

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

269

CRM-M-35490-2019 (O&M)
Date of order: 20.02.2024

Surender Kumar

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. Rohit Nagpal, Advocate
for the petitioner.

Mr. Aditya Pal Singla, AAG Haryana.

Nidhi Gupta, J.

Present petition under Section 482 of Cr.P.C. is filed seeking quashing of the order dated 02.05.2019 (Annexure P-5), passed by the Learned Additional Sessions Judge-cum-Judge, Special Court for Heinous Crime Against Women, Hisar, whereby serious aspersions have been cast on the work, act and conduct of the petitioner on completely baseless, false and unfounded grounds; and for issuance of a direction to the Learned Special court to pass appropriate orders in inquiries sent by the petitioner for grant of compensation to victims in cases relating to Protection of Children from Sexual Offences Act, 2012 bearing FIR No. 38 dated 25.07.2017, FIR No. 1153 dated 22.11.2017 and FIR No. 269 dated 30.10.2017 and in other similar pending inquiries; and further to quantify the amount of compensation as per the provisions of Section 33 (8) of POCSO Act, 2012 and Rule 7 of POCSO Rules, 2012 as well as the order

passed by the Hon'ble Supreme Court of India in the case titled as **“Nipun Saxena & Another Vs. Union of India & Others in Writ Petition (C) No. 565 of 2012”**.

2. Brief admitted facts of the case are as under:-

01.05.2018: The petitioner joined as Chief Judicial Magistrate-cum-Secretary, District Legal Services Authority, Hisar.

05.09.2018: (Annexure P1) - As per order dated 05.09.2018 in the case titled as **“Nipun Saxena & Another Vs. Union of India & Others in Writ Petition (C) No. 565 of 2012”**, the Hon'ble Apex Court observed that in cases for grant of compensation to victims relating to Protection of Children from Sexual Offences Act, 2012, Special Courts are the competent authority to grant compensation under Section 33 (8) of POCSO Act, 2012 and Rule 7 of POCSO Rules, 2012. The Hon'ble Supreme Court also held that the NALSA compensation Scheme should function as a guideline to the Learned Special Courts for awarding compensation to victims of child sexual abuse under Rule 7, until the rules are finalized by the Central Government.

10.09.2018: (Annexure P11) –In pursuance to the above, the National Legal Services Authority requested all the Member Secretaries of all the State Legal Services Authorities in India to circulate the NALSA's Victim Compensation Scheme - 2018 amongst all the learned District Judges, Special Judges (POCSO Act), DLSA's and TLSC's for compliance of the orders of the Hon'ble Supreme Court of India.

19.09.2018: (Annexure P12) - The learned Member Secretary, HSLSA also issued direction to all the Ld. District and Session Judges-cum-Chairpersons

of District Legal Service Authorities in the State of Haryana sharing the order dated 05.09.2018 passed by the Hon'ble Supreme Court of India as received from the Member Secretary, National Legal Services Authority, New Delhi and requested them to circulate the same amongst all the Learned Special Judges (POCSO Act) and other judicial Officers for necessary compliance.

25/28.02.2019: The petitioner received three cases from the Court of Dr. Pankaj, Learned Additional Sessions Judge-cum-Judge, Special Court for Heinous Crimes Against Women, Hisar for grant of compensation to victims under Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the ('POCSO Act'), in view of the provisions contained under Section 357A of Cr.P.C. The details of the cases are as under: -

i) State Vs. Kuldeep, bearing FIR No. 38 dated 25.07.2017, under Sections 323, 342, 376D, 506 IPC, Section 6 of Protection of Children from Sexual Offences, Act 2012 and Section 3 (2) (iv) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, Police Station Women, Hisar vide order dated 20.02.2019 (received on 25.02.2019);

ii) State Vs. Vikram, bearing FIR No. 1153 dated 22.11.2017 under Sections 363, 365, 376, 506 IPC, Section 3 of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 4 of Protection of Children from Sexual Offences, Act 2012, Police Station Sadar, Hisar vide order dated 08.02.2019 (received on 25.02.2019);

iii) State Vs. Manjit, bearing FIR No. 269 dated 30.10.2017 under Sections 365, 328, 376-D, 452, 34, 376 and 506 IPC; Section 6 of Protection

of Children from Sexual Offences, Act 2012 and Section 3 (2) (v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 at Police Station Uklana, vide order dated 15.02.2019 (received on 28.02.2019).

