

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

247

CWP-24953-2021 (O&M).
Date of Decision: 11.12.2023.

SHINDER KAUR

.. Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Ms. Veena Kumari, Advocate, with
Mr. Rajesh Kumar, Advocate, for the petitioner.

Ms. Niharika Shama, AAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present writ petition is for seeking directions to the respondents to pay compensation to the petitioner, who belongs to the Scheduled Caste Community and whose son namely Gurjeet Singh @ Vicky is alleged to have been murdered by persons of dominant caste on 25.04.2021 resulting into registration of FIR No.58 dated 26.04.2021, under Sections 302, 148 and 149 of the Indian Penal Code, 1860 and under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, at Police Station Bhikhi, District Mansa, in view of Rule 12 (4) read with Annexure 1 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

Learned counsel for the petitioner has vehemently argued that Gurjeet Singh son of Balvir Singh was working as labourer in Dana Mandi, Bhikhi. On 25.04.2021, the deceased Gurjeet Singh @ Vicky did not come home till late night. The petitioner along with her nephew namely Jasvir Singh went to Dana Mandi Bhikhi to enquire about the whereabouts of Gurjeet Singh @ Vicky. When they reached near the shops of Market Committee Office at about 10:30/11:00 P.M., they saw a car parked behind the shop and 4-5 motorcycles parked in front of the shop. They heard a huge cry and screaming coming from the shop. When they reached near to see inside the shop, they saw that Babbu resident of Dhaleva, Pamma resident of Bhikhi and Khushi resident of Jassarwal accompanied by 8-9 unknown persons, all armed with swords and clubs (gandasas) were attacking Gurjeet Singh @ Vicky. They raised an alarm whereupon the assailants fled away from the spot along with their respective weapons and the car. Gurjeet Singh @ Vicky was seriously injured and he was brought to the Civil Hospital, Bhikhi and thereafter to Civil Hospital, Mansa, where he was declared as 'brought dead'. Accordingly, the above said FIR No.58 dated 26.04.2021 was recorded at Police Station Bhikhi, District Mansa.

She further submits that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, had been notified by the Government and as per Rule 12 (4) of the said Rules, the District Magistrate or the Sub Divisional Magistrate or any other Executive Magistrate is required to make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members and dependents according to the scale as provided in the schedule annexed to the Rules i.e.

Annexure-I read with Annexure-II. It is contended that as per Sr. No.45 of

the aforesaid Rules of 1995, a compensation of Rs.8,25,000/- has been provided in the event of murder or death of a person belonging to Scheduled Castes or Scheduled Tribes and payment of 50% of said amount is to be made after post mortem report and the remaining 50% payment is to be made when the charge sheet is filed in the Court. She further contends that the petitioner had been granted first installment of 50%, however, the balance 50% amount has not been released even though the same was to be released on filing of the chargesheet in the Court. She further submits that additional reliefs provided at Sr. No.45 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, also ought to have been released in favour of the petitioner.

A short reply by way of affidavit of Jaspreet Singh, IAS, Deputy Commissioner-cum Chairperson, District Vigilance and Monitoring Committee, Mansa on behalf of respondents No.1 to 3 dated 09.05.2022 has been filed wherein it has been averred that the copy of post mortem report of the deceased was received in the office of District Social Justice and Empowerment Officer, Mansa, from the office of the Senior Superintendent of Police, Mansa on 30.04.2021 and a sum of Rs.4,12,500/- was disbursed immediately. It is further averred that the proposal for the remaining amount had also been sent to the Government but the same was not received.

However, during the course of arguments, learned counsel for the respondent/State has submitted that there had been certain subsequent developments. The above FIR No.58 dated 26.04.2021, under Sections 302, 148 and 149 of the Indian Penal Code, 1860 and under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989, at Police Station Bhikhi, District Mansa was tried as Sessions Case No.33 of 15.07.2021 by the Additional Sessions Judge, Mansa. The petitioner appeared as PW.2 in the said case but resiled from her statement. The above aspect noticed by the Additional Sessions Judge, Mansa in the judgment reads thus:-

