

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

219

CWP-16858-2018

Date of decision: 12.10.2023

NISHA SIDHU

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

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

Present:- Ms. Pooja Singh, Advocate
for the petitioner.

Mr. Rohit Bansal, Sr. DAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

Prayer made in the present petition is for seeking issuance of directions to the respondents to pay the compensation to the petitioner being a victim of an offence punishable under Section 376 of the Indian Penal Code, 1860.

2. The counsel for the petitioner has argued that the petitioner was raped by respondent No.3 on the pretext of marriage and as a result thereof a child was born on 23.07.2008. An FIR bearing No. 36 dated 08.03.2007 was registered for offences under Sections 376, 120-B read with Section 3 of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short “the SC/ST Act”) at Police Station Haibowal, Ludhiana.

3. The petitioner appeared as a witness and deposed against the respondent-accused whereupon he was convicted vide judgement dated 16.03.2016 and sentenced to undergo rigorous imprisonment for

a period of 07 years alongwith fine of Rs. 50,000/- to be disbursed to the petitioner.

4. Learned counsel appearing on behalf of the petitioner contends that the petitioner belongs to a Scheduled Caste community and had been subjected to assault by the respondent No.3-accused. The appeal against the above said judgment and conviction bearing CRA-S 1886-SB of 2016 is pending before this Court and has not been finally decided although sentence of the respondent stands suspended. She further refers to the notification dated 15.10.2013 issued by the Government of Punjab, Department of Home Affairs and Justice regarding victim compensation scheme as per which the State is expected to grant compensation to victims of rape. Representation in this regard was submitted by the petitioner on 22.07.2016 to the respondents with a subsequent legal notice of 04.04.2018, however, no decision was taken thereupon. Consequently, the present writ petition was filed.

5. Learned State counsel has on the other hand argued that the petitioner had moved an application on 05.02.2007 wherein it was alleged that she had been induced by respondent No.3-Vishal Sharma into friendly relations with her and later he proposed to enter into matrimonial alliance with her. The petitioner claims that she specifically informed respondent No.3 that she would solemnize a marriage only after the consent of her parents and that she introduced respondent No.3 to her parents. He also induced her parents to lend him a sum of Rs. 1,50,000/- to buy a Qualis to operate as a Taxi. When her father demanded the said money back, respondent No.3-Vishal Sharma

abused her father and a prayer was made for registration of case under Section 406, 420 and 120-B of the Indian Penal Code, 1860 and under provisions of the SC/ST Act. No allegation of rape was levelled by the petitioner in her application dated 05.02.2007 submitted by her, however, surprisingly, FIR No. 36 dated 08.03.2007 had been registered under Section 376, 120-B of the IPC read with Section 3 of the SC/ST Act. He further refers to the extract of the judgement dated 16.03.2016 as per which it was averred that during the pendency of the investigation, the petitioner solemnized a marriage on 25.03.2007 with accused-Vishal Sharma and resided in the matrimonial house for sometime. They, thereafter, shifted to a rented accommodation when the child was born. However, on account of differences amongst the parties, the petitioner filed her objection against the cancellation report in the said FIR and deposed against cancellation and her husband-Vishal Sharma-respondent No.3. Reinvestigation of the matter was ordered on 08.05.2009. It is thus contended that as the petitioner and respondent No.3-Vishal Sharma had solemnized a marriage and cohabitated together as a husband and wife for a period of more than 03 years and the son was born during subsistence of a valid wedlock. There is hence no occasion for the petitioner to claim compensation alleging the said matrimonial relationship as commission of offence of rape. He further argues that a compensation of Rs. 40,000/- has been directed to be paid by respondent No.3-Vishal Sharma by the trial Court and a further sum of Rs. 25,000/- has already been paid by the State to the petitioner under the provisions of the SC/ST Act. He argues that as per the notification dated 30.11.2017, the victim compensation scheme

had been framed and a criteria for grant of compensation had been notified thereunder.

6. Learned counsel appearing on behalf of the State, however, contends that insofar as the contents of para No. 7 as well as the averments with respect to the comments on the judgement passed by the trial Court are concerned, the same may be treated as expunged and be excluded from the affidavit filed. He, however, does not dispute the judgment of conviction leading to sentencing of respondent No.3 passed by the trial Court and that the pendency of appeal. The Victim Compensation Scheme, 2017 notified by the State and its applicability is also not disputed.

7. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

8. Taking into consideration the circumstances noticed above and the fact that the petitioner, being a member of the Scheduled Caste community, had been subjected to rape. The marriage, even if presumed to have been solemnized, is in later point of time as compared to the date when the offence in question was alleged to have been committed. The subsequent solemnization of marriage would not in any manner undo the criminal offence already committed. The claim of the petitioner for compensation gets further strengthened from the fact that during the proceedings before the trial Court, she reiterated her stand on an oath and deposed against respondent No.3-Vishal Sharma leading to a successful conviction. It would have been an altogether different case wherein the petitioner may have turned hostile and resiled from her

deposition leading to an acquittal of respondent No.3. She having maintained her stand, cannot be put to any prejudice merely because of solemnization of marriage later in point of time and the subsequent birth of the child.

9. Accordingly, the petitioner would continue to be a victim of rape and entitled to compensation as per the scheme notified by the Government which is not disputed. The reasons given by respondents for denial of the claim are thus untenable. The welfare object of a scheme has to be constructed favourably & denial of claim should be on the reasons that are valid & legally sustainable. It would thus be appropriate to direct the petitioner to submit an application to the competent authority under the scheme for compensation and without commenting any further.

10. The petitioner may thus submit her claim before the Punjab State Legal Services Authority for grant of compensation. In the event of the petitioner approaching the Punjab State Legal Services Authority for grant of compensation, her claim be considered by the respondents-authorities as per law and due compensation be released to her as per the undisputed Victim Compensation Scheme.

11. The period during which proceedings have remained pending shall be taken into consideration as well.

The present writ petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

OCTOBER 12, 2023

Vishal sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No