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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.20 19

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.22699 of 2019

Nalankilli

.. Petitioner

.Vs.

The State,
Represented by the Inspector of Police,
All Women Police Station,
T.Nagar, Chennai 600 017

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 15.04.2019 passed by the Mahila Court rejecting the Crl MP. SR No.4519 of 2019 in S.C.No.212 of 2016 and the Mahila Court / Special Court for Cases under POCSO Act / Children's Court, Chennai 600 104 may be directed to take the petition on file, number the same and pass appropriate orders in accordance with the Section.33(8) of the POCSO Act, 2012 and Rule 7 of the POCSO Rules, 2012, the Supreme Court Judgement in the case of Nipun Saxena Vs.Union of India dated 05.09.2018 in W.P[C] No.565 of 2012 and the NALSA Compensation Scheme.

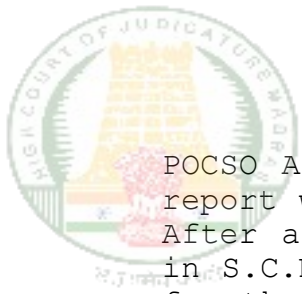
For Petitioner : Mr.J.Saravana Vel

For Respondent : Mr.M.Mohammed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed against the order passed by the Court below rejecting the application filed by the petitioner seeking for compensation under Rule 7 of the Protection of Children from Sexual Offences Rules 2012 (in short "the POCSO Rules").

2. It is seen from records that the daughter of the petitioner, who is a minor, was sexually assaulted by the accused person and the same resulted in a case registered in Crime No.9 of 2015, for an offence under Section 10 of the Protection of Children from Sexual Offences Act (in short "the



POCSO Act"). After the completion of the investigation, a final report was filed before the Court below and charges were framed. After a full-fledged trial, a judgment was passed on 05.03.2019 in S.C.No.212 of 2016, wherein, the accused person was convicted for the said offence and was sentenced to undergo five years of Simple Imprisonment and to pay a fine of a sum of Rs.5,000/- in default to undergo further period of six months Simple Imprisonment.

3. The petitioner, even before the judgment, had filed an application under Rule 7 of the POCSO Rules, for the relief of payment of compensation to the victim girl. The Court below did not entertain the application. However, at the time of passing of final judgment, the Court below fixed an interim compensation of a sum of Rs.25,000/- payable by the State Government.

4. The relevant portion of the judgment is extracted hereunder :-

48. The victim child who was aged about 10 years has suffered both physical and mental agony in her young age due to the sexual assault committed on her. She has also faced the trial or sexual offences, which is unsuitable to her age. And this would definitely bother the mental peace of the child. Hence, it is thought fit to award compensation to the victim child under Section 33(8) of The Protection of Children from Sexual Offences Act, 2012 to be payable to her by the State Government from the victim compensation fund. Considering the physical and mental agony suffered by the victim child, an interim compensation of Rs.25,000/- is awarded and the same shall be paid by the State Government from the victim Compensation Fund or other Scheme or Fund as prescribed under Rule 7(4) & (5) of the Protection of Children from Sexual Offences Act 2012.

5. After the judgment was passed, the petitioner represented an application under Rule 7 of the POCSO Rules that was filed earlier seeking for compensation. This application has been rejected by the Court below on the ground that the final judgment has already been passed in the case ordering for interim compensation and therefore, no further orders can be passed by the Court and the petitioner has to necessarily approach the Appellate Forum.



6. The learned counsel for the petitioner submitted that the Hon'ble Supreme Court in the Judgment in [Nipun Saxena Vs. Union of India] reported in 2018 SCC Online SC 2010, has specifically held that the NALSA Compensation Scheme should be taken as a guideline by the Special Court, while awarding compensation to the victims of child sexual abuse, under Rule 7 of the POCSO Rules, until the rules are finalized by the Central Government.

7. The learned counsel further submitted that the Court below did not take note of the judgment of the Hon'ble Supreme Court and was not right in rejecting the application. The learned counsel further submitted that the interim compensation that was awarded by the Court below will fall within Rule 7(1) of the POCSO Rules. The said rule only deals with interim compensation payable to the child, in order to meet immediate needs of the child. The learned counsel by bringing to the notice of this Court Rule 7(2) of the POCSO Rules, submitted that the Court below has to necessarily determine the final compensation that is payable to the child and the interim compensation shall be adjusted against the final compensation.

8. The learned counsel submitted that the Court below failed to take note of the judgement of the Hon'ble Supreme Court referred supra as well as the scope of Rule 7(2) of the POCSO Rules.

9. This Court has carefully considered the submissions made by the learned counsel for the petitioner and the materials available on record.

10. This Court is completely in agreement with the submissions made by the learned counsel for the petitioner. It will be necessary to extract the relevant portions of the judgment in Nipun Saxena Vs. Union of India, referred supra :-

6. On a reading of the aforesaid Rule, it appears to us that the Special Court may, in appropriate cases, on its own or on an application having been filed, pass an order for interim compensation for the immediate needs of the child. Of course, this Rule is a gender neutral provision.

