

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1105 OF 2015

1. Bhagwan s/o Digamber Devde
Age : 50 years, Occu : Labour,
R/o : Nagsen Nagar, Near Bharat Bekri,
Pirbazar, Aurangabad.
2. Dipali w/o Suryakant Shingade
Age : 17 years, Occu : Nil,
R/o : Nagsen Nagar, Near Bharat Bekri,
Pirbazar, Aurangabad.
3. Rupesh s/o Suryakant Shingade
Age : 1 year 9 months, Occu : Nil,
R/o : as above.

(Petitioner nos. 2 and 3 U/G of
father/maternal grandfather petitioner
No.1)

...Petitioners

versus

1. The State of Maharashtra
Notice to be served on A.G.P.
High Court Aurangabad for
The Secretary of Ministry of
Women and Child Development
Department, Mantralaya, Mumbai.
2. The District Collector
@ Chairman Victim Compensation
Scheme MANODHIRYA YOJANA.
Collector Office, Aurangabad.
3. The District Women and Child
Development Officer @
Secretary of Victim Compensation
Scheme MANODHIRYA YOJANA.
Plot No. 9, Jadhav Building,

Khokadpura, Near Gavkari Press,
Opp. Shivaji High School,
Aurangabad.

...Respondents

.....
Mr. M. N. Deshmukh, advocate for the petitioners.
Mr. A. D. Namde, A.P.P. for respondent nos. 1 to 3.
.....

**CORAM : S. S. SHINDE AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 28.06.2018**

**Date of pronouncing
the Judgment : 17.07.2018**

JUDGMENT (PER V.K. JADHAV, J.) :-

1. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the respective parties.

2. This writ petition is filed with the following prayer:

“B]Minor Petitioner No.2 and 3 be granted suitable victim compensation amount from MANODHIRYA YOJANA or any other funds of respondents including free medical and medicine treatment from Dhoot/Kamalnayan Bajaj/ Hegdewar Hospitals by quashing and setting aside order dated 11/16.03.2015 at Exhibit-F passed by respondent No.3.”

3. The learned counsel for the petitioners submits that respondent no.3, by the impugned order/communication dated 11/16.03.2015 has refused to grant benefit of Manodhairya Scheme to the petitioners merely on the ground that the said scheme is implemented in the State of Maharashtra with effect from 02.10.2013 and the incident had occurred prior to the said date i.e. from December 2012 to January 2013. The authority below, while passing the impugned order, ignored the provisions of the enactments introduced by the Parliament for the purpose of compensation and rehabilitation of the victims of crime, especially of rape, child sex abuse and acid attacks. As per the provisions of Section 357-A of the Code of Criminal Procedure, 1973, which is introduced by the Parliament by way of amendment w.e.f. 31.12.2009, it is incumbent upon every State Government to prepare a scheme for providing funds for compensating the victim or his/her dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. Section 357-C of Cr.P.C. also provides for free of cost first-aid or medical treatment to the victims of offences covered under Sections 326-A, 376, 376-A to 376-E of I.P.C in all hospitals including public or private, whether run by Central Government, State Government, local bodies or any other person. Based on the above provisions of Cr.P.C. and also the Supreme Court directives to have such scheme in place, the State Government has

introduced the scheme Manodhairya. Clause (iv) of the said scheme provides for housing, counseling, medical and legal aid, education and vocational training to the needy victims of rape, child sex abuse or acid attack victims. While it is necessary to punish the accused, it is equally necessary to rehabilitate victims of such crimes and to restore dignity and confidence that the accused took away from them, and it is for that purpose the State Government has launched the Manodhairya scheme in the State of Maharashtra. The authority below, by ignoring the very purpose of the scheme and also the amended/relevant provisions of Cr.P.C., has mechanically passed the impugned order which is arbitrary and advisory rather than functional.

4. The learned counsel for the petitioners submits that in the present case, the petitioners belong to Scheduled Casts category. The rape victim was a minor at the time of filing of writ petition, her father is a labour and mother is charlady and as such, the family is below poverty line and is in need of compensation and free medical treatment to the victim and her new born child.

5. The learned counsel for the petitioners, in order to substantiate his contention, placed reliance on the following two cases:

1. ***Delhi Domestic Working Womens Forum vs. Union of India***, reported in ***(1995) 1 SCC 14*** and
2. ***Tekan Alias Tekram vs. State of Madhya Pradesh***, reported in ***(2016) 4 SCC 461***.

6. The learned APP, on the other hand, invites our attention to the Government Resolution dated 21.10.2013 vide which the Manodhairya Scheme has been brought into effect in the State of Maharashtra, particularly clause (i) of the said G.R. which mandates that the said scheme will be applicable to the cases occurred on or after 02.10.2013. He submits that, in the instant case the period of crime is prior to the said date i.e. between December 2012 to January 2013 and the said fact is also not denied by the petitioners. Hence, Manodhairya Scheme is not applicable to the case of petitioner no.2 and the petitioners are not eligible for benefit under the said scheme.

