

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Cr.) No.284 of 2020Order reserved on: 21-7-2020Order delivered on: 18-8-2020

XYZ (The petitioner is victim of offence under Section 363, 366, 376 of Indian Penal Code and Section 3 and 4 of the Protection of Children from Sexual Offences Act 2012 and therefore petition is filed in pseudonymous name. The name of petitioner is also not disclosed in view of Section 228-A of Indian Penal Code. The affidavit and vakalatnama is filed in sealed envelope and separate application seeking permission to file the writ petition in pseudonymous name is also filed)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Home Department, Mahanadi Bhawan, Atal Nagar, Raipur (C.G.)
2. District Magistrate, Raipur, District Raipur (C.G.)

---- Respondents

 For Petitioner: Mr. Ashish Surana, Advocate.

For Respondents / State: -

Mr. Mateen Siddiqui, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. Proceedings of this matter have been taken-up for final hearing through video conferencing.
2. This writ petition projects the helplessness of the petitioner herein – rape victim (minor) at whose instance the accused (juvenile) has been found guilty and convicted for the criminal offences by the Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the JJ Act of 2015'), but till this date she has not been paid a single penny towards compensation, either

interim or final, despite clear pronouncements of their Lordships of the Supreme Court in catena of judgments including that of Suresh and another v. State of Haryana¹ mandating the criminal courts to advert to Section 357A of the Code of Criminal Procedure, 1973 (for short, 'the Code') at the time of final hearing and to award appropriate compensation to the rape victim as a matter of rule to enable her and her family to rehabilitate compelling the rape victim / petitioner to file this writ petition asking for compensation from the State and its authorities.

3. The petitioner (rape victim) made a report against the accused (juvenile) for the offences punishable under Sections 363, 366 & 376 of the IPC and Sections 3 & 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act') and ultimately, he was charged for those offences and also charge-sheeted, but though he was also charge-sheeted for the offences punishable under Sections 3 and 4 of the POCSO Act, but since the accused was juvenile, therefore, as per the provision contained in Section 34(1) of the POCSO Act, he was tried by the Juvenile Justice Board constituted under the Act of 2015 and ultimately, by judgment dated 2-3-2020, he was found guilty and convicted by the Juvenile Justice Board for offences under Sections 363, 366 & 376 of the IPC and Sections 3 & 4 of the POCSO Act as per the provisions contained in the JJ Act of 2015 and also he was sentenced to fine of ₹ 1,000/-, but no order was passed directing payment of compensation to the petitioner (victim) as provided under Section 357 of the Code. The learned Juvenile Justice Board also did

¹ (2015) 2 SCC 227

not consider it appropriate to recommend to the District Legal Services Authority (DLSA) or the State Legal Services Authority (SLSA) in terms of Section 357A of the Code for grant of compensation to the petitioner which compelled the petitioner to file this writ petition seeking compensation for her rehabilitation.

4. It is the case of the petitioner that she is a rape victim and the accused has also been found guilty by the Juvenile Justice Board, yet, she has not been paid even a single penny as compensation either as an interim measure or final, though Section 33(8) of the POCSO Act read with Rule 7 of the Protection of Children from Sexual Offences Rules, 2012 clearly provides that in appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child, as such, she is entitled for compensation as per the compensation scheme floated by the State Government that is called as “the Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018” (for short, 'the Scheme of 2018').
5. Opposing the writ petition, the State Government has filed its return stating inter alia that the Juvenile Justice Board has not made any recommendation to pay compensation in terms of Section 357A of the Code and if compensation has not been paid, remedy of the petitioner is to file appeal under the proviso to Section 372 of the Code and as such, the writ petition as framed and filed is not maintainable and deserves to be dismissed.
6. Mr. Ashish Surana, learned counsel appearing for the petitioner, at the

