

(P.H.C. Sch. 1-6)

पत्र संख्या / Letter No. : 10526-10562 /JJS-17-2021

प्रेषक / From: -

सुभाष चन्द्र शर्मा  
अपर निबंधक, किशोर न्याय सचिवालय,  
पटना उच्च न्यायालय, पटना



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Suvash Chandra Sharma  
Additional Registrar,  
Juvenile Justice Secretariat  
High Court of Judicature at Patna.

Dated, Patna the 19<sup>th</sup> Feb., 2022

To,

All the District and Sessions Judges,  
Bihar.

Sub: For following the Standard Operating Procedure (SOP) for recording the testimony through Video Conferencing in all criminal trials where child witnesses are not residing near Court Points in compliance of the order dated 01.02.2022 passed in W.P. (Crl.) No.-274 of 2020 by the Hon'ble Supreme Court of India.

Sir,

With reference to the subject noted above, I am directed to forward herewith the order dated 01.02.2022 passed in W.P. (Crl.) No.-274 of 2020 by the Hon'ble Supreme Court of India containing the Standard Operating Procedure (SOP), duly approved by the Hon'ble Supreme Court of India for further circulating the same amongst all the Judicial Officers of the district for being followed in all criminal trials where child witnesses, not residing near Court Points, are examined and not physically in the courts where the trial is conducted.

I am, therefore, to request you to ensure the strict compliance of the aforesaid direction of the Court.

Enclosures: -As Above (in 24 sheets)

Seen. Circulate among all  
courts of of the Judicature  
of O.L.S.A. for strict com-  
pliance.

System officer to  
upload on web-site.

Yours faithfully

Additional Registrar

for  
24/02/22

Seen  
22/02/2022

1 to SPT & JSP  
on 24/2/22  
+ to  
with in 10 days

21/2/22

ITEM NO.2 Court 5 (Video Conferencing) SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

SMW (C) No(s). 6/2021

IN RE CHILDREN IN STREET SITUATIONS

( [ ONLY W.P. (CRL.) NO. 274 OF 2020 IS LISTED UNDER THIS ITEM ] )

WITH

W.P. (Crl.) No. 274/2020 (PIL-W)  
( IA No. 139277/2021 - EXEMPTION FROM FILING AFFIDAVIT  
IA No. 10286/2021 - EXEMPTION FROM FILING AFFIDAVIT  
IA No. 8311/2021 - EXEMPTION FROM FILING AFFIDAVIT  
IA No. 97311/2020 - GRANT OF INTERIM RELIEF )

Date : 01-02-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO  
HON'BLE MR. JUSTICE B.R. GAVAI

For the parties: By Courts Motion

Mr. Gaurav Agrawal, AOR (A.C.)

Ms. Anitha Shenoy, Sr. Adv.  
Ms. Srishti Agnihotri, AOR  
Mr. Abishek Jebaraj, Adv  
Ms. Kriti Awasthi, Adv.  
Ms. Nimisha Menon, Adv  
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Mr. Sambhav Gupta, Adv  
Ms. Sanjana Grace Thomas, Adv.  
Ms. Aarti Krupa Kumar, Adv.  
A. Reyna Shruti, Adv

FOR NCPDR

Signature Not Verified  
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Mr. K.M. Nataraj, Ld. ASG  
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Ms. Swati Ghildiyal, Adv.  
Mr. Digvijay Dam, Adv.  
Mr. Manish, Adv.

	Ms. Rajeswari Mukherjee, Adv
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State of Nagaland	Ms. K. Enatoli Sema, AOR Mr. Amit Kumar Singh, Adv Ms. Chubalemla Chang, Adv.
NCT Delhi	Mr. Chirag M. Shroff, AOR
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 Ms. Veena Bansal, Adv.