“PW2 Shinder Kaur stated that on 25.04.2021, Jasvir Singh had come to her house. On that day, as her son Vicky had not come back home after work, she alongwith Jasvir Singh went in search of Vicky. In the area of Market Committee, Bhikhi, they noticed 4-5 unidentified persons running away. After covering some distance, they found the body of Vicky lying in a pool of blood near a shop. They took Vicky to Civil Hospital, Bhikhi, from where he was taken to Civil Hospital, Mansa. However, Vicky died on the way and was declared brought dead at Civil Hospital, Mansa. She stated that accused present in the court had neither inflicted any injuries to deceased Vicky nor they were the persons, whom they had seen running away from the spot of occurrence. She denied having suffered any statement to the police. On the request of learned Addl.PP for the State, the witness was declared hostile and cross-examined. In the course of her cross-examination conducted by learned Addl.PP for the State, the witness denied having suffered statement Mark 2A to the police. When confronted with the contents of statement Mark 2A, she denied the correctness thereof in its totality.”

It is contended that as the petitioner has not supported her case during the course of deposition in the Court of law, she would not be entitled to release of the balance consideration as no offence punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1989, was made out. Since commission of offence as per the Act is a pre-requisite under the law, non-fulfillment of conditions precedent would dis-entitle for benefit under the Act.

Responding to the above, learned counsel for the petitioner contends that in so far as the extract of the evidence/deposition made by the petitioner Shinder Kaur as PW.2 is concerned, the same is not disputed. However, the language of Rule 12 (4) read with Annexure – I, Entry 45 thereof, clearly shows that the entitlement for release of the balance 50% of the amount arises on the filing of the chargesheet. Any subsequent development could not be cited by the respondents for denial of the accrued benefits. Hence, disbursement of compensation as per Rules is not dependent on the final outcome of the proceedings. The right accrued in favour of the petitioner on filing of the chargesheet and there was an unnecessary and unjust delay on the part of the respondent-State in disbursement of compensation. Hence, notwithstanding the petitioner having resiled from her statement in proceedings before the Court, the benefit to which the petitioner was entitled under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, ought to have been released in her favour.

Neither any other argument has been advanced nor any judgment has been cited by the learned counsel for the petitioner.

Counsel for the State, however, repeats his arguments as already noted above and contends that his conduct is definitely required to be taken into consideration. Once no offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is made out, the release of benefit cannot be claimed as a matter of right.

I have heard learned counsel appearing for the respective parties and have gone through the documents appended along with the present petition including the judgment passed by the Additional Sessions Judge, Mansa, in Sessions Case No.33 of 15.07.2021 decided on 21.12.2022.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was notified to prevent commission of offences and atrocities against the member of the Scheduled Castes and Scheduled Tribes and to provide for special Courts for expeditious disposal of such offences as well as for relief and rehabilitation of victims of such offences. The definition of 'victim' has been provided under Section 2 (ec) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which reads thus:-

“Section 2. Definitions.

xxx xxx xxx

(ec) "victim" means any individual who falls within the definition of the "Scheduled Castes and Scheduled Tribes" under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs.”

Further, Section 15-A of Chapter IV-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, deals with the 'Rights of Victims and witnesses.' The said Section 15A is extracted as under:-

“15A. Rights of victims and witnesses.--(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victims age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses--

(a) the complete protection to secure the ends of justice;

(b) the travelling and maintenance expenses during investigation, inquiry and trial;

(c) the social-economic rehabilitation during investigation, inquiry and trial; and

(d) relocation.

(7) The State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.

(8) Without prejudice to the generality of the provisions of subsection (6), the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including--

(a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public;

(b) issuing directions for non-disclosure of the identity and addresses of the witnesses;

(c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection:

Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint:

Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.

(9) It shall be the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them at free of cost.

(10) All proceedings relating to offences under this Act shall be video recorded.