outset, replying to the preliminary objection, would submit that the judgment passed by the Juvenile Justice Board not awarding compensation under Section 357A of the POCSO Act to the petitioner would not be appealable by virtue of the provision contained in the proviso to Section 372 of the Code, as the accused has been tried as per the provision contained in the JJ Act of 2015 and against the judgment of conviction recorded and sentence awarded under the JJ Act of 2015, no appeal would lie under the Code. He would further submit that despite the decision of the Supreme Court in Suresh (supra) mandating the criminal courts to advert to Section 357A of the Code, the Juvenile Justice Board did not advert to Section 357A and failed to make recommendation to the DLSA or the SLSA for quantifying compensation, that would not preclude this Court in assessing compensation and granting compensation to the petitioner (rape victim) which she is otherwise entitled to. He would also submit that since Section 33(8) of the POCSO Act read with Rule 7 of the Protection of Children from Sexual Offences Rules, 2012 clearly provides for grant of additional compensation, but merely because the accused was tried as per the procedure laid down in the JJ Act of 2015, by virtue of Section 34(1) of the POCSO Act, the petitioner (rape victim) is still entitled for compensation, as trial of the accused under the Act of 2015 would not dis-entitle her to the benefit of compensation under Section 357A of the Code and Section 33(8) of the POCSO Act, because the substantive law providing for compensation will prevail over the procedural provisions. He would further contend that as per the Scheme of 2018, the petitioner – rape victim is entitled for

compensation along with interest. He would also contend that in this case no compensation either interim or final was not granted to the petitioner, as nobody appeared on behalf of the prosecution / State before the Juvenile Justice Board to assist the Court and when the petitioner made application for assisting the prosecution / Court, that was rejected on the ground since the State is not represented, therefore, she cannot assist the Court. Such a practice on the part of the State Government deserves to be deprecated and appropriate order be also passed directing the State in this regard and appropriate compensation be granted to the petitioner.

7. Mr. Mateen Siddiqui, learned State counsel, would submit that the writ petition as framed and filed is not maintainable in view of availability of efficacious alternative remedy in shape of proviso to Section 372 of the Code which provides for appeal against inadequate compensation granted to the victim. He would further submit that since no recommendation in terms of Section 357A (2) & (3) of the Code was made by the trial Court, no order / direction can be made in extraordinary jurisdiction to grant compensation to the rape victim / petitioner and even otherwise, if she is held entitled, then she would be entitled under the old Scheme i.e. the Chhattisgarh Victim Compensation Scheme, 2011 under which the rape victim is entitled for ₹ 50,000/- and as such, the writ petition deserves to be dismissed.
8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

Answer to Preliminary Objections: -

9. It appears from the record that at the instance of the petitioner, the accused (juvenile) was tried for the aforesaid offences under the provisions of the JJ Act of 2015, as per the provision contained in Section 34(1) of the POCSO Act and the accused has been convicted and sentenced under the aforesaid provisions of law. The JJ Act of 2015 provides for appeal, but no such appeal lies under Section 101 of the JJ Act of 2015 at the instance of victim against non-grant of compensation. Section 101(5) of the JJ Act of 2015 is not applicable to the instant case, therefore, appeal under the proviso to Section 372 of the Code is not available to the petitioner / victim. Even otherwise, proviso to Section 372 of the Code provides appeal against an order imposing inadequate compensation whereas, in the instant case, no compensation has been awarded to the victim, therefore, proviso to Section 372 of the Code is inapplicable to the petitioner (victim).
10. True it is that the Juvenile Justice Board has not recommended for grant of compensation either under Section 357A(2) or (3) of the Code, but that non-recommendation under Section 357A (2) or (3) of the Code will not preclude this Court to consider and grant compensation to the victim if it is brought to the notice of this Court that the criminal court neither granted compensation under Section 357 of the Code nor made recommendation to the DLSA or the SLSA to grant compensation under Section 357A of the Code. Thus, it is a fit case where this Court should step-in and consider grant of compensation to the petitioner (rape victim) in its writ jurisdiction. As such, both the preliminary objections raised herein-above by the learned State counsel, are hereby

overruled.

