

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**



+ **CRL.M.C. 1716/2021**

Date of Decision: 18.01.2022

IN THE MATTER OF:

A (MINOR) THROUGH HER MOTHER Petitioner
Through: Ms. Supriya Juneja and Ms. Sonali
Sharma, Advocates

Versus

STATE THROUGH STANDING COUNSEL & ANR. Respondents
Through: Mr. Kanwal Jeet Arora, Member
Secretary, DSLSA
Mr. Amit Ahlawat, APP for State with W/SI Lalita,
P.S. Mundka, Delhi.
Ms. Shilpi Singh, Litigation Secretary and Ms.
Bhawna Gandhi, Research Asst., DSLSA.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the child victim 'A', through her mother, assailing the order dated 24.04.2021 passed by the learned Additional Sessions Judge-06, West, Tis Hazari Courts, Delhi in FIR No. 394/2020 registered under Section 363 IPC at P.S. Mundka, Delhi, whereby the application moved on behalf of the child victim seeking grant of interim compensation was dismissed.
2. The present FIR came to be registered on a complaint given by the elder brother of the child victim, wherein it was stated that the child victim, who was aged about 12 years and 02 months, had gone missing and it was



suspected that their neighbour had ~~notified her on 30.03.2021~~ ~~subsequently~~, ~~on 30.03.2021~~, the child victim was produced before the concerned Police Station by her brother and her medical examination was conducted at *Sanjay Gandhi Memorial Hospital, Mangol Puri, Delhi*. At the hospital, the child victim underwent the Urine Pregnancy Test (hereinafter, referred to as the 'UPT') and the test came out to be positive.

The statement of the child victim was recorded under Section 161 Cr.P.C., wherein she stated that the accused, a neighbour, had forcibly established sexual relations with her and taken her to Bihar without her consent. On the basis of the same, Section 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, referred to as the '*POCSO Act*') were added to the case. Later, on 08.04.2021, statement of the child victim was recorded under Section 164 Cr.P.C., wherein she did not support the allegations levelled earlier in her statement recorded under Section 161 Cr.P.C. The charge sheet has been filed and charges already framed. The matter is stated to be listed for prosecution evidence.

3. Ms. Supriya Juneja, learned counsel for the child victim, while assailing the impugned order, contends that the impugned order was passed in total contravention of the mandate of Section 33(8) of the POCSO Act and Rule 7 of the Protection of Children from Sexual Offences Rules, 2012 (hereinafter, referred to as the '*POCSO Rules*') (*pari materia* to Rule 9 of the Protection of Children from Sexual Offences Rules, 2020.) She further submits that during her medical examination, the UPT of the child victim was conducted and the same was found positive. It is also submitted that in the present case, Section 6 of the POCSO Act is involved and the child victim is yet to be examined in trial. Learned counsel informs that the child victim has also undergone medical termination of pregnancy and submits



that in this backdrop, rejection of award of interim compensation to the child victim under Section 357A Cr.P.C. and Section 33(8) of the POCSO Act for the reason that she has not supported the prosecution case in her statement recorded under Section 164 Cr.P.C. was patently illegal.

4. Mr. Amit Ahlawat, learned APP for the State, has supported the case of the child victim.

5. A Reply Affidavit has been placed on record on behalf of respondent No. 2/Delhi State Legal Services Authority, wherein it is stated that the authority to award and quantify the amount of interim/final compensation for child victims lies with the Special POCSO Courts. It is also stated that as per the relevant provisions of the POCSO Act and POCSO Rules, the interim compensation is to be awarded by the Special Courts only in appropriate cases, after considering the facts and circumstances, and not in a routine manner pursuant to filing of an application in that regard.

6. I have heard learned counsels for the parties and perused the material placed on record.

7. In relation to award of compensation to child victims of sexual offences, reference may be had of Section 33 of the POCSO Act and Rule 7 of the POCSO Rules, 2012. Relevant sections of the provisions are extracted hereunder-

Section 33 POCSO Act

“33. Procedure and powers of Special Court.—

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.”

Rule 7 POCSO Rules, 2012

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“7. Compensation.—*(1) The Special Court may, 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 357-A 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;

xxx

(vii) whether the child become pregnant as a result of the offence;

xxx

(xii) any other factor that the Special Court may consider to be relevant...”