(11) It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as--

(a) to provide a copy of the recorded First Information Report at free of cost;

(b) to provide immediate relief in cash or in kind to atrocity victims or their dependents;

(c) to provide necessary protection to the atrocity victims or their dependents, and witnesses;

(d) to provide relief in respect of death or injury or damage to property;

(e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims;

(f) to provide the maintenance expenses to the atrocity victims and their dependents;

(g) to provide the information about the rights of atrocity victims at the time of making complaints and registering the First Information Report;

(h) to provide the protection to atrocity victims or their dependents and witnesses from intimidation and harassment;

(i) to provide the information to atrocity victims or their dependents or associated organisations or individuals, on the status of investigation and charge sheet and to provide copy of the charge sheet at free of cost;

(j) to take necessary precautions at the time of medical examination;

(k) to provide information to atrocity victims or their dependents or associated organisations or individuals, regarding the relief amount;

(l) to provide information to atrocity victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial;

(m) to give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organisations or individuals and to provide the legal aid for the said purpose;

(n) to execute the rights of atrocity victims or their dependents or associated organisations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.

(12) It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organisations, social workers or advocates.

Further, the State also notified the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, in exercise of

powers under Section 23 (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Rule 12 (4) thereof reads thus:-

“12 (4) The District Magistrate or the Sub Divisional Magistrate or any other Executive Magistrate shall make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members and dependents according to the scale as in the schedule annexed to these Rules (Annexure-I read with Annexure-II). Such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items.”

Further, aspect of Appendix-I prescribing the compensation of Rs.8,25,000/- and the Stage at which such amount is due is not in dispute.

The question which, however, falls for adjudication before this Court is as to whether any person can claim himself to be a victim of an atrocity only on the basis of a statement made before the Police under Section(s) 154 or 161 of Cr.P.C. especially when such a person has not supported the statement and has rather disowned the same while making a deposition in a Court of law. The petitioner having resiled from the said statement, the basic requirement of being a “victim” for invoking the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, itself falls under cloud.

The financial assistance under the Rules pre-supposes an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. There is also a legal presumption that a person approaching the police does so correctly and justly. A financial assistance

exchequer by a mere registration of a case, which is known to the complainant to be false. Being an eye witness account, there cannot be a failure as regards identification of named accused persons.

For issuing directions to release benefit under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Rules of 1995 framed thereunder, the claim has to be determined as per the object of the Act, the intended aim and the desired results sought to be achieved. The scheme of the Statute precedes conferring benefits to the members of the under privileged SC/ST victims against high handedness and oppression, however, the same is subject to commission of an offence under the above said Act and the Rules framed thereunder. The reading of Rule 12 (4) of the Rules of 1995 shows that it mandates, District Magistrate or the Sub Divisional Magistrate to make administrative and other arrangements to provide relief in cash or in kind to the “victims of atrocities.” The rights of victims and witnesses have been provided under Chapter IV-A of the Act of 1989 under Section 15A of the said Act. Hence, before a benefit can be claimed as a right, it is required to be established that a person is a “victim” of an “atrocities” which is a punishable offence under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. A mere occurrence of an event against a person belonging to Scheduled Caste and Scheduled Tribes does not entitle him for compensation.

The scheme of compensation under the Rules is pursuant to Section 15-A (12) of the Act of 1989 and the said clause extends the benefit to an “atrocities victim” and not just a “Victim”. “Atrocities” has been defined to mean an act punishable under Section 3 of the Act of 1989. The

presumption behind law being that the reported account of atrocity is truthful, the benefits under the Act and Rules framed thereunder can only be claimed when such legal duty is fulfilled and material on record would suggest fairness in action. An act which is borne out of unfairness, malice or lacks bona fide deprives itself of the equitable jurisdiction. Conduct of a person has always been crucial before a writ Court and a claimant cannot press for exercise of equity even when his conduct fails to inspire confidence.

The issue which thus next arises is as to whether the final outcome of the Act alleged to have been committed will have a bearing on the entitlement of a person to claim compensation or not. The said aspect has to be determined on case to case basis and the conduct of the claimant as well

It is not in dispute that the petitioner Shinder Kaur along with her nephew Jasbir Singh claim themselves to be the eye witnesses to the incident naming certain persons to have committed atrocities against Gurjeet Singh @ Vicky. The said persons were alleged to be belonging to the dominant caste. Consequently, the provisions of Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was specifically attracted, however, while appearing as a prosecution witness both the eye witnesses i.e. Jasbir Singh as well as Shinder Kaur (petitioner) resiled from their ocular version of the incident and made a specific assertion in the Court that the accused who had been brought up for trial were not the persons who inflicted injuries. The relevant part of the statement of PW.2 Shinder Kaur has been extracted earlier whereas the deposition of PW.1 Jasvir Singh is extracted herein below:-

