

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision: 01.02.2024

(1) CWP-13662-2020

JOGINDER SINGH AND ANOTHERPetitioners

VERSUS

STATE OF PUNJAB AND ANOTHERRespondents

(2) CWP-13720-2020

MANDEEP KAURPetitioner

VERSUS

UNION OF INDIA AND OTHERSRespondents

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

Present: - Ms. Veena Kumari, Advocate
for the petitioners.

Mr. Teevar Sharma, Asst. A.G. Punjab.

Ms. Gehna Vaishnavi, Advocate
for respondent No.1-Union of India in CWP-13720-2020 .

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Ms. Hemant Bassi, Advocate
for respondent No.2 in CWP-13622-2020
and for respondent No.3 in CWP-13720-2020.

VINOD S. BHARDWAJ, J. (Oral)

1. Both these writ petitions are being decided by a common order as the issues involved in these cases are identical.

2. Reference is, however, briefly made to the facts from CWP-13662-2020 titled as ***“Joginder Singh and another versus State of Punjab and another”***.

3. Learned counsel appearing on behalf of the petitioner contends that the petitioners are parents of two daughters who suffered Acid attack on their person on 12.10.2004 when the girls were just 20 and 21 years old respectively and were working as Nurses. They were going to their workplace in a rickshaw when an anti social element namely Narinder Singh, who was obsessed with one of the daughters of the petitioner, threw acid on both of them. An FIR bearing No. 146 dated 12.10.2004 was also registered at Police Station City Batala under Section 307 and 326 of the IPC. One of the daughters later succumbed to the injuries sustained during acid attack, after a long and painful struggle. It is contended that the trial instituted against the assailant culminated in conviction of the accused vide judgment dated 09.12.2008 and he was sentenced to life imprisonment. She contends that the surviving daughter of the petitioners has become disabled on account of the said acid attack and is under constant care of the petitioners. The petitioners had to face daily incarceration and huge medical expenses for the continuous ongoing treatment to overcome the pain from

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the attack. Besides, there is 41% Permanent disability suffered by the daughter as per the Disability Certificate dated 07.03.2018 issued by the competent authority. She contends that the mandate of Section 357A did not exist as on the date of judgment of conviction on 09.12.2008. The State of Punjab, however, notified a victim compensation policy in the year 2017 in supersession of the earlier schemes. As per the said scheme, the acid attack victims are entitled to compensation to a sum of Rs. 5 lakhs. An application was thereafter submitted by the petitioners for grant of compensation with the Legal Services Authorities. Since no decision was taken thereupon, the present writ petition was filed.

4. Counsel appearing on behalf of the respondent-State Legal Services Authority contends that during the pendency of the writ petition, the claim of the petitioners was considered by the respondent-authorities and the same was declined as the application in question had been submitted after prolonged delay and no reason was mentioned in the said application as to what were the causes for the said delay. He fairly submits that the policy stipulates the condonation of delay on reasons to be provided by the claimant. Section 16 of 2018 Scheme reads thus:

“16. Limitation

Under the scheme, no claim of assistance made by the victim or his/her dependent(s) under sub section (4) of Section 357-A of the Code, shall be entertained after a period of 03 years from the date of occurrence of offence or conclusion of the trial:-

Provided that the SLSA or DLSA as the case may be, is satisfied for the reasons to be recorded in writing may entertain claim after a period of 03 years.”

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5. He submits that since an order has been passed, the petitioners may prefer an appeal before the Appellate Authority and also move an application for seeking condonation of delay by giving reasons for such a delay and that the same shall be sympathetically considered.

6. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

7. It is not in dispute that the petitioners are unfortunate parents of the girls who had suffered acid attack injuries. One of them had already succumbed and the other has suffered permanent disability to the extent of 41%. It has also remained undisputed that no compensation has been granted to the petitioners and/or the victims by the State Agency and instrumentality. Further, once the Legal Services Authorities had the jurisdiction to condone the delay and is willing to examine the case sympathetically, there was no necessity for seeking any specific applications for condonation and the matter could have been enquired into suo moto by the District Legal Services Authority itself, to satisfy itself in this regard.

