

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHARATHIDASAN

W.P.No.9697 of 2011

Muniammal

.. Petitioner

Vs

1.The State of Tamilnadu,
rep. by its Secretary,
Home Department,
Fort St. George, Chennai-9

2.The Secretary,
Public and Social Welfare Department,
Government of Tamilnadu,
Fort St. George, Chennai-9

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to provide immediate compensation for the physical and mental injury, emotional sufferings and substantial impairment of fundamental rights caused to the minor child of the petitioner as a result of criminal offense under Sections 341, 342, 376 read with 511 IPC.

For Petitioner : Ms.P.Uma

For Respondents : Mr.I.Sathish, AGP

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, to direct the respondents to provide immediate compensation for the physical and mental injury, emotional sufferings and substantial impairment of fundamental rights caused to the minor child of the petitioner as a result of criminal offense under Sections 341, 342, 376 read with 511 IPC.

2. The facts leading to filing of the Writ Petition on the pre-supposed allegations are that the petitioner is the mother of victim child. While they were residing in temporary shelter at the time of tsunami, one Peter, who was residing adjacent to the shelter of the petitioner, had sexually assaulted the petitioner's daughter, who was aged about 9 years at that time. Then a complaint has been lodged by the

petitioner before the Inspector of Police, Ennore Police Station, and when they were reluctant to take action, the petitioner preferred a petition in CrI OP No.10657 of 2007 before this Court and the same was allowed and the petitioner's complaint was taken on file, and a case has been registered in Crime No.4 of 2007 under Section 4 of T.N. Prohibition of Women Harassment Act. Again, the petitioner has approached this Court and this Court by an order dated 17.04.2007, directed the respondent police to hand over the case to CBCID (Metro Wing) and to file a final report within three months. As per the above direction, a case has been registered under Crime No.39 of 2007, for offences under Sections 341, 342, 376 read with 511 IPC and the accused was arrested. Thereafter, after an elaborate trial, the accused was convicted for the offences under 341, 342, 376 read with 511 IPC. Since the petitioner's daughter was a minor girl suffered with physical and mental injury, at the time of occurrence, who had also undergone suffering and sexual harassment, the petitioner came out with the present Writ Petition seeking for suitable compensation.

3. A counter affidavit has been filed by the first respondent stating that the petitioner's claim is unsustainable since the petitioner has not given the facts and details for claiming compensation. The writ petition itself is not maintainable merely on the ground that sexual harassment is the basis for the allegations and the petitioner has not chosen to make any specific allegations of negligence or misconduct against the State or its authorities or officials, hence the respondents need not be liable to pay compensation. It is also stated that crime is committed by the individual and the vicarious liability on the State does not arise in this case since the petitioner has not set out any specific allegation against the State. It is also stated that as per the Government Order in G.O.(Ms) No.491 dated 18.05.2010, a victim of rape is entitled to a compensation of Rs.15,000/- only.

4. The learned counsel for the petitioner would submit that now pending writ petition, the State Government has framed a Scheme called Tamil Nadu Victim Compensation Scheme for Women Victims /Survivors of Sexual Assault/Other Crimes, 2018, (herein after referred to as 'the Scheme'). As per the scheme, the petitioner's daughter, who was a victim, is entitled for compensation and hence, the petitioner's claim may be considered under the Scheme.

5. Per contra, the learned Additional Government Pleader appearing for the respondents would contend that occurrence had taken place in the year 2006 while the Scheme was framed in the year 2018. Clause 16 of the Scheme envisages that no claim should be entertained if made beyond three years from the date of occurrence of the offence or conclusion of the trial and in this case, since admittedly, the occurrence took

place in the year 2006, the petitioner is not entitled to claim any compensation under the Scheme.

6. I have considered the rival submissions of the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

7. It is an admitted fact that the petitioner's daughter suffered physical, mental, emotional injuries due to the sexual harassment, ultimately, the accused was convicted after full-fledged trial. Now, on the basis of the directions of the Hon'ble Supreme Court, the State Government has also framed a Scheme for providing compensation for the women, who had undergone trauma of sexual harassment. No doubt, the Scheme has come into force in the year 2018, and Clause 16 of the Scheme provides a limitation for making a claim. However, the said Clause empowering the authorities to condone the delay in filing the application in deserving cases. The relevant paragraph of the Scheme reads as follows:

"Clause 16: Limitation:-Under the Scheme, no claim made by the victim or her dependent(s), under sub-section (4) of Section 357-A of the Code, shall be entertained after a period of three years from the date of occurrence of the offence or conclusion of the trial:

Provided that in deserving cases, on an application made in this regard for reasons to be recorded, the delay beyond three years may be condoned by the TNSLSAs or DLSAs.

8. Even though, the occurrence had taken place in the year 2006, ultimately, the accused was convicted only in the year 2010 and immediately thereafter, the petitioner has filed the present writ petition in the year 2011, and the same has been pending till date. During the pendency of writ petition, the Scheme was promulgated by the State of Tamil Nadu, and the authorities are also empowered to condone the delay in filing application seeking compensation by the victims. The petitioner's daughter, was a minor at the time of occurrence, has been sexually harassed, undergone untold suffering and mental agony. In these circumstances, I am of the view that it is a fit case for awarding compensation under the Scheme.

9. Considering the facts and circumstances of the case, and in the interest of justice, I am inclined to allow this writ petition, directing the petitioner to make a suitable application seeking for compensation, before the competent authority, viz., Tamil Nadu State Legal Services Authority, Chennai Region, Chennai, along with an application to condone the delay in filing the application, within a period of six weeks from the date of receipt of a copy of this order. On receipt of the same, the competent authority, Tamilnadu State Legal Services Authority, Chennai Region, Chennai is directed to consider the same and pass appropriate orders on merits and

in accordance with law within a period of eight weeks thereafter. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The State of Tamilnadu,
rep. by its Secretary,
Home Department,
Fort St. George, Chennai-9
- 2.The Secretary,
Public and Social Welfare Department,
Government of Tamilnadu,
Fort St. George, Chennai-9
- 3.The Secretary,
Tamilnadu State Legal Services Authority,
Chennai Region, Chennai.

+1cc to Mr.P.Uma, Advocate, S.R.No. 90953
+1cc to the Government Pleader, S.R.No. 91552

W.P.No.9697 of 2011

PA(CO)
GN(17/12/2019)

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