

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

**Crl. Misc. No. M-6935 of 2015**

**Date of decision : September 09, 2015**

**Ananya Thakur**

**..... Petitioner**

**Versus**

**Arvind Thakur and another**

**...Respondents**

**CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

**Present: Mr. H.S. Bhullar, Advocate  
for the petitioner**

**Mr. Sudesh Sahi, Advocate  
for respondent No. 1**

**Mr. Sukant Gupta, A.P.P. for  
U.T. Chandigarh – respondent No. 2**

**ANITA CHAUDHRY, J.**

The petitioner seeks quashing of order dated 18.2.2015 passed by Additional Sessions Judge-cum-Special Judge, Chandigarh and for directions to the Court to decide her application under Section 357-A Cr.P.C.

It would be apposite to refer to the facts which had given rise to a complaint filed by the petitioner before the Judicial Magistrate Ist Class. Perusal of the title shows that the petitioner presents herself as wife of Arvind Thakur who is arrayed as an accused.

The facts presented by the complainant are that she was

a matriculate and had done diploma in Fashion Designing and was living with her family but she was not worldly wise. She fell in love with Yogesh Kumar, a resident of Naraingarh and on his asking she left her parents house and started living with him. Yogesh is said to have taken her to temple where a marriage certificate was taken and then they approached the High Court for protection. The protection order was passed in the petition decided on 18.05.2012. Yogesh started harassing the complainant. The complainant tired of the harassment contacted Arvind Thakur on telephone. The complainant had pleaded that she had read the name of the respondent in the newspapers and on the net and had found that he was helping women in distress. A meeting with him was arranged at Bus Stand, Sector 43, Chandigarh. The complainant accompanied the respondent to a hotel in Sector 42, Chandigarh. The accused offered to leave her at the Bus Stand but on the way told her that he would leave her at Ramgarh. On the way they stopped in Sector-17, Chandigarh and at 6.00 p.m. they sat in another vehicle and he took her to Ramdarbar and thereafter they left for Ramgarh. On the way, the accused started showed interest in her life and left her at her destination.

The petitioner received a call from the accused. The complainant relates her encounter with the accused and had alleged that the accused offered to employ her and also arranged PG accommodation for her and she started working for him.

The complainant had further pleaded that on 23.07.2012 the accused without her consent filled her 'Mang' and put the Mangal

Shutra and promised to keep her as his wife. She started residing with the accused. She stated that the accused had presented her as his wife and told her that her marriage earlier performed was not legal marriage and he could marry her. Believing it, she started living in a house in Sector 38(W) Chandigarh. Later the complainant came to know that the respondent was already married. The petitioner then alleges that the accused had cheated her and had raped her.

A complaint was said to have been given to the police but no case was registered. Thereafter, the petitioner approached the Court with a complaint. Her prayer for forwarding the complaint to the police under Section 156(3) Cr.P.C. was rejected and the complainant was asked to lead her evidence. The Court summoned the accused and charge has been framed. The petitioner moved an application (Annexure P-3) under Section 357-A Cr.P.C. seeking ad-interim maintenance and rehabilitation amount. She had alleged that she has been exploited for 9 months and she was entitled to the following reliefs:-

- (i) direct the accused to hand over half of the property out of houses, shops, vehicles and cash with him for the rehabilitation of the victim/applicant;*
- (ii) and for the time being direct the accused to immediately hand over the possession of House No. 4848/1, Sector 38 (West), Chandigarh to the applicant for residing therein in the same condition as the same exist now because all the house hold articles such as furniture, beddings, kitchen articles, fridge, fans etc. are still lying therein and which were being used by the applicant and the accused while living there together as husband and wife.*

*(iii) he may be directed to pay Rs. 1 lac per month as maintenance amount.*

*(iv) he may further be directed to pay a sum of Rs. 20 lacs to the applicant as rehabilitation amount and for her sufferings as explained in the application;*

*(v) or in the alternative the State of U.T. Chandigarh or the Legal Services Authority, U.T. Chandigarh may be directed to pay such a rehabilitation amount to the applicant.*

*(vi) the applicant may be allowed any other relief or benefit to which she may be found entitled under the circumstances of the case.*

The respondent (accused) had filed his reply (Annexure P-4). The trial Court subsequently passed the following order:-

*“Statement of Insp. Mehar Kaur is recorded to the effect that after completion of inquiry, the record pertaining to the present case was deposited with HAC Branch, Police Head Quarter, Sec. 9, Chandigarh. Same may kindly be summoned for recording her evidence. In view of statement of Insp. Mehar Kaur it is hereby ordered that the summoned record be summoned from HAC Branch, Police Head Quarter, Sec. 9, Chandigarh. The witness present today is discharged and bound down for 2.3.2015.*

