

News

The trial judge should view and confirm the video in situations involving pornographic material. High Court of Kerala



According to the High Court, a trial court cannot find someone guilty of distributing pornographic recordings unless the judge watches the videos and confirms that they are, in fact, pornographic.

The Kerala High Court has noted that the trial judge is supposed to personally watch any video evidence presented in criminal proceedings against those arrested for disseminating pornographic material in order to confirm whether the footage is truly as obscene as claimed.

While convicting a guy accused of renting out video cassettes containing pornographic material, Justice **Kauser Edappagath** made the statement.

The trial court had found him guilty of obscenity under Section 299 (selling and distribution of obscene material) of the Indian Penal Code (IPC), the High Court observed, without first seeing the video cassettes used as evidence or confirming that the material was, in fact, filthy.

It came to the conclusion that without conducting such verification, the trial court could not have determined that the accused man was guilty of possessing pornographic material.

"The Court must view and examine the video cassette in order to determine whether it contains obscene scenes that are lascivious or appeal to the viewer's lustful, satyric, lewd, or prurient instincts when it is produced in a prosecution under Section 292 of the IPC. To put it another way, the High Court ruled that there is not enough substantial evidence to support a conclusion that an offence under Section 292 has been committed unless the judge or court personally watches the video cassette and determines that the content is offensive.

In the matter before the court, Harikumar, who ran a Kottayam video store, was charged with having ten pornographic video cassettes.

He was found guilty by a trial court under Section 292 (2) (a), (c), and (d) of the IPC (selling, hire, and circulation of obscene material) after the tapes were seized.

He was fined ₹2,000 and given a two-year sentence of simple jail. Later, an appellate court upheld the conviction but lowered the penalty to ₹2,000 in fines and one year in jail.

Harikumar challenged these orders by submitting a revision appeal to the High Court, claiming that the magistrate had never seen the allegedly pornographic images on the tapes. Instead, he maintained that the trial was based only on the testimony of witnesses and the findings of officials who looked over the evidence.

The High Court pointed out that video cassettes were considered primary evidence under the Indian Evidence Act of 1872.

It decided that there would be no substantial evidence to establish an obscenity conviction unless the trial judge physically saw the video tapes and independently determined whether or not they contained obscene content.

"The Court had to directly examine the video cassettes' contents in order to demonstrate that they contained pornographic content. It cannot be claimed that there is substantial evidence to support the claim that the video cassette's contents are obscene until the Court examines the cassette that the prosecution has produced for its examination, as required by Section 61

of the Indian Evidence Act," the ruling stated.

The High Court ruled that although police officer and other witness testimony could support conclusions, it could not take the place of the court's own legal examination of the material.

The Court determined that **Harikumar's** conviction was legally untenable because neither the trial court nor the appeal court had seen the cassettes' contents firsthand.

Harikumar's conviction and sentence were thus overturned, and the criminal revision petition was granted.

Harikumar was represented by advocate MP Madhavankutty.

Sangeetha Raj NR, a public prosecutor, represented the State.