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AM LARSON

Item – 48

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**IN THE HIGH COURT OF MANIPUR  
AT IMPHAL**

**W.P.(C) No.310 of 2023**

Smt. Sandham Mema aged about 60 years, W/o Sandham  
Ibopishak Meitei of Keirak Makha Leikai, P.S. & P.O.  
Kakching, Kakching District, Manipur – 795013 and Another.

*....Petitioner/s*

- Versus -

The State of Manipur represented by Principal Secretary/  
Commissioner (Home), Govt. of Manipur, office at Old  
Secretariat, Babupara, PO Imphal, Imphal West, Manipur –  
795001, Old High Court Complex and Others.

*...Respondent/s*

**BEFORE  
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

**ORDER  
(ORAL)**

**23.11.2023**

[1] Heard Mr. B. Prem Sharma, learned panel counsel appearing on behalf of High Court Legal Services Committee, Mr. H. Samarjit, learned GA for the State Respondent and Mr. Th. Rajkishore, learned counsel appearing for respondent No.2, Manipur State Commission for Protection of Child Rights.

[2] The petitioners filed the present writ petition under Article 226 of the Constitution of India for granting compensation to petitioner No.2

who was the minor victim of sexual offence at the relevant time. The accused faced trial for the charge under Section 376 of IPC read with Section 4 of POCSO Act in Spl. Trial (POCSO) Case No.24 of 2017 in the Court of Special Judge (POCSO), Thoubal.

[2.1] During the course of trial, the accused expired and vide order dated 28.11.2018, the trial was closed on the demise of the accused person.

[3] Mr. B. Prem Sharma, learned panel counsel submits that no compensation amount was awarded by the Ld. Special Court while closing the trial.

[4] Mr. B. Prem Sharma, learned panel counsel submits that the Special Court ought to have given appropriate award in terms of Section 33 of the POCSO Act. Since the trial was closed, the petitioners approached this Court for granting of appropriate compensation under Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018 framed by National Legal Services Authority.

[5] Mr. H. Samarjit, learned GA for the State Respondent and Mr. Th. Rajkishore, learned counsel for respondent No.2 have pointed out that the writ petition is not maintainable in the present form as explanation appended to the said Scheme framed by NALSA provides that the Scheme is not applicable in respect of POCSO case and the same is to be considered by the Special Court under Section 33 (8) of the POCSO

Act and Rule 7 of POCSO Rules, 2012. The explanation is reproduced as follows:

**Explanation:** It is clarified that this Chapter does not apply to minor victims under POCSO Act, 2012 in so far as their compensation issues are to be dealt with only by the Ld. Special Courts under Section 33(8) of POCSO Act, 2012 and Rules (7) of the POCSO Rules, 2012.

[6] Mr. Th. Rajkishore, learned counsel for respondent No.2 has pointed out that POCSO Rule has been amended and new POCSO Rule was framed in 2020 repealing the earlier rules of 2012 and in that case, the relevant provision under the new rule of 2020 is Rule 9 in respect of interim compensation.

[7] This Court has considered the submissions made at bar and perused the materials on record. The explanation appended to the Scheme of 2018 framed by NALSA specially excludes the compensation to be awarded to the minor victim in POCSO Act under Section 33(8) of the POCSO Act, 2012 and Rule 7 of the POCSO Rules, 2012 (Rule 9 of the new POCSO Rule, 2020).

[8] In order dated 28.11.2018 passed by the Ld. Special Judge, the aspect of adequate compensation to the victim (petitioner No.2) was not considered for awarding the compensation to the victim. Acquittal or conviction of the accused person has nothing to do with the entitlement of compensation to the victim of sexual assault. If the sexual assault is established from the materials produced, the Special Court is bound to grant adequate compensation.

[9] Accordingly, the petitioners are given liberty to approach the Special Court (POCSO) at Thoubal for awarding adequate compensation under Section 33 (8) of the POCSO Act read with Rule 9 of the POCSO Rules, 2020 in terms of the explanation appended to Rule 18 (2) of the Scheme of 2018 framed by NALSA and also the Scheme of 2023 framed by the Government of Manipur.

[9.1] With this observation, the writ petition is disposed of giving liberty to the petitioners to approach the Special Court (POCSO) at Thoubal for claiming compensation under Section 33(8) of the POCSO Act and Rule 9 of the POCSO Rules, 2020.

[9.2] On filing of the application by the petitioners, the Special Court (POCSO) at Thoubal shall make an endeavor to dispose of the same within 3(three) months from the date of filing of the application.

[10] This Court appreciates the endeavor made by Mr. B. Prem Sharma, learned panel counsel appearing on behalf of High Court Legal Services Committee in pursuing the present case.

[11] Furnish a copy of this order to the learned counsels appearing for the parties and send a copy of the same to the Learned Special Judge (POCSO), Thoubal for information.

**JUDGE**