

(278) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16867-2022 (O&M)
Date of Decision:02.02.2023

Babu Pal

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Sushil Bhardwaj, Advocate for the petitioner.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

Mr. Sumeet Goel, Sr. Advocate with
Mr. A.S. Balwan, Advocate for respondent No.2.

VINOD S. BHARDWAJ , J. (Oral)

CM-1951-CWP-2023

The application is allowed as prayed for. Order dated 31.10.2022 passed by Additional Sessions Judge, Fast Track Court, Gurugram, order dated 23.11.2022 passed by respondent No.2-DLSA and the letter dated Nil issued by the Assistant in the office of DLSA, Gurugram, are taken on record as Annexures R-2/1, R-2/2 and R-2/3 respectively.

Main case

The instant writ petition has been filed for issuance of direction to respondent No.2 to grant compensation under the Haryana Victim Compensation Scheme, 2013 dated 03.04.2013 (Annexure P-2) to the daughter of the petitioner being rape victim.

Brief facts of the case giving rise to the present petition are that the petitioner, who is resident of Madhya Pradesh, and works in Gurugram, Haryana for his livelihood. On 11.08.2014, eight years old minor daughter of the petitioner was subjected to Aggravated Penetrative sexual assault resulting in registration of FIR No.253 dated 12.08.2014 under Section 376 IPC and Section 3 and 4 of POSCO Act, 2012 registered at Police Station Sector-40, Gurugram. On

Procedure Code (hereinafter referred to as “Cr.P.C”) was filed. Evidence thereafter was concluded and Additional Sessions Judge, Gurugram, vide its judgment dated 09.06.2015 and order dated 10.06.2015 convicted the accused persons for commission of offence under Section 376 (2) (i) of IPC and under Section 6 of POCSO Act, 2012 and sentenced the accused to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.5000/-; and in default of payment of fine to further under Rigorous Imprisonment for a period of 5 months. Sentences were ordered to run concurrently. The case of the daughter of the petitioner was, however, was not forwarded to the Legal Service Authority, Gurugram, for grant of compensation under the Haryana Victims Compensation Scheme, 2013 (hereinafter referred to as Scheme of 2013), even though, the daughter of the petitioner was entitled to the compensation under the above scheme which was in force at the time of the incident. No compensation was awarded also under Section 357 Cr.P.C.

Thereafter an application seeking grant of compensation/rehabilitation under the State Compensation Scheme mentioning subsequent developments was submitted. The said application was taken up by the Court of Additional Sessions Judge, Fast Track Special Court, Gurugram, for the offences under POCSO Act, 2012. The said application was allowed vide order dated 31.10.2022 and a compensation of Rs.4,00,000/- was awarded by the POCSO Court. The said payment has already been released in favour of the petitioner on 18.01.2023. It is averred that compensation in terms of the order passed by the POCSO Court having been released, there is no subsisting grievance.

Learned counsel appearing on behalf of the petitioner, however, submits that incident in question had taken place on 11.08.2014 and the victim compensation Scheme of 2013 was then in force. The said Scheme has been appended as (Annexure P-2). As per Schedule-I appended with the aforesaid

Scheme of 2013, if the victim is less than 14 years, the compensation prescribed in the schedule is to be increased by 50% over and above the amount specified. A minimum compensation of Rs.3,00,000/- has been prescribed for the victim of rape under the said Scheme. As the daughter of the petitioner was 8 years of age i.e. less than 14 years, she would be entitled to an additional compensation of Rs.1,50,000/- over and above Rs.3,00,000/- as minimum compensation as prescribed under the schedule. Subsequent to this, she is now entitled to Rs.4,50,000/- in terms of the said Scheme of 2013. Hence, a just and proper compensation in terms of the scheme has been denied to the petitioner.

Counsel for the respondents however contends that compensation as per order of the Court has been released in favour of the victim.

I have heard learned counsel for the parties and have gone through the record of the case.

It is undisputed that the scheme of 2013 was in force as on the date of incident. Some of the relevant provisions of the scheme reads thus:

“2. In this scheme, unless the context otherwise requires:

- a) “act” means the Code of Criminal Procedure, 1973 (2 of 1974);*
- b) “crime” means illegal act of omission or commission or an offence committed against the human body of the victim;*
- c) “dependents” means wife/husband, father, mother, unmarried daughter, minor children and includes other legal heir of the victim who, on providing sufficient proof, is found fully dependent on the victim by the District Legal Services Authority;*
- d) “family” means parents, children and includes all blood relations living the same household;*
- e) “schedule” means Schedule appended to this scheme;*
- f) “state’ means the “State of Haryana.”*
- g) Victim means victim as defined under the Act and also includes said attach victim”***

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4. (1) A victim shall be eligible for the grant of compensation where:

(a) A recommendation is made by the Court under sub-section (2) and (3)

of Section 357-A of the Act or the offender is not traced or identified, and where no trial takes place, such victim may also apply grant of compensation under sub-section (4) of Section 357-A of the Act;

(b) The victim/claimant reports the crime to the officer-in-charge of the police station or any senior police officer or Executive Magistrate or Judicial Magistrate of the area within 48 hours of the occurrence:

Provided that the District Legal Service Authority if satisfied for the reasons to be recorded in writing, may condone that delay in reporting;

(c) The offender is traced or identified, and where trial has taken place, the victim/claimant has cooperated with the police and prosecution during the investigation and trial of the case;

(d) The income of the family should not exceed Rs.4.5 Lac per annum;

(e) The Crime on account of which the compensation which is to be paid under this scheme should have been occurred within the jurisdiction of Haryana State.