7. Ms. Pinky Anand, learned Additional Solicitor General informs us that there is a proposal to amend the POCSO Act and that the Rules will be framed after the amendment in the POCSO Act is made.



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8. In the interim, therefore, the situation is that there are no guidelines or Rules that are applicable on the basis of which the Special Court can pass appropriate orders.

9. Keeping this hiatus in mind, we are of the opinion, after hearing learned counsel for the parties as well as learned Additional Solicitor General, that the NALSA Compensation Scheme should function as a guideline to the Special Court for the award of compensation to victims of child sexual abuse under Rule 7 until the Rules are finalized by the Central Government.

10. The Special Judge will, of course, take the provisions of the POCSO Act into consideration as well as any circumstances that are special to the victim while passing an appropriate order.

11. We need not emphasize that the legislation is gender neutral and, therefore, the Guidelines will be applicable to all children.

12. The Special Judge will also pass appropriate orders regarding actual physical payment of the compensation or the interim compensation so that it is not misused or mis-utilised and is actually available for the benefit of the child victim. If the Special Judge deems it appropriate, an order of depositing the amount in an interest-bearing account may be passed.

13. A copy of the NALSA's Compensation Scheme as well as a copy of this order should be sent by the Registry to the Registrar General of every High Court with a direction that the Registrar General will circulate them to all the concerned District Judges for circulation to the Special Judges and the State, District and Taluka Legal Services Committees.

14. A copy of the Scheme and a copy of the order passed by this Court will also be sent by the Registry to all the Judicial Academies for information.

15. We also direct that the publicity should be given to the Scheme as well as the order passed by us on regular basis until the Rules are finalized by the Central Government. Learned Additional Solicitor General assures us that the needful will be done on a regular basis through all forms of media.



16. Needless to say that the Scheme and the Guideline will be operational from 2nd October 2018.

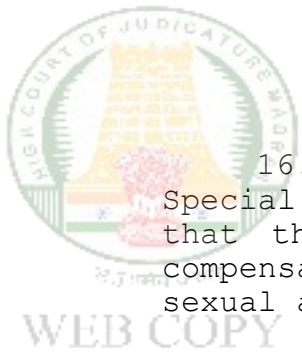
11. The NALSA Compensation Scheme was taken note of by the Hon'ble Supreme Court while passing the above judgment and the said Scheme has given a detailed procedure for fixing the compensation payable to the victim of a sexual abuse.

12. The Hon'ble Supreme Court took the pains to give such a direction only with a view to take care of the victims of sexual abuse and to give them sufficient compensation to tide over the situation. The Courts are required to be sensitive to these issues and the directions given by the Hon'ble Supreme Court will have to be followed in letter and spirit.

13. The petitioner has brought to the notice of the Court below both the judgment of the Hon'ble Supreme Court as well as the NALSA Compensation Scheme. The Court below without understanding the scope of the directions given by the Hon'ble Supreme Court, thought it fit to refer to Paragraph 48 of the Judgment and was under a mistaken impression that if final compensation is determined, the same will amount to reviewing the judgment passed by the Court below.

14. In the considered view of this Court, the Court below has mis-directed itself. The language used under Rule 7 (1) and 7(2) of the POCSO Rules, are unambiguous. Rule 7 (1) of the POCSO Rules, deals with payment of interim compensation and Rule 7(2) of the POCSO Rules, deals with payment of final compensation. At the time of payment of final compensation, the interim compensation already paid to the child will be adjusted from the final compensation.

15. In view of the above, the order passed by the Court below is hereby set aside and the Court below is directed to take the application filed by the petitioner on file and deal with the same in accordance with the directions of the Hon'ble Supreme Court in Nipun Saxena (Referred supra) and determine the compensation payable to the victim child in accordance with the NALSA Compensation Scheme and the guidelines available under Rule 7(3) of the POCSO Rules. It goes without saying that the Court below can adjust the interim compensation already granted from the final compensation that is going to be determined and direct the same to be paid by the State Government.



16. A copy of this order shall be circulated to all the Special Courts dealing with the offences under the POCSO Act, so that there is more clarity while dealing with the claim of compensation made by the victim child, who has been subjected to sexual abuse.

17. Accordingly this Criminal Original petition is allowed with the above directions.

Sd/-
Assistant Registrar (Insp.Cell)

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Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Court / Special Court for cases under POCSO Act,
Children's Court, Chennai
2. The Inspector of Police,
All Women Police Station,
T.Nagar, Chennai 600 017
3. The Public Prosecutor,
High Court, Madras
4. The Section Officer,
F Section, High Court, Madras.
(For circulating copy of this Order to all the
Special Courts dealing with the POCSO Act - vide
directions paragraph 16)

Crl.OP No.22699 of 2019

RSK(CO)
SSM(28/08/2019)