8. Counsel for the petitioners further places reliance on the judgment of this Court passed in the matter of **“Suman and another versus Union of India and others”** dated 10.05.2018 passed in CWP-20477 of 2017 wherein it was held as under:

I am in full agreement with the contention raised by learned counsel for the petitioners because in the the latest Scheme of the Government of Haryana, notified on 25.3.2016, which was further amended by issuance of a notification dated 27.10.2016, a note has been appended for granting 50% over

and above the amount specified to the acid victim provided he/she is less than 14 years of age. Thus, I hold that petitioner No.2 deserves to be paid another sum of Rs.1.5 lacs being less than 14 years of age at the time of occurrence, besides the amount of Rs. 3 lacs already paid to her, in terms of the Scheme notified on 16.1.2014.

As regards the payment of Rs.1 lac to each of the petitioners from the Prime Ministers National Relief Fund Scheme is concerned, the argument raised by learned counsel for respondent No.1 is not accepted that the said Scheme would not be applicable to the petitioners, who had suffered the unfortunate incident on 15.12.2014 and the Prime Ministers National Relief Fund Scheme was floated by the Government of India on 9.11.2016.

*To my mind, in a social welfare state where the Government of India is trying to ameliorate the grievance of the deprived section of the Society, declining the payment of compensation of Rs.1 lac from the Prime Ministers National Relief Fund Scheme only on the ground that the occurrence is prior to the decision taken by the Government of India is not justified. Therefore, I hold the petitioners entitled to Rs.1 lac each from the Prime Ministers National Relief Fund Scheme and direct respondent No.1 to make the payment of the said amount to the petitioners within a period of one month from the date of receipt of certified copy of this order. Further, learned counsel for the petitioners has relied upon a decision of this Court in the case of **“Anju Vs. State of Haryana and others” 2016(2) RCR (Criminal) 794**, which was also a case of an acid attack victim. In the said case, all the policies of the Government were thoroughly discussed besides noticing the decision of the Supreme Court in the case of **“Parivartan Kendra Vs. Union of India” 2016(1) RCR (Criminal) 336**. Respondents No.2 & 3 are thus further directed to consider the case of the petitioners in the light of the decision rendered by*

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this Court in the case of Anju (Supra) and grant them necessary compensation/relief, if they are found entitled to it. The necessary order shall be passed either by respondent No.2 or respondent No.3 within a period of one month from the date of receipt of certified copy of this order. It is needless to mention that the amount of Rs.1,50,000/-, which has been enhanced in the case of petitioner No.2, shall also be paid to her within a period of one month from the date of receipt of certified copy of this order.”

9. She further places reliance on the Single Bench judgment of Calcutta High Court in the matter of **“Piyali Dutta versus The State of West Bengal and others”** passed in **Writ Petition No. 26174 of 2014** decided on 07.07.2017. The relevant extract of the said judgment reads thus:-

“The Victim Compensation Scheme, 2012 and the West Bengal Victim Compensation Scheme, 2017 have come into being pursuant to and by virtue of Section 357A of the Code of Criminal Procedure, 1973. Section 357A does not introduce any criminal liability to the accused. It requires and enforces the directive principles enshrined in the Constitution of India under Article 38 which obligates the State to render social justice to its citizens. Right to receive just compensation as a victim of a crime, notwithstanding the result of the criminal proceedings emanating out of the incident of crime can be read into Article 21 of the Constitution of India guaranteeing Right to life. Right to life, encompasses within its fold, the Right to live with dignity. A citizen cannot be asked to forfeit the right to live with dignity just because such citizen has become a victim of an act of crime. The state is obliged to protect the life and property of its citizen. The victim may or may not receive compensation in the criminal proceedings. The criminal proceedings may result in acquittal of the accused. Disposal of such criminal proceedings with a particular result does not