11. Turning to the merits of the matter, it would be appropriate to notice the law relating to compensation to victim in this behalf. Section 357 of the Code provides that the trial Court at the time of conclusion of trial can grant compensation to the victim. Section 357 of the Code provides as under: -

“357. Order to pay compensation.—(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any *bona fide* purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal

be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.”

12. Despite the above-stated clear provision of grant of compensation to the victim at the time of conclusion of trial, the criminal courts were found reluctant to award compensation to the victims; noticing this apathy and inhibition, the Supreme Court in the matter of Hari Krishna and State of Haryana v. Sukhbir Singh² recommended to all courts to exercise this power of granting compensation liberally under Section 357 of the Code so as to meet the ends of justice by observing as under: -

“Section 357 of the Cr.P.C. is an important provision but Courts have seldom invoked it. This Section of law empowers the Court to award compensation while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to the victim who has suffered by the action of the accused. This power to award compensation is not ancillary to other sentences but is in addition thereto. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We therefore recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.”

² (1988) 4 SCC 551

13. The above-stated mandate / reminder of their Lordships of the Supreme Court qua the grant of compensation to the victim at the time of conclusion of trial, did not evince any interest in the criminal courts and apathy continued qua victims. In view of that situation, the Supreme Court in the matter of Ankush Shivaji Gaikwad v. State of Maharashtra³, held that it is the mandatory duty of Courts to apply its mind to the question of compensation in every criminal case, that too by recording reasons. It has been held as under in paragraph 66 of the report: -

“66. To sum up: while the award or refusal of compensation in a particular case may be within the Court’s discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 of the Code of Criminal Procedure would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.”

14. Meanwhile, the Law Commission of India in its 154th Law Commission Report on the Code of Criminal Procedure made recommendation to insert Section 357A as Victim compensation scheme and consequently, accepting the said recommendation, Section 357A was inserted in the Code which reads as follows: -

³ (2013) 6 SCC 770

“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) to (6) xxx xxx xxx”

15. This provision has been brought into the statute book i.e. the Code of Criminal Procedure, 1973, by Amending Act 5 of 2009 and the amendment has been brought into force with effect from 31-12-2009. The object and purpose of the provision is to enable the Court to direct the State to pay compensation to the victim where the compensation under Section 357 was not adequate or where the cases ended in acquittal or discharge and the victim was required to be rehabilitated. The provision was incorporated on the recommendation of 154th Report of the Law Commission. It recognises compensation as one of the methods of protection of victims. {See Suresh (supra).}

16. At this stage, it would be appropriate to notice Sections 357B and 357C of the Code which read as under: -

“357B. Compensation to be in addition to fine under section 326A or section 376D of Indian Penal Code.—The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under [section 326A](#), [376AB](#), [section 376D](#),

[376DA and 376DB of the Indian Penal Code \(45 of 1860\).](#)

357C. Treatment of victims.—All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident.”

17. In Suresh (supra), their Lordships of the Supreme Court have clearly noticed that despite there being a clear provision in Section 357A of the Code, the award of compensation has not become a rule and interim compensation, though it is very important, is not being granted by the courts. It has been observed pertinently as under: -

“15. We are informed that 25 out of 29 State Governments have notified victim compensation schemes. The schemes specify maximum limit of compensation and subject to maximum limit, the discretion to decide the quantum has been left with the State/ District Legal Authorities. It has been brought to our notice that even though almost a period of five years has expired since the enactment of Section 357-A, the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the courts. It has also been pointed out that the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation.

16. We are of the view that it is the duty of the courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is

obligatory on the part of the court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.”