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Ms. Uttara Babbar, AOR

Mr. M. Yogesh Kanna, AOR

UPON hearing the counsel the Court made the following  
 O R D E R

W.P.(CrI.) No. 274/2020

1. This Writ Petition has been filed for the following reliefs: -

pilot project, after having detailed discussions with the counsel appearing for the Petitioners. For the purpose of the pilot project, the learned Amicus Curiae selected four cases. Out of these, trial had commenced in two cases with respect to which, it was requested that directions be given for examination of witnesses by video conferencing. SC No. 151 of 2019 (***State v. Rahmatulla***) arises out of FIR No. 612 of 2018 dated 05.12.2018, registered under Sections 75/79 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("**JJ Act**"), Sections 3/3A/14 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 ("**CLA**"), Sections 16/17/18 of the Bonded Labour System (Abolition) Act, 1976 ("**BLA**") and Sections 370/374 of the Indian Penal Code, 1860 ("**IPC**"). The brief facts of the said case are that on 05.12.2018, 11 children engaged in stitching work of suit/ coat covers were rescued by a surprise rescue operation from premises in Kirawal Nagar, North East Delhi, PS Khajuri Khas. The rescued children were sent to their native places, *i.e.*, Sitamarhi and East Champaran Districts of Bihar. The case was pending in the court of Additional District Judge, Karkadooma, New Delhi. The second case bearing Case No. 52 of 2019 (***State v. Mohd. Sherjahan***) relates to FIR No. 20 of 2019



Curiae is that through the summons, the witnesses be intimated about (i) the address of the Remote Point and date and time of hearing; (ii) name, contact details and a brief explanation of the role of the Remote Point Coordinator ("**RPC**"); and (iii) the requirement to carry a proof of identification. The third stage pertained to the actual examination of the child witnesses at the Remote Point and the procedures to be followed to ensure that the witnesses are examined *in camera* and without any influence.

4. After being satisfied with the trial run of examination of child witnesses at remote points, the learned Amicus Curiae in consultation with Ms. Anitha Shenoy, learned Senior Counsel appearing for the Petitioners, submitted a draft Standard Operating Procedure ("**SOP**"), with five stages, on 12.04.2021. By order dated 26.10.2021, this Court directed the draft SOP to be served on all the State Governments / Union Territories as well as the High Courts for their comments. After receiving responses from the High Courts, the learned Amicus Curiae submitted a note with a modified draft SOP for recording evidence of children through video conferencing. The draft SOP as suggested by the learned Amicus Curiae is as under:

"1. It is suggested that testimony of children, who are

conferencing facilities, the Trial Court should ordinarily give preference to examination of the child witness through video conferencing.

5. The authorized officer at the Court Point may get in touch with the RPC at the Remote Point and work out all modalities for recording of the child witness statement through video conferencing.

6. If video conferencing is feasible, a date and time be fixed by the trial court for examination of the witness(es). Summons may be issued to the child witness(es) to present himself/herself for evidence before the RPC. The summons may be served in addition through the local process server of the remote point. The witness would be required to come with identification documents. The summons would also have the name and contact details of the RPC at the Remote Point and would also mention that the witness can take help of legal aid or other assistance through the Secretary, District Legal Service Authority, if required.

7. The child witness shall be entitled to the presence of a support person as defined in the Protection of Children from Sexual Offences Rules, 2020 or any other applicable laws/guidelines or as allowed by the Trial Court. Further, best practices that are required to be followed in recording the evidence of child witnesses should continue to be followed even during the recording of the testimony through video conferencing. These include, ensuring that the child witness is provided diet money on the basis of the distance travelled by him or her to reach the remote point, the presence of a police officer at the remote point to ensure that the child

is misplaced for some reason.

11. Whenever a Trial Court proposes to record the testimony of a child witness, who is residing in another State, an intimation of the same should also be given to the Registrar of the High Court of the Court point. The Ld. Registrar may intimate the same to the Ld. Registrar of the High Court of the Remote Point with a request to render all assistance possible for recording of the testimony of the child.

12. This Standard Operating Procedure is only a broad guideline. The method and manner of recording of testimony be dependent upon the video conferencing rules framed by the respective High Courts, which would be kept in mind while recording the testimony of the child witness. It should be kept in mind that the recording of the testimony should be done expeditiously, without undue delay.

<sup>1</sup> It can also be done at Taluk level as in some cases, video conferencing room can be available in a court complex at Taluk level or Sub Divisional level."

5. Article 24 of the Constitution of India prohibits employment of a child below the age of 14 years in any factory or mine. Article 39(f) of the Constitution obligates the State to provide opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity and to ensure that childhood and youth are protected against exploitation and against moral and material



as child labourers, migrant children, trafficked children, children of migrant labour, street children, child victims of alcohol and substance abuse, children in areas in civil unrest, orphans, children with disability (mental and physical), children with chronic ailments, married children, children of manual scavengers, children of sex workers, children of prisoners, etc. are tracked, rescued, rehabilitated and have access to their right to education.

