

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

212

CWP-8771-2016 (O&M).
Date of Decision: 10.01.2024.

BALJEET KAUR

... Petitioner

Versus

THE STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Ms. Divya Sharma, Advocate, (Amicus Curiae)
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab

VINOD S. BHARDWAJ, J. (ORAL)

Prayer made in instant writ petition was for seeking directions to the respondents No.1 to 3 to award compensation to the petitioner as per Notification dated 15.10.2013 (Annexure P-2) issued by the respondent No.1 since the petitioner is a victim of gang rape and no compensation has been awarded to her even while convicting the accused persons in exercise of powers under Section 357-A of the Code of Criminal Procedure, vide judgment of conviction and order of sentence dated 24.12.2014 (Annexure P-1).

Learned Amicus Curiae contends that the petitioner had submitted an application to the Punjab State Human Rights Commission averring that she was married in the year 2001 with one Hardeep Singh and they have been blessed with two sons from this wedlock. On 28.06.2010, when she was alone at her home since her children had gone to the house of their maternal grand-parents and her husband who is a driver in Punjab Roadways had gone to Chandigarh for training, accused Balli @ Harpreet Singh, Banti @ Sukhvir Singh, Sunny @ Kuldeep Singh, Babbu @ Harjit Singh and one unknown person who were in drunken condition forcibly entered into her house and started giving beatings to her. They dragged her to a room and tied her mouth with cloth and thereafter committed rape upon her one by one. They also prepared a movie of the incident on their mobile phone and left her house at about 1:00 A.M. midnight threatening the petitioner with dire consequences. She informed the matter to her husband telephonically and on 30.06.2010 when her husband came back from Chandigarh, she immediately reported the matter to the police. The FIR was, however, not registered due to which they approached the Punjab State Human Rights Commission which directed the Senior Superintendent of Police, Gurdaspur to conduct an inquiry vide order dated 26.08.2010. That FIR No.128 dated 03.12.2010 under Section 376 (g) of the Indian Penal Code, 1860, was registered at Police Station, Kahnuwan, Tehsil and District Gurdaspur. The accused persons named above were subject to trial and vide judgment dated 24.12.2014, they were convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and a fine of Rs.10,000/- each was imposed on them. One of the accused namely Kuldip Singh @

Sunny was declared as a proclaimed offender and has not been named so far.

It has been contended by the learned Amicus Curiae that at the time of passing of the judgment of conviction and order of sentence dated 24.12.2014, the compensation in terms of Section 357-A of the Code of Criminal Procedure, was not awarded. The petitioner thereafter moved an application to the respondent Authorities under the **Punjab** Victim or their Dependents **Compensation Scheme, 2011**, however, the said application for compensation has been denied as the application was moved after a delay of six months. She contends that the petitioner would be entitled to a compensation as per the Notification dated 15.10.2013 issued by the Department of Home Affairs and Justice, Government of Punjab.

Learned State counsel for the respondent-State contends that the application for the Punjab Victim or their Dependents Compensation Scheme, 2011, was forwarded and the same was duly considered. The petitioner was not found entitled to the same and the said application was dismissed vide order dated 07.10.2015 which is extracted as under:-

"As per Victim Compensation Scheme bearing No. 5/154/2008-3H4/3597 dated 08.12.2011, the following criteria is prescribed for determining the eligibility regarding the claim for Victim Compensation:-

- i) He/she should not have compensated for the loss or injury under any other Scheme of the Central/State Govt., an Insurance Company or any other Institution.*

- ii) *Loss of injury sustained by the victim or his dependants should have caused substantial loss to the income of the family resulting difficulty in making both ends meet without the financial aid or has to be spend beyond his means on medical treatment and;*
- iii) *Where the perpetrator of a crime is not traced or identified or where no trial takes place but the victim is identified and the victim has to incur a lot of expenses on physical and mental rehabilitation.*

From perusal of clause (iii) above, it is clear that the compensation can only be allowed to the Victim where the perpetrator of a crime is not traced or identified or where no trial takes place but the victim is identified. In this case, the accused (perpetrators) involved in the crime were traced and identified and their trial commenced in the court of Ld. Additional Sessions Judge, Gurdaspur and culminated into conviction and sentence. The applicant being victim of crime was required to move application under section 357-A Cr.P.C. before the court where the trial against the accused was pending but this was not done by the upPLICANT/Victim. She has directly moved the present application for compensation in the Office of the Member Secretary, Punjab Legal 26 Services Authority, Chandigarh OF MO and it was received in this office for further action and to decide and recommend the case to the Victim Compensation Committee for passing an award for appropriate amount.

I have also perused the judgment dated 24.12.2014 passed by the Ld. Addl. Sessions Judge, Gurdaspur. The Id. Court has not made any recommendation for grant of compensation to the Victim. Even, the present application moved by the applicant is also not within limitation. As per the

said Scheme, the limitation of six months from the date of occurrence is prescribed but the present application moved by the applicant on 03.06.2015, apparently after the expiry of period of six months. Even the instant application was moved after passing of the judgment on 24.12.2015. Therefore, the application moved by the Victim/applicant is not within limitation.

In view of what has been discussed above, the applicant is not entitled to grant of compensation prayed for. Hence, the claim of the applicant fails and the same is hereby dismissed. File be consigned to the record room."

It is thus contended that the application having been submitted beyond the limitation of six months from the date of occurrence, hence, the claim of the petitioner was declined. The additional reason given for declining the same was that there was no such recommendation to grant compensation in favour of the petitioner by the trial Court while convicting and sentencing the accused.

I have heard the learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition.

The grievance espoused by the petitioner is that the compensation as per admissibility has not been awarded either under Section 357-A Cr.P.C., or under the Punjab Victim or their Dependents Compensation Scheme, 2011, as notified by the State of Punjab. Surprisingly, the State takes a defence that the compensation could

not be awarded for want of recommendation by the trial Court and has declined to discharge its obligation merely because the application in question was moved after a delay of 06 months from the date of occurrence.

Taking into consideration the circumstances noticed above and also the fact that the FIR in question could be registered against the accused persons only with the intervention of the Punjab State Human Right Commission and also that the accused-private respondents already stand convicted in the said case. There may very well be a possibility that the victim was awaiting award of compensation under Section 357-A Cr.P.C. by the trial Court and the occasion to approach this Court arose only after no such compensation was awarded by the trial Court at the stage of convicting the private respondents/accused persons. The scheme being benevolent and intended to rehabilitate and compensate a victim of atrocity, such technical objection as regards the claim having been submitted delayed in point of time should not stand in the way of the social welfare object sought to be served by the said scheme. The present writ petition is accordingly allowed. The official respondents are directed to the release the compensation in terms of the Punjab Victim or their Dependents Compensation Scheme, 2011, as it was in force then within a period of 06 weeks after the receipt of certified copy of the order.

January 10, 2024
raj arora

(VINOD S. BHARDWAJ
JUDGE

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