(2) The employees of Central/State Government, Boards, Corporations and Public Undertakings and income tax payees shall not be eligible under this scheme.

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5. (1) Whenever a recommendation is made by the Court under sub-section (2) of Section 357-A of the Act or an application is made by any victim or his dependent under sub-section (4) of section 357-A of the Act to the District Legal Services Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness of the claim. After verifying the claim and by conducting due enquiry, the District Legal Service Authority, the District Legal Services Authority shall award compensation within two months, in accordance with provisions of this scheme.

(2) Compensation under this scheme shall be paid subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of Section 357 of the Act, the victim-claimant shall remit an amount equal to the amount of compensation, or the amount ordered to be paid under the said sub-section (3) of section 357 of the Act, whichever is less. An undertaking to this effect shall be given by the victim-claimant on before the disbursal of the compensation amount.

in addition to the payment of the fine to the victim under section 326 A or section 376 D of the Indian Penal Code.

(3) The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case depending on fact of each case.

(4) The quantum of compensation to be awarded to the victim or his dependents shall be as per Schedule I.

(5) The amount of compensation decided under the scheme shall be disbursed to the victim or his dependents, as the case may be, from the Fund. While making payment of amount of compensation, the District Legal Services Authority shall ensure that all the provisions of this scheme are strictly complied with.

(5A) Notwithstanding anything in this scheme, the Acid Attack Victim shall be paid amount of Rs.1.00 lac within 15 days of the occurrence of the incident and the balance amount of Rs.2.00 lacs shall be paid within two months of such incident.

(6) Compensation received by the victim from the State in relation to the crime in question, namely, insurance, ex-gratia and/or payment received under any other Act or “Rajiv Gandhi Pariwar Bima Yojna” or any other State-run scheme, shall be considered as part of the compensation amount under this scheme, the victim/claimant who has received compensation amount from collateral sources mentioned above shall be deemed to be compensated under this scheme and shall not be entitled to separate compensation under this scheme. If the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of fund.”

It is evident from a perusal of the above that for a victim to be eligible, she is required to fulfill the eligibility condition under Clause 4 of the Scheme of 2013. It is not in dispute that compensation under Section 357-A has not been awarded by the POCSO Act by the Court and it has held that the minimum compensation payable is Rs.4,00,000/-. Hence, the daughter of the petitione fulfills all the requirements prescribed under the Scheme.

Further, Clause 5 (4) of the Scheme 2013 stipulates that the compensation to be awarded to the victim has to be as per the Schedule-I. It is also stipuated that the compensation is to be paid on the condition that of the Court orders accused to pay any amount by way of compensation, such amount or the compensation paid, whichever is less, has to be remitted.

In the present case, the compensation has now been ordered by the Court to be paid. Even though, the said order is not a subject matter of challenge in the present case and ordinarily a person should raise a challenge to such order, however, considering the design objective of the scheme which is compensatory in nature for the wrong done to a person, directing the petitioner to file a fresh petition for the balance amount of Rs.50,000/- would only add to his miseries. The cost of litigation may itself take away the benefit which she claims to be due to her. Hence, considering the larger interest of justice in mind, the Court is inclined to exercise its power of issuing the prerogative writ to meet the ends of justice. Relegating the victim to approach as per the procedure afresh would rather victimize her further, moreso, when her eligibility and entitlement is not in dispute, the only thing which remains to be seen is whether the compensation has been awarded in terms of the Scheme or not.

A perusal of the order dated 31.10.2022 passed by the Fast Track Court under the POCSO Act, 2012 shows that the minimum amount of Rs.4,00,000/- has been awarded under the Haryana Victim Compensation Scheme of 2020. The erstwhile Scheme of 2013 has been repealed.

It cannot be lost sight that the incident in question took place in the year 2014 and the judgment was passed in 2015 i.e. when the scheme of 2013 was in force. The ascertainment of compensation was to be done by the Court, which however, did not take place. When the said aspect was brought to the notice, the

order was passed in 2022. By that time now scheme has already been notified.

I am of the view that the victim cannot be denied benefit of more benevolent scheme merely due to an act of oversight by the Court. The Act of Court should not prejudice her claim to just compensation. She cannot be now deprived of her compensation merely because the said aspect could not be brought up at the time when trial was concluded. The victim being a minor and 10 years of age on the date when she was violated and also when the matter was decided, the Court is the supreme guardian of her best interests as *parens patriae*. Thus, the obligation was cast on the Court to perfect her best interest.

Hence, the aforesaid deprivation is now being undone in exercise of the power of prerogative writ. The sending of the petitioner to avail alternative remedy of appeal would be an exercise in futility as the authorities under the scheme cannot award compensation under a repealed scheme. Besides, the balance claim is only a nominal amount of Rs.50,000/- even as per scheme of 2013.

Accordingly, the present petition is allowed and the respondent-District Legal Services Authority is directed to award a total compensation of Rs.4,50,000/- as per the Haryana Victim Compensation Scheme, 2013. The amount of Rs.4,00,000/- already disbursed be adjusted from the amount above. The balance amount of Rs.50,000/- be released in favour of the petitioner within a period of 4 weeks from today as per law.

(VINOD S. BHARDWAJ)
JUDGE

02.02.2023
rajeev

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No