8. The matter of awarding of compensation to victims, especially women, came up before the Supreme Court in Nipun Saxena v. Union of India, **W.P.(C) 565/2012**, as a result whereof, a Committee was constituted to prepare model guidelines/rules with respect to compensation to victims of sexual offences and acid attacks, on the recommendation of the Court. In pursuance, a scheme called ‘*Victim Compensation for Survivors of Sexual Assault and Acid Attack*’ was framed and placed before the Court. On



11.05.2018, all States/UTs were directed by the Court to implement the same in their respective jurisdictions and the Scheme was finally accepted by the Court on 25.07.2018, when no objection was received in respect thereof. However, in furtherance of certain suggestions received, the Committee was directed to look into the Scheme again, whereafter the final guidelines were placed before the Court on 05.09.2018 under the heading '*NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes-2018*'. Paragraph 8 of the NALSA Compensation Scheme provides as under:-

"8. FACTORS TO BE CONSIDERED WHILE AWARDING COMPENSATION -

While deciding a matter, the State Legal Services Authority/District Legal Services Authority may take into consideration the following factors relating to the loss or injury suffered by the victim:

(1) Gravity of the offence and severity of mental or physical harm or injury suffered by the victim:

xxx

(7) Whether victim became pregnant as a result of the offence, whether she had to undergo Medical Termination of Pregnancy (MTP)/give birth to a child, including rehabilitation needs of such child;"

9. During the course of proceedings in Nipun Saxena (Supra), it was also brought to the notice of the Supreme Court that similar Rules/guidelines did not exist in respect of child victims of sexual abuse. Keeping in view the averment that the POCSO Act was sought to be amended, and requisite Rules would be framed thereafter, it was directed that NALSA's Compensation Scheme shall function as a guideline to Special Courts for award of compensation to child victims of sexual abuse under Rule 7 of the POCSO Rules, 2012 until Rules were formulated by the Central Government.

10. Subsequently, the POCSO Rules, 2020 were brought into effect to



extend the benefit of the provisions of the aforesaid Scheme to child victims.

Rule 9 of the POCSO Rules, 2020 is *pari materia* to Rule 7 of the POCSO Rules, 2012 and reads as follows:-

“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 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 357-A of the Code of Criminal Procedure, 1973 (2 of 1974) 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 child's medical treatment for physical or mental health or on both;*

xxx

(vii) *whether the child became pregnant as a result of the offence;*

xxx

(xii) *any other factor that the Special Court may consider to be relevant...*”

11. In Raj Kumar v. State reported as **2019 SCC OnLine Del 11546**, while considering the aspect of grant of compensation to a victim of sexual assault, this Court has held as follows:



“89. This Court thus holds that: NEUTRAL CITATION NO: 2022/DHC/000544

(i). *The obligation of the criminal court to consider direction for payment of compensation under Section 357 Cr.P.C. (as indeed under other provision of law such as Section 5 of Probation of Offenders Act) is a matter of inquiry by the criminal court and the amount paid there-under is subject to recovery from the person found guilty for the offence the commission of which has been proved.*

(ii). *The Victim Compensation Fund set up by the State in terms of the Victim Compensation Scheme under Section 357A Cr. PC is at the disposal of Legal Services Authority and the criminal court in seisin of the case may only “make recommendation” to, but not “direct”, such authority to pay compensation to the victim (or his dependents) from such fund. In this view, the legal services authority before it decides to award compensation and disburses the amount must make proper inquiry to independently find whether a case is made out in law, and under the scheme, for such compensation to be paid guided, of course, by the evidence led at trial and conclusion of the court based thereupon.*

(iii). *Before making a recommendation under sub-Section (2) of Section 357A Cr. PC for compensation to be paid in a criminal case wherein a person has been found guilty of complicity in the crime which has been proved, the criminal court must make inquiry as to whether:*

(a). The victim (or his dependents) had suffered “loss or injury as a result of the crime” and “require rehabilitation”;

(b). the compensation can be ordered to be paid under Section 357 Cr. PC by the convict;

(c). the compensation awarded under Section 357 Cr. PC is “not adequate” for “rehabilitation”;

xxx

(vii). *The payment of interim compensation under the Victim Compensation Scheme is “subject to final determination” of the right to receive compensation under the law and, therefore, it must be awarded and disbursed with appropriate riders to take care of the possibility of being recovered back in the event of it being ultimately*



concluded that the accusations were unfounded. NO: 2022/DHC/000544

(viii). Unless the exigencies of the case so demand, compensation (whether interim or final) ought not be released by DSLSA in lump sum, care to be taken that the money meant for rehabilitation of the victim is not frittered away and also such that in the event of superior courts in hierarchy upturning the decision, the money if wrongly paid, can be recovered back and, for such purposes, the existing practice of DSLSA, as also ordained by various provisions of the Delhi Victim Compensation Scheme, 2018, to release the compensation in a phased manner should be scrupulously followed and ensured to be complied with by all concerned including the bankers of the authority and the beneficiary.

(ix). Unless the exceptional circumstances of the case so demand, the final compensation awarded by DSLSA in terms of the Victim Compensation Scheme under sub-Section (3) of Section 357 Cr. PC ought not be released by DSLSA unless and until the period allowed for bringing a challenge to the decision of the trial court (by appeal or a petition) has elapsed or if an appeal (or petition) be presented, before decision thereupon, it being incumbent on DSLSA to approach the superior hierarchal court to seek early release of compensation in case the prevalent circumstances concerning the victim so justify.