mean that, the incident of crime did not happen or that, the victim is not entitled to or require compensation. In an acquittal, the Court does not find the accused guilty of the crime. Acquittal of the accused, ipso facto, does not mean that, the incident of crime did not take place. The victim of the crime, may require support, monetary and otherwise to mitigate the loss and injury suffered as a result of the crime. The victim may require rehabilitation. Acid attack victims require reconstruction of personal self by reason of the very nature of the crime. The victim will require medical attention. The victim may require counseling. The victim must be assisted in rehabilitating and integrating herself himself into the society. All of these processes are time and money consuming. The victim and his/her family members may not be economically or financially favorably placed to undertake discharge of such onerous responsibilities. The victim may come from less favourable economic and financial strata of the society. It is the state's duty to come in aid to the victim of a crime to ameliorate the suffering to the extent possible. Section 357A of the Code of Criminal Procedure, 1973 and the Scheme of 2017 of the State formulated in exercise of such powers, seek to address such issues and put in ameliorative measures for the victims of the crime. Noticeably, section 357 B stipulates that, the compensation payable by the state government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code, 1860.

Section 357A is a beneficial piece of legislation introduced for the benefit of the victims of a crime. It does not prescribe a time limit. It does not say that, a crime occurring prior to a specified date is not covered thereunder. As noted above, it is not introducing a criminal liability. It is time neutral, that is to say that, it does not distinguish between

victims of a crime happening prior to the introduction of the section to the statute with those incidents of crime happening post its introduction in the statute book. The section itself not making any distinction between victims on the basis of the time of occurrence of the crime, the same cannot be read into it. The plain reading of the section does not permit one to interpret the same to mean that, it contemplates differential treatment of victims of the specified crimes on the basis of time of occurrence of such crime. Such a difference if sought to be read into Section 357A of the Code of Criminal Procedure, 1973 it would do violence to it. It would not be an intelligible or a reasonable differentia to distinguish between victims of crime on the basis of time of occurrence, more so when the section itself is silent on time. The requirement on the State to extend compensation for loss and injury suffered by reason of the crime and rehabilitation of the victims of the specified crimes are universal to all victims irrespective of the time of occurrence of the crime. Victims have not been segregated on the basis of time of occurrence of the crime. Segregation on such basis is unacceptable. It would militate against the right to equality and equal treatment by the State guaranteed under the Constitution of India. In such perspective, the victims of the specified crimes are similarly situated and circumstanced. Therefore, to segregate them on the basis of time of occurrence of crime, would be unjust, improper and militate against the very object of the Section 357A of the Code of Criminal Procedure, 1973, and the fundamental rights of the victims to be treated equally, fairly and justly. Section 357A, requires every State Government in coalition with the Central Government to prepare schemes for the purpose of compensation to the victims or their dependents who has suffered loss and injury and who require rehabilitation. Sub-section (3) allows the Trial Court, at the conclusion of the trial, to make recommendation for compensation, if the Court is

satisfied that, the compensation awarded under Section 357A is not adequate and the victim has to be rehabilitated. It allows the Trial Court to undertake such exercise in cases where there is an acquittal or discharge of the accused. Victim is defined in Section 2(wa) of the Code of Criminal Procedure, 1973. It means a person who has suffered a loss or injury caused by an act or omission for which an accused person has been charged. Such expression includes his/her guardian/legal heir. The petitioner relies upon four unreported decisions of the Bombay High Court in support of the contention that, acid attack victims of crimes committed prior to the introduction of Section 357A were granted compensation. Three orders of the Bombay High Court in W.P. No. 4267 of 2015 (Aarti Thakur v. State of Maharashtra) dated March 11, 2015, March 19, 2015 and March 27, 2015 are relied upon. These three orders notices the date of occurrence of the crime, the Scheme of Maharashtra prevailing and directs grant of interim compensation. The issue of a cut-off date for receipt of compensation has not yet been decided. The fourth order of the Bombay High Court Criminal is a Public Interest Litigation No. 35 of 2013 (Forum Against Oppression of Women & Anr. v. Union of India & Ors.) dated March 17, 2015. The issue of time limit has not been finally decided therein also.