7. By clause 28 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009) (with effect from 31.12.2009), a new Section 357-A has been inserted in order to provide for the State Government to prepare, in co-ordination with the Central Government, a scheme called “victim compensation scheme” for the purpose of compensation to the victim or his/her dependents who have suffered loss or injury as a result of the crime. Section 357-A is reproduced herein below:

“357-A. **Victim compensation scheme.**- (1) Every State Government in co-ordination 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.”

8. In the case of ***Mohd. Haroon and Others vs. Union of India and Another***, reported in **(2014) 5 SCC 252**, in cases of crimes against women, the Supreme Court has expressed the necessity of formulation and implementation of the policies to uplift socio-economic conditions of women to curb gender violence. By referring the provisions of Section 357-A, which cast a responsibility on the State Government to formulate scheme for compensation to the victims of crime in co-ordination with the Central Government, the Supreme Court has observed that no rigid formula can be evolved as to have a uniform amount and it should vary in facts and circumstances of each case. Nevertheless, the obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to the commission of such heinous crime (rape), rehabilitation becomes a must in each and every case.

9. In the case of ***Laxmi vs. Union of India and Others***, reported in **(2016) 3 SCC 669**, the Supreme Court has held that a minimum of

Rs.3,00,000/- (Rupees three lakhs only) shall be made available to each victim of acid attack under Section 357-A, full medical assistance should be provided to the victims of acid attack, private hospitals should also provide free medical treatment to such victims and action may be taken against hospital/clinic for refusal to treat victims of acid attacks in contravention of the provisions of Section 357-C of the Code. The Supreme Court has also observed that free medical treatment shall not only imply physical treatment to the victim of acid attack but also availability of medicines, bed and food in the concerned hospital.

10. In the case of ***Tekan alias Tekram vs. State of Madhya Pradesh (now Chhattisgarh)***, reported in ***(2016) 4 SCC 461***, where the victim was subjected to sexual intercourse on the pretext of marriage, the Supreme Court held that all the States and Union Territories shall make all endeavour to formulate a uniform scheme for providing victim compensation in respect of rape/sexual exploitation as required under the law taking into consideration the scheme framed by the State of Goa for rape victim compensation.

11. In the backdrop of the aforesaid observations, the State of Maharashtra has passed a Government Resolution dated 21.10.2013

for implementation of a scheme named and titled as Manodhairya Yojna with effect from 02.10.2013 for grant of compensation to the rape victims, sexually abused children and acid attack victims. In the aforesaid Government Resolution, for the purpose of grant of compensation to the rape victims, it has been decided to consider the definition of 'rape' in terms of the provisions of Section 375 of IPC and further made applicable the provisions of Sections 376, 376(2), 376-A, 376-B, 376-C, 376-D and 376-E of IPC and also made applicable the provision of Sections 3, 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) to consider sexual assault on children. For the purpose of acid attack victims, it has been decided to consider the definition of 'acid attack' in term of the provisions of Sections 326-A and 326-B of IPC. By the said G.R. dated 21.10.2013, a fixed compensation has been determined with regard to the categories as detailed above, alongwith provisions for free medical treatment in Government Hospitals and the State of Maharashtra has also formed the District Criminal Injuries Relief and Rehabilitation Board (for short "District Board") presided over by the District Collector alongwith other members including Civil Surgeon and Government Pleader of the concerned District etc. It has also been specifically stated in the said Government Resolution dated 21.10.2013 that as soon as an F.I.R. is registered, the concerned police

station/Investigating Officer has to inform about the said registration of crime to the District Board.

12. In terms of the Government Resolution dated 21.10.2013, petitioner nos. 1 and 2 had filed an application before the said District Board on 09.02.2015 for grant of compensation of Rs.3,00,000/- in view of registration of Crime No. M.Case 01/2014 at Osmanpura Police Station, Aurangabad. By communication dated 11/16th March, 2015, the Member Secretary of the District Criminal Injuries Relief and Rehabilitation Board informed petitioner no.1 herein that rape victims are entitled for compensation in terms of the G.R. dated 21.10.2013 only for the incidents which have occurred on 02.10.2013 onwards and the said benefit cannot be extended to the victims of rape wherein the incident had taken place prior to 02.10.2013. It has been specifically communicated to the petitioners that they are not entitled for compensation under the said G.R. and that the District Board has taken a decision to that effect.

