

Sl. No. 103

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CIRCULAR

Sub: Courts and Judges – Handling of Child Witnesses
– Guidelines to Subordinate Judicial Officers of
the State – Issued.

All the Judicial Officers in the State of Tamil Nadu and Union Territory of Puducherry are hereby instructed to strictly adhere to the following guidelines while handling child witnesses without any deviation.

Guidelines to Subordinate Judicial Officers of the State for Handling Child Witnesses

These practice directions are issued in the interest of child witnesses and to diminish the stress and trauma suffered by them, either as complainants or as witnesses, in performing their roles in the Criminal Justice System. These directions are intended to limit the strain inflicted on child witnesses when they are asked to testify regarding the traumatic incidents of abuse or violence in a strange and often hostile court room atmosphere and also to remove the secondary victimization of the child and to make the experience as child-friendly as possible, taking into account the scientific advancements, with the availability of facilities such as close circuit television, video-conferencing, etc. The reasons for giving special status to the children are in conformity with Article 39(f) of the Constitution of India, and also Articles 19 and 34 of the Convention on Child Rights, to which India is a signatory.

The directions issued to support the child through the process of Court must be applied with discretion, the support given should not result in "coaching" of the child, but for ensuring a greater degree of reliability of the child's evidence, because of the raised 'comfort levels'.

- The trial courts shall give effect to Section 327(1) of the Code of Criminal Procedure liberally.
- Apart from cases with relation to the offences mentioned under Section 327(2), Cr.P.C. and the offences mentioned in (2004) 5 S.C.C. 518 (*Sakshi vs. Union of India*) under Sections 375, 354 and 377 of the Indian Penal Code, generally, where Child witnesses are being examined, the Judges shall ensure that the court room is not overcrowded and that there is a free atmosphere and therefore, it is preferable that the proceedings are held in-camera. If in reality the 'in-camera' proceedings merely amount to clearing the court room of onlookers, but the onlookers are able to look through the windows, then it is 'in-camera' only in name and not in spirit. The reason for the proceedings to be conducted 'in-camera' must be given full effect to by the Magistrate concerned.
- The proviso to Section 327(2), Cr.P.C., shall also be invoked by the Presiding Officer suo motu keeping in mind the interest of the child witness, and if the child has a language problem, a lady who is familiar with the particular language may be allowed to remain in the Court room where the child witness is being examined.
- If the Presiding Officer feels, in view of the mental condition of the child, that a lady doctor or a social worker may be allowed to remain in the Court room, the proviso to Section 327(2), Cr.P.C., shall be liberally invoked.

> If medical examination of the child complainant is required, the requisition therefor shall be given as early as possible.

> The child witness may be made to sit down and if required, sufficient breaks may be given during the recording of evidence, the child remaining in the room itself, and the Presiding Officer may also speak to the child informally so that the child feels re-assured and speaks freely.

> The provisions of Sub-section (2) of Section 327, Cr.P.C. shall, in addition to the offences mentioned in the Sub-section, also apply in enquiry or trial of offences under Sections 354 and 377, LP.C.

> In holding trial of child sex abuse or rape, the following directions given in *Sakshi vs. Union of India, (2004) 5 S.C.C. 518* shall be borne in mind:

(i) A screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;

(ii) The questions put in examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court, who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(iii) The victim of child abuse or rape, while giving testimony in Court, should be allowed sufficient breaks as and when required.

> Depending upon the facts and circumstances of each case, preference should be given for the examination of the child witnesses at the earliest point of time, especially if the child witness is coming from another State or a distant place and also in view of the fragile memory of the child.

As regards Test Identification Parade, in addition to the provisions of the *Guidance to Magistrates in Tamil Nadu, 1993* and *P.S.O. 600 of the Tamil Nadu Police Standing Orders*, the Test Identification Parade when conducted for identification by a child – whether a complainant or a witness – can be done by employing Close Circuit Television Technology or a one-way mirror, so that the child is not made to confront the abuser, face-to-face.

//By Order//

HIGH COURT, MADRAS
DATED: 12/07/2007

REGISTRAR GENERAL

To

1. All the Principal District Judges, State of Tamil Nadu. | with a request to
2. The Principal Judge, City Civil Court, Chennai. | bring this circular
3. The Chief Judge, Court of Small Causes, Chennai. | to the notice of
4. The Chief Judge, Puducherry. | all the Judicial Officers under their control/ respective units

R.Dis.No.79/2007, Dt.24-7-2007 Prl.District Court, Pudukkottai.

Copy communicated to all Judicial Officers in this District and 'A' Sec., Shr., ~~xxx~~ ~~xxx~~ ~~xxx~~ Translator and Sessions Assistant of this court for information and necessary action.

SD/- K. Jayasankaran,

Principal District Judge,
Pudukkottai.

/t.c.f.b.o/

P.A. to District Judge,
Pudukkottai.