

2024:PHHC:115724



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

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CWP-9518-2022

Date of decision: 04.09.2024

MS. H

.....Petitioner

VERSUS

PUNJAB STATE LEGAL SERVICES AUTHORITY AND ANOTHER

.....Respondents

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

Present :- Mr. Hardik Ahluwalia, Advocate for
Mr. G. S. Manku, Advocate
for the petitioner.

Mr. Ankit Bhinchar, Advocate for
Mr. S.P.S. Sidhu, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

The petitioner has approached to this Court challenging the order dated 03.03.2022 (Annexure P-5) passed by the Additional Sessions Judge, Gurdaspur vide which the application of the petitioner dated 27.01.2022 seeking compensation under “*Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018*” was disposed of as not maintainable.

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2. Learned Counsel appearing on behalf of the petitioner contends that a scheme known as “Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018” has been framed by the National Legal Services Authority, New Delhi and on directions of the Apex Court, a “Women Victim Compensation Fund” is maintained by the State Government from which compensation as directed by State Legal Services Authority or District Legal Services Authority into be paid to the victims of sexual assault and other crimes or their dependant.

3. The petitioner is a victim of sexual assault resulting in registration of case FIR No. 63 dated 15.07.2012 for offence under Sections 376, 363, 366-A/368/120-B IPC, where the accused was convicted vide judgment dated 22.07.2021 for offences under Section 376/363,366-A/368 IPC and sentenced to rigorous imprisonment for a period of 10 years for offence under Section 376, rigorous imprisonment for a period of three years for offence under Section 363 and Section 368 IPC and imprisonment for a period of five years for offence under Section 366-A of the IPC and in default thereof, to further undergo rigorous imprisonment of six months and three months under different offence and all the sentences are ordered to be run concurrently. Another FIR No. 69 dated 29.06.2013 was also registered and a charge-sheet had been filed against Sukhdev Singh son of Sucha Singh resident of village Umarpur, Batala in relation to the commission of the offence of rape against the petitioner. Vide judgment of conviction and order of sentence dated 22.07.2021, the accused has been held guilty for offences under Sections 363/367/368/506 IPC and has been sentenced to undergo

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imprisonment for a period of three years each in different offences and for a period of one year for offence under Section 506 IPC. All the sentences were to run concurrently.

4. He contends that the petitioner had submitted an application for grant of compensation before the Court of Additional Sessions Judge, Gurdaspur, however, the said application was dismissed on the ground that the provisions of the Chapter 2 do not apply to the minor victims under the POCSO Act, 2012 since the special provision has been prescribed under Section 33 (8) of the POCSO Act, 2012 for grant of compensation and also that the Court had become functus officio after passing of the judgment on 22.07.2021 and does not have any authority to take a decision with respect to grant of compensation.

5. Learned Counsel for the petitioner contends that the compensation had been declined to the petitioner erroneously and without taking into consideration the facts essential to the claim. He contends that the case was neither registered for offences under the POCSO Act nor any person has been convicted of the same. He contends that he is also not seeking a compensation in relation to the provisions of the POCSO Act and the Rules framed thereunder. Hence, the said foundation of the impugned order was bad, in the absence of any such claim being lodged by the applicant. He contends that the compensation was being asked for on account of initiation of proceedings and conviction of the accused for sexual offences not only under Section 376/363/366-A and 368 but also for offences under Sections 363, 367, 368 and 506 of the Indian Penal Code and

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that the District Legal Services Authority was required to satisfy itself with respect to the facts and to examine the case of the petitioner for being considered for grant of compensation. The said application was however wrongly forwarded by the Legal Services Authorities to the trial Court wherein the impugned order was passed. He contends that powers had been conferred upon the Legal Service Authority for taking a decision in view of Clause 9 of the said compensation scheme and to grant compensation. Hence, it was not necessary for the Legal Service Authority to refer the case of the petitioner to the trial Court for determination of compensation under Section 357 Cr.P.C and that the Legal Service Authority was in itself competent to examine the entitlement of the petitioner, if any, to the relief of compensation under the Victim Compensation Scheme of 2018. He contends that in not exercising its jurisdiction, the respondent-Legal Service Authority has abdicated its duties thus causing prejudice to the petitioner.

6. Counsel for the respondent-Legal Service Authorities has merely reiterated the factum of receipt of the application and having forwarded the same to the Additional Sessions Judge-trial Court, Gurdaspur for determination of compensation under Section 357 Cr. P.C. and contends that the same having been declined, there was no occasion for the Legal Service Authority to award any compensation. It is, however, not disputed that no decision had been taken by the District Legal Service Authorities for grant of compensation to the petitioner in offences for which the accused stands convicted.

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7. I have heard learned Counsel for the parties and have gone through the documents available on record.

8. Undisputedly a victim of sexual offences is entitled to be compensated under the Victim Compensation Scheme. The Legal Services Authority has been vested with a power to determine compensation, on a claim so made but the said exercise was not undertaken by it. The trial Court has not dismissed the application on merits but has done so on the ground of maintainability. The other reasons which have been given are also factually incorrect and not borne out from the record. In any case, where the Court holds that it is functus officio and can't take cognizance, it is an issue of maintainability and Court ought not go into any other merit.

9. The compensation scheme is a benevolent scheme aimed for rehabilitation and is not a source of further harassment. The claim could have been thus considered by the District Legal Service Authority at its own level as well.

10. Needless to mention that even if the accused has not been convicted for commission of the offence under the POCSO Act, the same cannot be the basis to decline the benefit which are otherwise admissible to the petitioner under the scheme and for the offences to which the petitioner had been subjected.

11. Besides, the District Legal Service Authority itself sent the issue to the trial Court and never referred the matter to the Special Court under the POCSO Act. It can not thus contend that only the POCSO Court is



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competent to award compensation even when no charge has been framed or trial conducted under the POCSO Act. The technicalities are now being used as a stumbling block against the victim. The same would not be a just and proper thing to do in the facts of the present case.

12. I find that the Legal Service Authority has failed to examine the claim of the petitioner in light of the object of the Victim Compensation Policy of 2018. In the event of the trial Court failing to look into the claim or not considering the same on account of having become functus officio, the same could not operate as a bar against the District Legal Service Authorities to exercise its jurisdiction and to ascertain the entitlement of the victim compensation, as per its own satisfaction.

13. The present writ petition is accordingly disposed of with a direction to the District Legal Service Authorities to consider the claim of the petitioner for grant of compensation under the Victim Compensation Policy of 2018 and in the event of the petitioner being found entitled to compensation thereunder, the same to be released expeditiously in her favour and preferably within a period of three months from receipt of certified copy of this order.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 04, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No