18. In the matter of Bijoy alias Guddu Das v. State of West Bengal⁴, the Calcutta High Court while dealing with the provisions of the POCSO Act qua the compensation to the victim, in paragraph 39 of the report, held as under: -

“39. The following directives are issued to the investigating agencies, prosecutors and the Special Courts so that the aforesaid provisions of law are followed in letter and spirit and fundamental right of dignity of a child victim and other basic human rights are preserved:-

1. to 8. xxx xxx xxx

9. The Special Court upon receipt of information as to commission of any offence under the Act by registration of FIR shall on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation and upon giving an opportunity of hearing to the State and other affected parties including the victim pass appropriate order for interim compensation and/or rehabilitation of the child. In conclusion of proceeding, whether the accused is convicted or not, or in cases where the accused has not been traced or had absconded, the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim. The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund. The interim/final compensation shall be paid either from the Victim Compensation Fund or any other special scheme/fund established under section 357-A of the Code or any other law for the time being in force through the State

4 2017 Cri. L.J. 3893

Legal Services Authorities or the District Services Authority in whose hands the Fund is entrusted. If the Court declines to pass interim or final compensation in the instant case it shall record its reasons for not doing so. The interim compensation, so paid, shall be adjusted with final compensation, if any, awarded by the Special Court in conclusion of trial in terms of section 33(8) of the Act.

10. xxx xxx xxx”

19. The judgment of the Calcutta High Court in Bijoy alias Guddu Das (supra) was not only approved by the Supreme Court in the matter of Nipun Saxena and another v. Union of India and others⁵, but their Lordships were pleased to make the said judgment a part of its judgment mandating all concerned to issue necessary direction in that behalf. It was held as under: -

“45. The Calcutta High Court in *Bijoy case*⁴ has also given other directions to ensure that the provisions of the law are followed in letter and spirit, and the fundamental rights of a child victim and other basic human rights are protected. We are in agreement with all these directions. Though some of the issues dealt with in these directions do not strictly arise in this case, keeping in view the fact that we are dealing with the rights of children, we are annexing the directions issued by the Calcutta High Court as Annexure 1 to this judgment. We request all the Chairpersons and Members of all the Juvenile Justice Committee of all the High Courts in the country to go through the judgment of the Calcutta High Court and the directions issued therein and they may issue similar directions, keeping in view the particular needs of each High Court/State.”

20. The Protection of Children from Sexual Offences Act, 2012 came to be enacted by the Parliament with effect from 14-11-2012 to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences. Sub-section (8) of Section 33 of the POCSO Act and

⁵ (2019) 2 SCC 703

Rule 7 of the Protection of Children from Sexual Offences Rules, 2012

which also provide for compensation read as under: -

Section 33(8) of the POCSO Act

“33. Procedure and powers of Special Court.—(1) to (7)

xxx xxx xxx

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) xxx xxx xxx”

Rule 7 of the POCSO Rules, 2012 (substituted by the POCSO Rules, 2020 with effect from 9-3-2020)

Rule 9 of the *pari materia* POCSO Rules, 2020

“9. Compensation.—(1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court, under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:—

- (i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;
- (ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;
- (iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- (iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- (v) the relationship of the child to the offender, if any;
- (vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;
- (vii) whether the child became pregnant as a result of the offence;
- (viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;
- (ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;
- (x) any disability suffered by the child as a result of the offence;
- (xi) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;
- (xii) any other factor that the Special Court may consider to be relevant.

(4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government.”

21. A conjoint reading of sub-section (8) of Section 33 of the POCSO Act read with Rule 9 of the POCSO Rules, 2020 would show that the Special Judge is empowered to direct for payment of compensation to the victim / child for loss or pain which he / she has suffered. The quantum of compensation shall be calculated taking into consideration the loss or injury suffered by the victim and other related factors laid down in Rule 7(3) of the POCSO Rules, 2012 substituted by the POCSO Rules, 2020 and shall not be restricted to the minimum compensation amount as prescribed by the Victims Compensation Scheme by the State Government. It would also be clear that such compensation, interim or final, shall be paid either from the Victims Compensation Scheme or any other scheme or fund established under Section 357A of the Code.

