As per section 2(1)(d) of the POCSO "child" means any person below the age of "eighteen years". Once it is ascertained that as on the date of commission of the offence, the victim of the offence is a person below the age of "eighteen years", the special procedure prescribed as per the provisions in the POCSO with regard to the recording of statement of the child (sections 24 and 26), medical examination (section 27 r/w rule 5), procedure for media (section 23) etc. shall become applicable. Such child victim shall be entitled to emergency medical care under rule 5 of the Protection of Children from Sexual Offences Rules, 2012. Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.

03. There are reported instances of undue delay in filing charge sheet and serious lapses in submitting important documents like the documents to prove date of birth, mental disability of the child etc. before courts in cases under POCSO. The delay makes the witnesses increasingly reluctant to testify and causes the escape of the victim. Hence it is instructed that the time limit prescribed by the statute for filing charge sheet etc. shall be mandatorily complied with. In one case reported in the Pathanamthitta district, where a mentally challenged 15 year old girl was

sexually abused by her neighbor, instead of invoking section 6 of POCSO (Punishment for aggravated penetrative sexual assault) which provides for a maximum punishment of imprisonment for life, section 8 of POCSO (Punishment for Sexual Assault) providing for a maximum of imprisonment upto five years is seen invoked. The Investigating Officers are, therefore, instructed to exercise extreme care and caution in charging the offences under POCSO and in submitting the exact documents to prove date of birth, mental disability etc. of the child against whom the offence has been committed so that the offenders are awarded maximum punishment.

04. In all cases of sexual offences against children, the Investigating Officers are hereby instructed to get acquainted with the Model Guidelines (<http://www.wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>) issued by the Ministry of Women and Child Development under section 39 of POCSO in the detection of offences against children, for safeguarding child rights.

05. The investigation of the offences under the POCSO by the Police requires an integrated and coordinated approach keeping in mind the best interest of the child. All officers are hence instructed to comply with the legal provisions in dealing with the offences under the POCSO.

06. In all sexual offence cases women and children shall be treated with dignity and compassion and their privacy safeguarded by all means.

W 25/8/2017
Loknath Behera, IPS,
State Police Chief.

To

All Officers in List D- for information and urgent necessary action.

Copy to: Circular Register, Kerala Police Website.