

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

CRIMINAL WRIT PETITION NO.653 OF 2018

Farah W/o Naim Chaus
Age-25 years, Occ-Household,
R/o Damgan Pura, Barabhai Galli,
Ravivar Peth, Ambajogai,
Tq. Ambajogai, Dist. Beed.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through : Secretary
Women & Child Development Department,
Mantralaya, Mumbai-32
2. The Collector, Beed,
Dist. Beed.
3. District Women & Child Development
Officer, Beed, District Beed.

RESPONDENTS

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Mr. P.P. Khandagale, Advocate for the Petitioner.
Mr. S.Y. Mahajan, A.P.P. for Respondent Nos.1 to 3.

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**CORAM:S.S.SHINDE &
R.G. AVACHAT,JJ.**

**RESERVED ON : 06.02.2019
PRONOUNCED ON: 13.02.2019**

JUDGMENT (Per S.S.Shinde, J.):

Rule. Rule made returnable forthwith
and heard finally with the consent of the
parties.

2. Being aggrieved by the impugned communication dated 23rd May, 2017 (Exhibit-C/Page 51) issued by Respondent No.3, rejecting the application of the petitioner, praying therein to grant compensation to her being a convict of rape under "Manodharya Scheme", the present Petition is filed.

3. It is the case of the petitioner that on 6th September, 2012 in between 4.30 a.m. to 5.00 a.m., Amjad Kathalu Qureshi and Manjurali Layakali Shah entered in her house and committed rape on her against her will. During the course of said sexual assault, the petitioner was also assaulted by those accused. The accused were tried and convicted by the Additional Sessions Judge, Ambajogai for an offence punishable under Section 376 of the Indian Penal Code and for other offences under the Indian Penal Code.

4. It is the case of the petitioner that merely because the date of incident is prior to the date of issuance of Government Resolution dated 21st October, 2013, issued by the Women and Child Welfare Department, her application has been rejected.

5. Learned counsel appearing for the petitioner submits that the said scheme is providing financial aid to the victim of rape so as to bring out the victim from the shock of rape. It is submitted that the husband of the petitioner is working as labourer and one child is dependent upon her. Due to the said incident of rape, her reputation in the society has been shaken and family is not in a position to pull on financially. It is submitted that the Division Bench (Coram : S.S. Shinde and V.K. Jadhav, JJ) in the case

of Bhagwan S/o Digamber Devde and others V/s The State of Maharashtra and others) in Criminal Writ Petition No.1105 of 2015, in similar facts situation has allowed the Petition and directed the concerned State Authorities to grant compensation to the petitioner therein. Learned counsel also invites our attention to the pleadings in the Petition, grounds taken therein, rejoinder affidavit and submits that the Petition deserves to be allowed.

6. On the other hand learned A.P.P. appearing for the Respondent-State and its officials invites our attention to the affidavit in reply and the Government Resolution dated 21st October, 2013 and subsequent Government Resolution dated 1st August, 2017, and submits that, it is made clear in the said Government Resolution that

if the incident had taken place prior to bringing into force the Government Resolution dated 21st October, 2013, in that case, the victim will not be entitled for compensation. It is submitted that the State Government has introduced the new revised "Manodhairya Scheme" and as per the said scheme, all powers to decide the application of the victim has been vested with the District Legal Services Authority. It is submitted that the cut-off date i.e. 2nd October, 2013, which is mentioned in the first Government Resolution dated 21st October, 2013, is not yet removed and it is under active consideration of the State Government to remove such cut-off date.

7. We have given careful consideration to the submissions advanced by learned counsel appearing for the petitioner and

learned A.P.P. appearing for the respondent/State. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein and annexures thereto, reply filed on behalf of Respondent Nos.1 to 3, rejoinder filed by the petitioner and all the relevant Government Resolutions, which are placed on record.

8. Indisputably, the Government Resolution dated 21st October, 2013 has been brought into force so as to provide compensation keeping in view the provisions of Section 357 of the Code of Criminal Procedure. The Division Bench of this Court (Coram : S.S. Shinde and V.K. Jadhav, JJ) in the case of Bhagwan S/o Digamber Devde and others V/s The State of Maharashtra and others) in Criminal Writ Petition No.1105 of 2015, while considering the similar facts

situation, in paras 7 to 12 held as under:-

"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."

9. It is true that the first information report has been registered on 6th September, 2012 with Ambajogai Police Station for the offences punishable under Section 324, 376, 452 of the Indian Penal Code. The Government Resolution dated 21st October, 2013 has been brought into force from the date of issuance of said Government Resolution. By way of said Government Resolution, the benefits are extended to the convicts of

rape. It is true that though the date of incident is prior to bringing into force such Government Resolution, however, mental trauma suffered by the petitioner is continuous cause from the date of such incident, and further same may continue throughout life of the petitioner.

10. It is also necessary to state that though the date of incident is prior to bringing into force the said Resolution, nevertheless the trial had taken place after introducing such resolution and accused has been convicted under Section 376 of the Indian Penal Code in the year 2017. When the State Government has brought the aforesaid Government Resolution with laudable object to provide compensation to the victim of rape, on technical ground that the alleged offence has taken place prior to issuance of the Government Resolution, would be defeating the

very object of bringing into force the said Government Resolution.

11. As rightly submitted by learned counsel appearing for the petitioner, in the case of Bhagwan S/o Digamber Devde and others V/s The State of Maharashtra and others, cited supra, this Court has considered some what similar facts situation and had arrived at a conclusion to issue directions to the Respondents to pay compensation to the victim therein. It is true that the old cases should not be reopened, however, if the trials are concluded after bringing into force aforesaid Government Resolution and the allegations in the first information report have been proved and to that effect the conviction is given to the accused, in our considered opinion, merely technically the incident had taken place just one year before the introduction

of the said Government Resolution, cannot be a ground to deny the compensation to the petitioner when the petitioner has approached to this Court stating therein that her husband is labourer and there is one child dependent upon them and due to loss of reputation in the society, they are not able to collect the adequate means for their survival.

12. In that view of the matter, in the peculiar facts and circumstances of this case, we are of the opinion that the ends of justice would be met in case the directions are issued to the District Legal Services Authority to pay the compensation of Rs.2,00,000/- (Rs. Two Lacs Only) to the petitioner. Accordingly, we pass the following order :-

ORDER

(i) Writ Petition is allowed. The impugned communication dated 23rd May, 2017 (Exhibit-C/Page 51) issued by Respondent No.3, is quashed and set aside.

(ii) We direct the District Legal Services Authority, Beed to pay Rs.2,00,000/- (Rs.Two Lacs) to the petitioner, as one time measure.

(iii) We make it clear that the present order is passed in the peculiar facts and circumstances of this case, and the same may not be cited as a precedent in other cases.

10. Writ Petition stands disposed of accordingly. Rule is made absolute in above terms.

(R.G. AVACHAT, J)

(S.S.SHINDE, J)