22. In the State of Chhattisgarh with effect from 3-8-2011, the Chhattisgarh Victim Compensation Scheme, 2011 enacted under Section 357A of the Code was in force and the Schedule attached with the Scheme states as under: -

Schedule

S.No.	Details of Loss or Injury	Maximum Limit of Compensation
1.	Loss of Life	1.00 Lac
2.	Loss of limb or part of body resulting	50,000

	80% or above handicap or serious injury due to Acid Attack	
3.	Loss of Limb or part of body resulting above 40% and below 80% handicapped	25,000
4.	Rape of Minor	50,000
5.	Rape	25,000
6.	Rehabilitation	20,000
7.	Loss of limb or part of body resulting below 40% handicap	10,000
8.	Injury causing several mental agony to women and child victim in cases like human Trafficking	20,000
9.	Simple loss or injury to child victim	10,000

23. The Supreme Court in the matter of Nipun Saxena and another v. Union of India and others⁶, in paragraph 9, held on 5-9-2018 that till the Scheme is framed, the NALSA's 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 of the POCSO Rules of 2012. Paragraphs 2, 9, 10 and 11 to 15 of the report state as under: -

2. It has been brought to our notice that as far as children are concerned, no Scheme of this nature has been framed with regard to the victims of sexual abuse under the provisions of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act").

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 NALSA's 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 finalised 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

⁶ (2019) 13 SCC 715

appropriate order.

11. We need not emphasise 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 misutilised 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 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 District Judges concerned 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 finalised by the Central Government. The learned Additional Solicitor General assures us that the needful will be done on a regular basis through all forms of media. Needless to say that the Scheme and the Guidelines will be operational from 2-10-2018."

24. It would be appropriate to mention here that the National Legal Services Authority (NALSA) setup a committee and finalised the Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes and submitted before the Supreme Court on 24-4-2018 and on 21-5-2018, the said Scheme was accepted by the Supreme Court and called as "the Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes". In the said Scheme, minimum limit of compensation provided to rape victim is ₹ 4 lakhs and upper limit of

compensation is ₹ 7 lakhs. The Explanation appended to the said Rules provides that Chapter will not apply to the minor victims under the POCSO Act, 2012 qua compensation, as compensation issues are to be dealt with by the Special Courts under Section 33(8) of the POCSO Act, 2012 and Rule 7 of the POCSO Rules, 2012. Thereafter, pursuant to the direction of the Supreme Court in Nipun Saxena (supra) by order dated 5-9-2018 that “NALSA's Compensation Scheme for Women Victims/ Survivors of Sexual Assault/other Crimes 2018” shall function as a guideline to the Special Court for the award of compensation to the victims of child sexual offence under Section 33(8) of the POCSO Act, 2012 and in exercise of the powers conferred by Section 357A of the Code, the State of Chhattisgarh has framed a scheme known as the Compensation Scheme for Women Victims/ Survivors of Sexual Assault/other Crimes, 2018 with effect from 2-10-2018. Explanation appended to the Scheme provides that in case of Minor Victims under POCSO, it would be applicable. The Schedule attached to the said Scheme provides that in case of rape, minimum limit of compensation would be ₹ 4 lakhs and upper limit of compensation would be ₹ 7 lakhs. Serial No.3 of the said Schedule reads as under: -

SCHEDULE APPLICABLE TO WOMEN VICTIM OF CRIMES

S.No.	Particulars of loss or injury	Minimum Limit of Compensation	Upper Limit of Compensation
3.	Rape	Rs. 4 Lakh	Rs. 7 Lakh

25. Now, the question is, whether the petitioner (rape victim) is entitled for compensation as per the Scheme of 2018 framed by the State Government which came into force with effect from 2nd October, 2018

as per the notification dated 4th February, 2019 by which date the Scheme has been brought into force or under the old scheme which was enforced with effect from 3-8-2011?

26. Admittedly, the Juvenile Justice Board while delivering judgment was required to consider and make recommendation under Section 357A(2) of the Code to the DLSA or the SLSA, as the petitioner is the rape victim and the accused has been found guilty and convicted, but the learned Juvenile Justice Board did not notice either Section 357 or 357A of the Code and did not make recommendation for disbursing the fine amount imposed by virtue of Section 357(1) of the Code and even did not notice Section 33(8) of the POCSO Act, 2012, though the Board convicted the accused (juvenile) under Sections 3 & 4 of the POCSO Act, 2012 and also did not make any recommendation for compensation under Section 357A of the Code, whereas it was obliged to do so. No reason has been assigned for not making recommendation for compensation.