*Two PWs named Sushil Chahar & Mamta Sharma are also also present but could not be examined as they did not bring the complete summoned record. Therefore, they are also discharged for today and bound down with the direction to bring the complete summoned record on the date fixed. Summons of Navneet Gulati received back duly effected but despite service he did not appear in the Court. Therefore, he be summoned through*

*bailable warrants in the sum of Rs. 5,000/- with one surety in the like amount returnable for the date fixed. Summons of Ananya Thakur complainant/ prosecutrix received back unserved. In order to procure the presence of Ananya Thakur complainant/prosecutrix she be summoned through bailable warrants in the sum of Rs. 5,000/- with one surety in the like amount returnable for the date fixed.*

*Learned counsel appearing on behalf of complainant pressed the application under Section 357-A Cr.P.C. for grant of ad-interim maintenance and rehabilitation amount. In the light of the facts and circumstances of the present case I did not find it appropriate to decide the application at this stage. The aforesaid application will be decided at the time of the final decision of the case.”*

I have heard counsel for the petitioner. He has referred to Section 357-A Cr.P.C. and placed reliance upon **Suresh and another vs. State of Haryana, 2015(9) RCR(Criminal) 148** and has urged that interim financial relief can be granted to a victim and the Court has postponed the issue saying that the matter would be decided after the trial is completed and direction be given to the Court to decide her application.

Learned counsel appearing for respondent No. 1 as well as the counsel representing State of U.T. Chandigarh have urged that provisions of Section 357-A Cr.P.C are not be read in isolation and it is only when an order is passed under Section 357 Cr.P.C. and the Court finds that the compensation is not adequate then only an order has to be made at the conclusion of the trial. It was urged

that each State Government has to prepare a scheme and State of U.T. Chandigarh has also prepared a scheme and it is available and it has reported that the District Legal Services Authority or the State Legal Services Authority that shall decide the quantum of compensation to be awarded under the scheme as referred to in sub Section (1). It was urged that the evidence of the prosecution was still going on. Learned counsel for respondent No. 1 had urged that the petition under Section 125 Cr.P.C. had been filed and some maintenance had been allowed to the petitioner.

It would be necessary at this juncture to refer to Section 357 and 357-A Cr.P.C. :-

***357.Order to pay compensation.-***

*(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied -*

*(a) in defraying the expenses properly incurred in the prosecution;*

*(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;*

*(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855, (13 of 1855) entitled to recover damages from the person sentenced for the loss resulting to them from such death;*

*(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bonafide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.*

*(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.*

*(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.*

*(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.*

*(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.*

**357A. Victim compensation scheme.** - *(1) Every State Government in coronation with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation .*

*(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).*

*(3) If the trial Court, at the conclusion of the trial, is satisfied that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the Victim has to be rehabilitated, it may make recommendation for compensation.*

*(4) Where the offender is not traced or identified, but the victim is identified and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.*

*(5) On receipt of such recommendation or on the application under sub-section(4) the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.*

*(6) The State or the District Legal Services Authority, as the case may be to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of costs on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.*

Respondent No. 1 is facing trial on a complaint filed by the petitioner. A complaint earlier had been given to the police but no FIR was registered. The petitioner now pleads that she is a victim

and was entitled to interim order and for payment of compensation.

A perusal of the provisions contained in the Criminal Procedure Code makes it evident that under Section 357 Cr.P.C. when a Court imposes a sentence then it would make an order for payment of fine and it lays the manner in which the fine has to be defrayed and if the sentence is passed and fine does not form part thereof then compensation can be awarded for any loss or injury by reason of the act for which the accused person had been sentenced. It further says that an order under this Section can be made even by an Appellate Court or by the High Court while exercising the powers of revision.

Section 357-A Cr.P.C. confers powers on the State Government to prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. The amended provisions were introduced in the Criminal Procedure Code in 2009. It is the Court which has to make a recommendation for compensation and it is District Legal Services Authority who would decide the compensation which is payable. Clause 3 speaks about the powers of the trial Court to award additional compensation if it is satisfied that the compensation awarded under Section 357 Cr.P.C. is not adequate or where the cases ends in acquittal if the victim has to be rehabilitated then it is to recommend payment of compensation.

The Authority referred to by the petitioner is of little help.

In the present case police did not register the FIR and the merits of

the complaint are yet to be adjudicated. The trial Court has only postponed the issue as it feels that considering the circumstances of the case it would be appropriate to take up the issue at the end of the trial. The trial Court has to take a decision at the conclusion of the trial in view of the facts.

It is yet to be adjudicated as to whether the petitioner is a legally wedded wife or it was a live in relationship and whether she is a victim and whether the case would fall under Section 376 Cr.P.C.

I find no merit in the petition and the same is dismissed.

**September 09, 2015**

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**(ANITA CHAUDHRY)  
JUDGE**