90. On the available facts, and in the circumstances, noted above, and, of course, in light of above conclusions, this court directs as under:—

(i). Delhi Victim Compensation Scheme, 2018 be appropriately modified and improved upon keeping in view, inter alia, the conclusions reached by this court as summarized above.

(ii). In addition to formal amendment of the Delhi Victim Compensation Scheme 2018, measures be taken by Member Secretary, DSLSA, amongst others, by issuing guidelines and holding sensitization programmes so that there is no abuse of the Victim Compensation Fund and such that it attains its intended objectives.

(iii). The Member Secretary, DSLSA shall formulate the standard operating procedure such that the decisions of the competent authorities to release the compensation in a phased manner is scrupulously complied with by all concerned - including bankers of the authority and the beneficiary - and there is proper accountability



and follow-up.

NEUTRAL CITATION NO: 2022/DHC/000544

(iv). *The Member Secretary, DSLSA shall create a permanent mechanism for monitoring of the progress and result of investigation or trial of all such cases in which interim relief of compensation has been provided under the Victim Compensation Scheme such that:*

(a). *In the event of it being found by investigation or at trial that no offence was committed, the money paid to the victim can be recovered back.*

(b). *In the event of an accused being found guilty, and convicted, the money paid as compensation from the Victim Compensation Fund under Section 357A Cr. PC may be recovered from him.*

(v). *For ensuring that there is a possibility of the amount to be recovered back from the victim in the eventuality mentioned above, suitable safeguards in the form of appropriate documentation (undertaking, indemnity bond or such like other measures) shall be evolved and adopted by DSLSA for future use.*

(vi). *The data of 2017 has been referred to in this judgment only by way of illustration. The Member Secretary, DSLSA shall arrange for an appropriate scrutiny of all such past cases where interim compensation was awarded (including those of 2017 noted earlier) and take necessary measures for recovery in accordance with law of such amounts as have been wrongfully paid.*

(vii). *Such provisions of Delhi Victim Compensation Scheme, 2018 as permit recovery of the amount paid to the victim from the wrong-doer, lying dormant and in disuse, shall be enforced in accordance with law by legal services authority.”*

12. From the foregoing, it is apparent that Rule 9 of the POCSO Rules, 2020 provides that the Special Court on its own, or on an application filed by or on behalf of the child victim, may pass an order for the award of interim compensation under Section 33(8) of the POCSO Act read with sub-sections (2) and (3) of Section 357A Cr.P.C. At the time of passing of such order, the concerned Court is required to take into account all factors that may be deemed relevant, including the type of abuse, the gravity of the offence, the



severity of the mental/physical harm/injury suffered by the child whether the child victim became pregnant as a result of the offence.

13. Suffice it to note that in case any compensation (interim or final) awarded to a victim is required to be recovered, proper safeguards have been put in place in terms of the decision in Raj Kumar (Supra). A victim filing an application seeking interim compensation is required to provide undertaking, indemnity bond, etc. to the effect that if compensation awarded to her/him is to be refunded, following payment of compensation by the accused/convict as per the order/judgment of the Trial Court, she/he would have no objection.

14. In the present case, the child victim in her statement recorded under Section 161 Cr.P.C. has stated that the accused had forcefully established sexual relations with her and taken her to Bihar without her consent. The UPT of the child victim was conducted and the result was positive. It has been reported that the child victim also underwent medical termination of pregnancy.

Even though after filing of the complaint, the child victim was eventually produced at the police station by her brother, the averment of her having become pregnant as a result of the alleged offence is *prima facie* supported by her MLC as well as her statement recorded under Section 161 Cr.P.C. Thus, in terms of the '*relevant factors*' stated under Rule 7 of the POCSO Rules, 2012 (*pari materia* to Rule 9 of the POCSO Rules, 2020), the dismissal of the child victim's application seeking interim compensation on account of her not having supported the initial allegations in her statement recorded under Section 164 Cr.P.C. is untenable.

Further, it is noted that while moving the application seeking interim compensation before the concerned Court, the mother of the child victim filed an undertaking to the effect that she has no objection in case any compensation awarded to her is subsequently required to be refunded. It was



also stated that she has no objection if any compensation awarded to her, supposed to be refunded, is obtained by the DSLSA directly from the Bank Account opened for disbursement of the compensation under the Scheme.

15. In light of the aforesaid, the fact that the UPT of the child victim came to be positive and the further fact that she is yet to be examined in trial, this Court is of the considered opinion that the view taken by the concerned Court is premature and legally unsound. Accordingly, the impugned order is set aside and the Trial Court is directed to consider the application filed on behalf of the child victim afresh in accordance with law, especially the provisions referred to hereinabove.

16. With the above directions, the present petition is disposed of.

17. A copy of this order be communicated electronically to the concerned Trial Court for information.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 18, 2022/v