13. On careful perusal of the copy of F.I.R. No. M.Case 01/2014, we find that the aforesaid crime came to be registered on 22.12.2014. However, in the said F.I.R., period of incident is shown as December 2012 to January 2013. It also appears that the aforesaid crime M.Case

01/2014 came to be registered for the offences punishable under Sections 354-C, 354-D, 363, 366, 366-A, 368, 375, 376 and 376-A of IPC, under Sections 376-E, 506 r/w 34 of IPC and Sections 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012.

14. On careful perusal of the contents of F.I.R. of Crime No. M.Case 01/2014, we find that during the period from December 2012 to January 2013, the accused Suryakant Shingade, who is residing adjacent to the house of the petitioners herein, threatened petitioner no.2/complainant that he had a video showing her naked figure and he would place the said video on internet. It has been further alleged in the complaint that by giving such threat, said accused had repeatedly committed rape on petitioner no.2, in consequence of which, petitioner no.2/original complainant remained pregnant. It has been further alleged in the complaint that in the month of July 2013, said accused had performed marriage with petitioner no.2 by violating the provisions of the Prohibition of Child Marriage Act, 2006 and by taking disadvantage of the same, sexually abused and committed rape on her time to time. On 19.11.2013, petitioner no.2/original complainant gave birth to a male child in one hospital at Karad. After birth of the said child, the accused alongwith his family members had been to the said hospital and declined paternity of the said child. It has

been further alleged in the complaint that even the accused had given threat to petitioner no.2 that if she would approach the police, they would kill her.

15. On careful perusal of the contents of F.I.R., we are of the opinion that petitioner no.2 has fulfilled the criteria of rape victim and also the victim of sexual assault in terms of the provisions of Sections 3, 4, 5 and 6 of the POCSO Act as specifically mentioned in the Government Resolution dated 21.10.2013. In addition to the provisions of Section 376 of IPC, the provisions of Section 5, most particularly Section 5 (j)(ii), (k) and (l) of POCSO Act stand attracted in terms of the allegations made in the complaint.

16. In terms of the provisions of Section 220 of the Code of Criminal Procedure, if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. The word 'transaction' means a group of acts so connected together as to involve certain ideas, namely, unity, continuity and connection. In order to determine, whether a group of acts constitute one transaction, it is necessary to ascertain whether they are so connected together as to constitute a whole which can properly

be described as a transaction. The fact that the offences are committed at different times does not necessarily show that they may not be so connected. Proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the elements for consideration, whether the alleged acts form the same transaction. On perusal of the allegations made in the complaint, we find that it is a series of acts, as alleged against the accused in the aforesaid Crime No. M.Case 01/2014, which together form the same transaction. We find no justification in rejecting the application of the petitioners by the District Criminal Injuries Relief and Rehabilitation Board by ignoring the series of acts which form the same transaction and ultimately, on 19.11.2013, the accused has not only denied paternity of the child, but also given threats to petitioner no.2/complainant. In view of the above discussion, in our considered opinion, the petitioners are entitled for compensation in terms of the Government Resolution dated 21.10.2013.

17. The earlier decision taken by the District Criminal Injuries Relief and Rehabilitation Board also needs to be referred, wherein the said District Board, by order dated 19.01.2015, granted compensation of Rs.3,00,000/- to the petitioners. However, on 16.02.2015, the said District Board has again reviewed its own decision, cancelled the same

and refused to grant compensation to the petitioners. On careful perusal of the entire scheme as stated in G.R. Dated 21.10.2013, we do not find that such power to review its own decision has been conferred upon the District Criminal Injuries Relief and Rehabilitation Board.

18. The learned counsel for the petitioners has brought to our notice the Government Resolution dated 30.12.2017. It appears that as per the directions given by the Division Bench of this Court at its principle seat at Mumbai by order dated 08.03.2017 in pending writ petition no. 2951 of 2016, removal of the cut-off date 02.10.2013 is under positive consideration of the Government and benefit of the said scheme is likely to be extended to all such victims with retrospective effect. Though the State Government is yet to give a positive decision in this regard, the quantum of compensation has been raised to a considerable extent as per Annexure A to the aforesaid Government Resolution dated 30.12.2017.

19. In the instant case, petitioner no.2/rape victim was a minor as on the date of filing of the writ petition. She has delivered a male child. Her father is a labour by occupation and her mother is a charlady. In view of the above discussion, the petitioners are entitled for the compensation amount under the Manodhairya Scheme in terms of the

Government Resolution dated 21.10.2013. We accordingly allow the writ petition in terms of prayer clause “B” and further direct the respondents to grant victim compensation of Rs.3,00,000/- (Rupees three lakhs only) to the petitioners under the Manodhairya Scheme, alongwith free medical facilities in terms of the Government Resolution dated 21.10.2013. Rule is made absolute in the above terms. The writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)

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