“PW1 Jasvir Singh stated that on 25.04.2021, he had gone to the house of his maternal grandparents at village Samaon. On that day, as his cousin Vicky had not come back home after work, he alongwith his maternal aunt Shinder Kaur went in search of Vicky. In the area of Market Committee, Bhikhi, they noticed 4-5 unidentified persons running away. After covering some distance, they found the body of Vicky lying in a pool of blood near a shop. They took Vicky to Civil Hospital, Bhikhi, from where he where he was taken to Civil Hospital, Mansa. However, Vicky died on the way and was declared brought dead at Civil Hospital, Mansa. He stated that accused present in the court had neither inflicted any injuries to deceased Vicky nor they were the persons, who they had seen running away from the spot of occurrence. He denied having suffered any statement to the police. On the request of learned Addl.PP for the State, the witness was declared hostile and cross-examined. In the course of his cross-examination conducted by learned Addl. P.P for the State, the witness denied having suffered statement Mark 1A to the police. When confronted with the contents of statement Mark 1A, he denied the correctness thereof in its totality. Identifying his signatures at Point A on Mark 1A, he stated that those signatures had been obtained from him by the police on some blank papers. He also denied having suffered statement Mark 1B before the police. He denied that the memo Mark 1C had been prepared by the police in his presence. He denied having suffered statement Mark 1D before the police.”

Apparently, the prosecution was launched in this case under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the accused persons on the basis of an eye-witness account wherein the petitioner Shinder Kaur along with the eye-witness of the incident claimed to be at the spot and having seen the accused inflicting

injuries on the deceased Gurjeet Singh @ Vicky. The petitioner, however, specifically denied the presence of the accused persons at the time of causing incident notwithstanding that the said persons were ones who had been named by her in the original complaint as well as during the course of her statement recorded by the police under Section 161 Cr.P.C.

It seems that the laudable object of the Statute and Rules framed thereunder is being abused and is subjected to misuse by mischievous elements. The object for which a compensatory provision has been prescribed in a Statutory Scheme indubitably relies upon the credibility and integrity of the claimant and proceeds on a presumption that the complainant/victim shall resort to disclosing the true nature of the incident and would support his cause. In the event of the victim not supporting the case of the prosecution and establishing that the incident, on the basis whereof the compensation is being claimed, had actually not taken place in the manner as was alleged by him at the stage of launching his first claim, it cannot be said that any subsequent development would have no bearing on the right of such a person. The victim having not discharged his obligation and having failed to establish that any cognizable offence stipulated under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, ever took place would not be entitled to the beneficial provisions notified under the Scheme. The contention of the petitioner that the final outcome of the trial could not determine the entitlement of the petitioner/victim to claim benefit under any circumstances would have been correct only in an altogether different scenario. The same would, in fact, apply and enure in favour of a victim in case they would have withstood the test of cross-examination and deposed

in support of the prosecution but the same failed for reasons other than the victim/witnesses resiling from their own statement. In the present case, the credibility of the prosecution was shattered on account of the claimant/beneficiary herself not supporting the case of the prosecution despite claiming to be eye witness. This clearly is an attempt at committing fraud on the beneficial and benevolent provision of a Statute and is more intended to avail a benefit by mis-reporting/mis-representation of the facts. This Court would not sit as a mute spectator and come to an aid of a person playing fraud on a Statute and trying to elicit a benefit under the benevolent Scheme knowing fully well that he or she would not be entitled to the same. Any such interpretation of a statutory provision is likely to embolden practicing fraud on Statute prompting leveling of false accusations only for drawing benefits. Such an attempt needs to be curbed and not ignored.

The release of benefits under a Scheme are always inherently subject to a lawful act and the same being bona fide, legal and correct. Any act of fraud would vitiate the entire process and object of law and would disentitle a beneficiary to claim or retain the benefits. Any right under a Statute inheres performance of the statutory duty and failure to discharge the statutory duty would defeat entitlement of the statutory right. The act(s) of petitioner is found lacking on all frontiers. The powers under prerogative writ come to the aid of establishing rule of law and not as an accomplice to assist perfecting right actuated by deceit or fraud.

The present petition is accordingly dismissed.

December 11, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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