

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

222

CWP-3901-2021 (O&M)
Date of decision: 13.03.2024

Mrs. Afsana ...Petitioner

VERSUS

State of Haryana and others ...Respondents

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

Present :- Ms. Kushaldeep Kaur, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG Haryana.

Mr. Kunal Mulwani, Advocate for respondents No.2 and 3.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for modification of order dated 13.01.2020 (Annexure P-2) passed by respondent No.3-The District Legal Services Authority, Faridabad, whereby an amount of Rs.4 lakhs has been ordered to be paid to the petitioner/victim under the Victim Compensation Scheme.

2. It has been prayed that a compensation of Rs.8 lakhs should be awarded to the petitioner in the light of the order dated 25.07.2018 (Annexure P-4) passed by this Court. It is evident from a perusal of the order sheets that no one has entered appearance on behalf of the petitioner on last two occasions and the situation has remained the same today as well. Accordingly Ms. Kushaldeep Kaur, Advocate, who is on the panel of the High Court Legal Services Committee is appointed as counsel to assist this Court on behalf of the petitioner in the present case. She has gone through

the paper-book supplied to her by the learned counsel for the respondent for her perusal.

3. Learned counsel for the petitioner has vehemently argued that the petitioner is a rape victim in case FIR No.18 dated 22.02.2018 registered under Sections 376, 313, 506 and 34 IPC at Police Station Women, Sector-16-A, Faridabad. The accused was thereafter convicted and sentenced to undergo rigorous imprisonment for a period of 10 years by the Additional Sessions Judge-cum-Fast Track Court, Faridabad. The case of the petitioner was referred to the District Services Authority, Faridabad, for compensation vide judgment dated 20.11.2019. The operative part of the said judgment reads thus:

“Hon'ble Supreme Court in Ankush Shivaji Gaikwad versus State of Maharashtra, 2013(2) RCR Criminal 1036 and Suresh and another Vs. State of Haryana, (2015) 2 SCC-227 has observed that in case of conviction of an accused in criminal offense, it is mandatory duty of the Court to consider the question of award of compensation to victim of crime. So, the case is recommended to the District Legal Services Authority for the grant of compensation under Section 357A sub-section (3) of the Code of Criminal Procedure, under the Haryana Victim compensation Scheme, 2013 to the prosecutrix. A copy of this judgment be sent to the Secretary, District Legal Services Authority, Faridabad for necessary action under the provisions of Haryana Victim Compensation Scheme, 2013. Case property, if any, be dealt with in

accordance with the provisions of law."

4. Learned counsel for the petitioner further states that the Chief Judicial Magistrate-cum-Secretary, District Legal Services Authority, Faridabad, conducted an enquiry and recorded his finding holding that the petitioner is entitled to compensation of Rs.4 lakhs. The operative part of the said enquiry/order dated 13.01.2020 reads thus:

"Considering the fact that the victim is sufferer and has been subjected to heinous and barbarous crime, which resulted in severe physical and mental injuries. This Authority finds it appropriate that an amount of Rs. 4,00,000/- (Rupees Four Lac Only) be granted as final compensation to the victim, which would include her rehabilitation.

It is ordered accordingly, in view of the above said discussion and for the reason recorded above, it is directed that a compensation of Rs. 4,00,000/- (Rupees Four Lac Only) is paid to the victim, from the Victim Compensation Scheme with the District Legal Services Authority, Faridabad, as per the Schedule 1 (Srl. No. 4) of Haryana Victim Compensation Scheme, 2013."

5. The petitioner claims that she has complied with the conditions and has furnished the information including details of bank account and affidavits, as directed by the District Legal Services Authority, however, the amount of compensation had not been deposited and she further contends that she is entitled to higher compensation to the extent of Rs.8 lakh in terms of the Victim Compensation Scheme.

6. She further contends that a compensation of Rs.8 lakhs was awarded by this Court in a similar matter i.e. **CWP-5951-2018** titled as '**Shabana Vs. State of Haryana and others**'. She thus prayed that the compensation already awarded be released in favour of the petitioner and higher compensation be given to her in view of the above judgment.

7. A short reply has been filed by Deputy Director, Social Justice & Empowerment Department, Haryana, on behalf of respondent No.1, wherein the factual aspects noticed above are not under dispute. It is however submitted that the petitioner may seek enhancement of compensation from the Department of Home, Haryana, being the Nodal Department.

8. A separate short reply has also been filed by the Special Secretary to Govt. of Haryana, Administration of Justice Department, on behalf of respondent No.4, wherein it is averred that the Victim Compensation Scheme provides for remedy of appeal under Clause 17 and instead of approaching this Court, the petitioner ought to have preferred an appeal before the District & Sessions Judge-cum-Chairperson, District Legal Services Authority.

9. Learned counsel appearing on behalf the District Legal Services Authority further contended that the amount of Rs.4 lakhs, as ordered by the Chief Judicial Magistrate-cum-Secretary, District Legal Services Authority, Faridabad has already been released in favour of the petitioner. He further submits that as far as the amount of compensation to be paid to the victim is concerned, the minimum amount fixed under the said Scheme is Rs.4 lakhs and the same has already been awarded and released in favour of the

petitioner in the present case.

10. On a pointed query, learned counsel for the District Legal Services Authority however does not dispute the fact that the compensation awarded to the petitioner is minimum and that a higher compensation can be awarded by the competent authority, upon consideration and in totality of circumstance. He however submits that since a remedy of appeal is prescribed under the Victim Compensation Scheme, the petitioner may approach the appellate authority, with the relevant material justifying her claim for a higher compensation. He contends that in the event of the petitioner preferring any such appropriate appeal/petition before the appellate authority, a reasoned decision shall be taken thereupon.

11. In view of the above, the present writ petition is **disposed of at this stage** with liberty to the petitioner to approach the appellate authority under Clause 17 of the Haryana Victim Compensation Scheme, 2013, **within a period of two months** of receipt of a certified copy of this order. In the event of such an appeal being preferred by the petitioner, her claim shall be considered by the appellate authority, on merit, and a reasoned order shall be passed after affording an opportunity of hearing.

12. A copy of this order be placed also before The High Court Legal Services Committee for its record and necessary action and to release the admissible dues/fee payable to the nominated Legal Aid Counsel.

(VINOD S. BHARDWAJ)
JUDGE

13.03.2024

Mangal Singh

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