27. Reverting to the facts of the case in the light of the above-stated statutory provisions and in the light of the aforesaid principles of law laid down by their Lordships of the Supreme Court in the aforesaid judgments, it is quite vivid that since the victim was minor and the accused (juvenile) has been convicted for offences under Sections 363, 366 & 376 of the IPC and Sections 3 & 4 of the POCSO Act, the petitioner (rape victim) and her family members were required to be rehabilitated to protect them. Consequently, recommendation ought to have been made by the Juvenile Justice Board to the DLSA or the SLSA under Section 357A(2) of the Code read with Section 33(8) of the

POCSO Act and Rule 7 of the POCSO Rules, 2012, but that has not been done despite the clear cut mandate in that regard. Taking into consideration that the petitioner is rape victim, that too minor and she has been sexually assaulted when the offence took place and she has suffered not only physically but mentally also, and considering the gravity of offence and that she is required to be rehabilitated and further taking into consideration the provisions contained in the NALSA's Compensation Scheme of 2018 and also keeping in mind the provision enumerated in Section 33(8) of the POCSO Act read with Rule 7 of the POCSO Rules, 2012 / Rule 9 of the POCSO Rules, 2020 (w.e.f. 9-3-2020) and she has been traumatised heavily, the petitioner herein is entitled for total compensation of ₹ 7 lakhs under Scheme 2018 and not under Scheme of 2011. Apart from this, since she has not been paid any compensation at all, even interim or otherwise, and she is required to come to this Court to ventilate her grievances seeking the remedy of writ jurisdiction of this Court, she would also be entitled for interest from the date of judgment by the Juvenile Justice Board i.e. 2-3-2020 till the actual payment is made.

28. Accordingly, it is held that the petitioner will be entitled for compensation of ₹ 7 lakhs jointly from respondents No.1 & 2 along with interest. Respondents No.1 & 2 shall deposit the above-stated amount before the Special Judge (POCSO), Raipur within 30 days from today. The Special Judge (POCSO) shall disburse the said amount to the victim in accordance with the directions given by the Supreme Court in the matter of General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and others⁷

⁷ AIR 1994 SC 1631

(paragraph 17) read with paragraph 12 in Nipun Saxena (supra) {(2019) 13 SCC 715).

29. The writ petition is allowed to the extent sketched herein-above. No order as to cost(s).

30. Before leaving the record, a note of caution is absolutely necessary to the criminal courts as well as for the State Government and its authorities. Despite clear mandate contained in Section 357A of the Code and mandate of their Lordships of the Supreme Court in this regard in the judgments cited (supra), the criminal courts are not even considering the question of compensation to the victims, particularly the rape victims which is not only disturbing, but warranting remedial steps to be taken forthwith. Similarly, in this case, none appeared on behalf of the prosecution to assist the Juvenile Justice Board and request made by the victim to assist, was turned down by the Juvenile Justice Board citing reason that the State is not represented, therefore, let the matter be placed before Hon'ble the Chief Justice for consideration,

1. for circulating a copy of this order to the judicial officers manning the criminal courts for perusal and needful action;
2. for sending a copy of this order to the Director, Chhattisgarh State Judicial Academy, Bilaspur to formulate a training programme for the judicial officers in this regard;
3. for sending a copy of this order to the Principal Secretary (Law) and the Director (Prosecution) to take effective and remedial steps to represent the State / interest of victim before all the Juvenile Justice Boards (if appropriate).

(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.284 of 2020

XYZ

Versus

State of Chhattisgarh and another

Head Note

Rape victim is entitled for compensation under Section 357A of the CrPC read with Section 33(8) of the POCSO Act.

बलात्कार पीड़िता दंड प्रक्रिया संहिता की धारा 357A सहपठित पाकसो अधिनियम की धारा 33(8) के अंतर्गत क्षतिपूर्ति प्राप्त करने की हकदार है।