6. Taking note of employment of children in fire-cracker factories of Sivakasi, Tamilnadu, this Court in ***M.C. Mehta v. State of Tamil Nadu & Ors.***<sup>1</sup> issued the following directions to the State Governments:

*“33. To give shape to the aforesaid directions, we require the States concerned to do the following:*

*(1) A survey would be made of the aforesaid type of child labour which would be completed within six months from today.*

*(2) To start with, work could be taken up regarding those employments which have been mentioned in Article 24, which may be regarded as core sector, to determine which hazardous aspect of the employment would be taken as criterion. The most hazardous employment may*

industry where the child is employed, a public undertaking and would be manual in nature inasmuch as the child in question must be engaged in doing manual work. The undertaking chosen for employment shall be one which is nearest to the place of residence of the family.

✓ (5) In those cases where alternative employment would not be made available as aforesaid, the parent/guardian of the child concerned would be paid the income which would be earned on the corpus, which would be a sum of Rs 25,000 for each child, every month. The employment given or payment made would cease to be operative if the child would not be sent by the parent/guardian for education.

(6) On discontinuation of the employment of the child, his education would be assured in suitable institution with a view to make him a better citizen. It may be pointed out that Article 45 mandates compulsory education for all children until they complete the age of 14 years; it is also required to be free. It would be the duty of the Inspectors to see that this call of the Constitution is carried out.

(7) A district could be the unit of collection so that the executive head of the district keeps a watchful eye on the work of the Inspectors. Further, in view of the magnitude of the task, a separate cell in the Labour Department of the appropriate Government would be

International Year was adopted by the UN General Assembly. All the member states were asked to take effective measures to eradicate forced labour and human trafficking. The number of children labourers has risen in the last four years globally. According to data released by agencies the problem of Child Labour in India is persisting inspite of the best efforts of the Government. Covid-19 had a devastating effect on children from the lower strata of society who have been suffering due to the loss of employment of their parents & closure of schools which has forced them into labour for survival. We have highlighted the problem for the purpose of reiterating the importance of protection of children and rescuing and rehabilitating them.

- ✓8. At present, we are concerned with obviating difficulties to victims of trafficking with respect to travelling long distances for the purpose of giving evidence in trial courts. Though, the public-spirited Petitioners were concerned with the safety of the trafficked children being forced to travel long distances for giving evidence during the COVID-19 pandemic, we are of the opinion that the suggestions made by the learned Amicus Curiae, in consultation with Ms. Shenoy, relating to the SOP should be put in practice as a regular feature. The said

*jeopardy and would remain only on paper. Data, particularly of the magnitude of the kind that we are concerned with, can be easily collected through the use of computers and the internet. This would be of great assistance in planning and management of resources and MWCD and others concerned with child rights must take full advantage of this.*

*78. That apart, there can be no doubt that the use of computers and peripherals would make an immense contribution to the administrative functioning of the JJBs and CWCs. Both the Government of India and the State Governments need to look into this and provide necessary software and hardware to the JJBs and the CWCs for obvious reasons. We were informed by the learned counsel that the police authorities in Telangana and Andhra Pradesh in consultation with the Juvenile Justice Committee of the High Court have made considerable use of information and communication technology and we are of the view that innovative steps must be encouraged. Similarly, the use of videoconferencing could also be considered in appropriate cases where some inconvenience to the juvenile in conflict with law necessitates the use of videoconferencing facilities."*

9. We have carefully examined the draft SOP which contains minute details about steps to be taken for recording the testimony of child witnesses at Remote Points. Responses have been filed by the High Courts. There is no objection taken by any High Court to the SOP being put in practice

following :

- (1) NALSA would pay Rs.1,500/- per day to the Remote Point Coordinator (RPC) whenever the RPC is required for the purposes of examination of the child witness(es) through video conferencing.
- (2) NALSA would provide legal assistance to the child on the days when he/she comes from his/her examination, if the child is otherwise not represented by a counsel.

12. We appreciate the stand taken by NALSA to strengthen the video conferencing facilities in DLSA offices in the States of Uttar Pradesh, Bihar, West Bengal, Odisha and Assam, to begin with to ensure that in case video conferencing facility in the court complex is not available, video conferencing facility in DLSA office can be utilized for recording of the evidence of the child witness.
- ✓ 13. NALSA has also come forward to place the details regarding the availability of video conferencing facility for recording of statement of child witnesses in the offices of DLSA and court complex and the name and contact number of the RPC on its website and the website of State Legal Services Authority (SLSA) by 30.04.2022.



14. The concerned judicial officer at the Remote Point and the trial Court shall ensure that the recording of evidence shall be in camera wherever necessary.

List this matter on 2<sup>nd</sup> May, 2022 at the end of the Board.

(Geeta Ahuja)  
Court Master

(Anand Prakash)  
Court Master