When Section 357A of the Code of Criminal Procedure, 1973 is found not to impose any time restriction, can a scheme formulated in exercise of powers conferred by such section introduce a time limit or can it be read to have done so? The West Bengal Victim Compensation Scheme, 2017 does not specify that, a victim of a crime committed prior to a particular date will not be considered for the grant of compensation under such scheme. State, however, specifies that the application for compensation should be made within 180 days from the date of occurrence. It also allows condonation of

delay in making the application within the stipulated time, if sufficient cause is shown. Clause (9) of the Scheme of 2017 cannot be read to be in derogation of Section 357A or introducing anything not contemplated by Section 357A. Section 357A not specifying a time prior to which an acid attack victim cannot receive compensation, the Scheme of 2017 and clause (9) thereunder should be read accordingly. Scheme of 2017 therefor does not prevent a victim of a crime specified therein to apply for compensation provided such applicant satisfies the adjudicating authority that he/she was prevented by sufficient cause beyond the prescribed period of 180 days from the date of occurrence of crime in applying.

In view of the discussions above, the first issue is answered in the affirmative and in favour of the petitioner. A person suffering an acid attack prior to December 31, 2009 is entitled to compensation under Section 357A of the Code of Criminal Procedure, 1973. The second issue is answered in the affirmative and in favour of the petitioner. The West Bengal Victim Compensation Scheme, 2017, allows a victim to apply for a compensation. It is for the adjudicating authority to decide on the sufficiency of the reasons shown for the delay in making such application, if it is made beyond 180 days from the occurrence of crime. The third issue is answered in the negative and in favour of the petitioner. Neither Section 357A of the Code of Criminal Procedure, 1973, nor the West Bengal Victim Compensation Scheme, 2017, prescribe a date prior to which a victim cannot be granted compensation or rehabilitation. So far as the fourth issue is concerned, the petitioner is a victim of an acid attack occurring in 2005. On the basis of a written complaint in respect of such crime, a session proceeding was initiated and the accused was convicted on August 18, 2008. The petitioner had submitted an application for compensation to the respondent no. 2 on July 14, 2014, after becoming aware of the Supreme Court Order dated April 10, 2015 passed in

Laxmi (supra). Such application has not been decided yet. On the date of such application, the Victim Compensation Scheme, 2012, issued by the 2000 notification dated November 1, 2012, was in vogue. Such scheme cannot be read to negate a right conferred under Section 357A of the Code of Criminal Procedure, 1973. Now the West Bengal Victim Compensation Scheme, 2017, is in operation. Under the Scheme of 2017, the State or the District Legal Services Authority is empowered to decide an application for grant of compensation under Section 357A(4). In such circumstances, the respondent no. 2 will forward the application made by the petitioner dated July 15, 2014, to the appropriate authority under the West Bengal Victim Compensation Scheme, 2017 for decision. Such transmission should be made by the respondent no. 2 within a week from the date of communication of this order to him. The appropriate authority, thereafter, will decide such application, in accordance with law, after affording reasonable opportunity of hearing to the petitioner. It will pass such orders, as deemed necessary by it, as expeditiously as possible and preferably within two weeks from the date of receipt of the application for grant of compensation. The fourth issue is decided accordingly. W.P. No. 26174 (W) of 2014 is disposed of. No order as to costs. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.”

10. Counsel for the respondents does not dispute the applicability of the said judgment. He however submits that the petitioner is at liberty to prefer an appeal before the Appellate Authority for seeking condonation of such delay.

11. I am, however, of the opinion that once the judgments mandates that a lenient view ought to be adopted in matters relating to

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compensation pertaining to acid attack victims, being a social welfare policy and intended to rehabilitate and restitute the victims, hence, it would be improper at this juncture to relegate the present writ petition to the authorities, merely for technical compliance and for seeking a separate application for condonation of delay. The procedural laws are handmaiden of justice and are required to be adhered to for extending ends of justice. However, where the ends of justice are likely to be delayed, the High Court may, in an appropriate case, exercise the writ jurisdiction without having the parties to exhaust all their alternative remedies. Moreover, the exercise only seems to be ministerial in nature and would only cause delay and deprivation of relief to the petitioners who would otherwise be entitled to the same.

12. Accordingly, the petitions are allowed and the orders passed by the authorities on 08.10.2020 and 30.10.2020 respectively denying the claim on grounds of delayed submission of the same are set aside. The Legal Services Authorities are accordingly directed to decide the case of the petitioners in terms of the applicable policy and to disburse the admissible compensation to the petitioners within a period of 08 weeks of receipt of certified copy of this order.

A photocopy of this order be placed on the file of connected case.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 01, 2024
Vishal Sharma

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