

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

**CRM-W-119 of 2001 in
CRWP No.1155 of 1995**

Date of Decision: 17.08.2016

Kamlesh Sharma

... Applicant

Versus

State of Haryana

... Respondent

CORAM:- HON'BLE MR. JUSTICE M. JEYAPPAUL

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. R.S.Mamli, Advocate,
for the applicant.

Mr. Sangram Singh, Advocate for
Mr. Sumeet Goel, Advocate,
for the CBI.

Mr. Ashok Mutreja, DAG., Haryana.

TEJINDER SINGH DHINDSA, J.

The instant application under Section 482 Cr.P.C. was preferred in the year 2001 praying for grant of compensation to the tune of Rs.5 lacs to the applicant on the plea that her daughter, namely, Renuka was raped and murdered by one Sunil Kumar Gupta and other co-accused on 26.08.1995 and in spite of the offender having been identified, he has not been traced and as such trial has not commenced.

Counsel for the parties have been heard.

The case file reveals that the main case had been disposed of by

this Court on 28.11.1995 and investigation in the matter had been entrusted to the Central Bureau of Investigation. Thereafter, Central Bureau of Investigation filed its report on 27.01.1998 before this Court indicating involvement of Sunil Kumar Gupta in the crime and as such charge-sheet against him was proposed under Sections 364, 367, 302 read with Section 201 and 120-B of the Indian Penal Code. The report presented before this Court was objected to by all concerned. Vide order dated 30.05.2003, this Court did not accept the report filed by the CBI pointing out glaring infirmities in the process of investigation and accordingly directed the report to be placed before the Director CBI with directions to carry out further investigation in terms of the observations contained in the order. On the same very date i.e. 30.05.2003, the instant application was adjourned sine die.

We are now in the year 2016 and faced with a situation where no headway has still been made. Counsel for the parties have apprised this Court that even though the offender had been identified but he has till date not been traced and as such the trial has not commenced.

Prayer of the applicant i.e. mother of the victim seeking compensation under such circumstances would have to be seen against the backdrop of Section 357-A of the Code of Criminal Procedure and which reads as follows:-

357A. Victim compensation scheme-(1) Every State Government in coordination 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 recommendations 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 cost 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.”*

The State of Haryana vide Notification dated 03.04.2013 in exercise of powers conferred by Section 357-A of Cr.P.C. has framed the Haryana Victim Compensation Scheme, 2013 and the same has been placed on record. Clause 4 of the Scheme is relevant and reads as under:-

- 4. (1) A victim shall be eligible for the grant of compensation where,--*

(a) a recommendation is made by the Court under sub section (2) and (3) of Section 357-A of the act of the offender is not traced or identified, and where no trial takes place, such victim may also apply grant of compensation under sub-section (4) of section 357-A of the act;

(b) the victim/claimant reports the crime to the officer-in-charge of the police station or any senior police officer or Executive Magistrate or Judicial Magistrate of the area within 48 hours of the occurrence:

Provided that the District Legal Service Authority if satisfied for the reasons to be recorded in writing, may condone that delay in reporting.

(c) the offender is traced or identified, and where trial has taken place, the victim/claimant has cooperated with the police and prosecution during the investigation and trial of the case;

(d) The income of the family should not exceed Rs.4.5 lac per annum:

(e) The Crime on account of which the compensation which to be paid under this scheme should have been occurred within the jurisdiction of Haryana State.

(2) The employees of Central/State Government, Boards. Corporations and Public Undertakings and income tax payees shall not be eligible under this scheme.”

We are of the considered view that the Statutory Provision having been specifically inserted in Cr.P.C. covering the field of grant of compensation and a Victim Compensation Scheme having been framed by the State Government, it would be imperative for the applicant to pursue her claim before the concerned authority under the scheme.

Accordingly, the instant application is disposed of in terms of granting liberty to the applicant to submit her claim/application before the appropriate authority under Section 357-A of the Cr.P.C. read with Victim

Compensation Scheme.

Suffice it to observe that in the eventuality of any such claim being set up and in the peculiar facts and circumstances of the case, the applicant would not be confronted with the objection of delay.

Application is Disposed of.

(M. JEYAPPAUL)
JUDGE

(TEJINDER SINGH DHINDSA)
JUDGE

17.08.2016
vandana

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No