Upon receiving the abovementioned cases, the petitioner immediately initiated inquiries. The statements of victims and material witnesses were recorded. The requisite documents were also called from the concerned Investigating Officers.

20.03.2019: (Annexure P2) - Since the petitioner was not authorized to pass any orders in the cases referred, a clarification was sought from the Ld. Member Secretary, Haryana State Legal Services Authority (HSLSA), Panchkula, in a similar case with respect to compensation to be granted to the victims.

08.04.2019: (Annexure P3) - The Learned Member Secretary, Haryana State Legal Services Authority, Panchkula informed the petitioner that the matter was put up before the Hon'ble Executive Chairman of the Authority who directed to send the matter back to the Special Court for Heinous Crimes Against Women at Hisar to look into the matter in view of the directions issued by Haryana Human Rights Commission vide order dated 14.02.2019 holding that the Learned Special Court for Heinous Crime against Women is the competent authority for grant of compensation in cases related to POCSO Act, 2012 as per Section 33 (8) of POCSO Act, 2012.

28.04.2019: The matter was also discussed in the workshop of Chief Judicial Magistrates-cum-Secretaries, District Legal Services Authorities, Haryana

and it was suggested by the Learned Member Secretary, Haryana State Legal Services Authority, Panchkula that the cases for grant of compensation relating to POCSO Act, 2012, either interim or final, shall be dealt only by the Learned Special Courts. It was also resolved in the said meeting that the pending cases for grant of compensation to Victims in cases relating to POCSO Act, 2012 be sent back to the Learned Special Courts for Heinous Crime against Women by making reference to that effect.

29.04.2019, 01.05.2019 and 01.05.2019: (Annexure P4 (Colly)) - In compliance of the aforesaid instructions, the petitioner sent the aforesaid three inquiries i.e. State Vs. Kuldeep, State Vs Vikram and State Vs. Manjeet, back to the Learned Special Court for information and necessary action by making three separate references bearing No.3287 dated 29.04.2019, No.3327 dated 01.05.2019 and No.3328 dated 01.05.2019 respectively.

02.05.2019: (Annexure P5) - The petitioner received a copy of the impugned order dated 02.05.2019 whereby the Ld. Special Court had sent the aforesaid three inquiries back to the petitioner to comply with the directions already given in the orders of sentences dated 15.02.2019, 08.02.2019 and 20.02.2019. The petitioner is aggrieved of the fact that while passing the said order dated 02.05.2019, the Ld. Special Court has cast serious aspersions on the work, act and conduct of the petitioner. The Ld. Special Court has categorically observed that the petitioner is trying to shift his duties as prescribed by law as it appears that the petitioner is either having burden of work or is not intending to do his duty as

prescribed by law as the directions given by the Ld. Special Court in various judgments have not been complied with by the petitioner.

06.05.2019: (Annexure P7) - The petitioner filed a representation before the Learned Member Secretary, Haryana State Legal Services Authority, Panchkula. The facts of the case were brought to the knowledge of the authority and the HSLSA was requested to look into the matter and pass necessary orders for grant of compensation in the cases marked to the petitioner again vide impugned order dated 02.05.2019.

05.07.2019: (Annexure P13) - The Appellate Authority under the Haryana Victim Compensation Scheme, 2013, in a similar matter involving compensation to be paid to the victim under the said scheme, has dealt with the same issue and has crystalized the entire topic vide its judgment in VCS Appeal No.03 of 2019 in the case of Neelam Vs. DLSA, Rewari dated 05.07.2019. The Appellate authority has given a categorical finding to the effect that it is the duty of the Special Courts under POCSO Act, 2012 to quantify the compensation payable to the children who are victims of crime. The Appellate Authority has further held that it is the Special Court alone which can quantify the compensation payable to the victim.

09.07.2019: (Annexure P8) – Vide letter dated 09.07.2019, received from the Member Secretary, HSLSA the petitioner was informed that: *“The matter was put up before Hon’ble Mr. Justice Rajiv Sharma, Judge, Punjab and Haryana High Court and Executive Chairman of this Authority. His Lordship has approved and asked you to send back the aforesaid matter to the Ld. Trial Court under the Protection of Children from Sexual Offences*

Act, 2012 with the request to fix the amount of compensation as per the provisions of Section 33(8) of POCSO Act, 2012 and Rule 7 of POCSO Rules, 2012 as well as the order passed by the Hon'ble Supreme Court of India in the case of Nipun Saxena and another Vs. Union of India and others W.P. (C) No. 565 of 2012. His Lordship has further approved that you may avail appropriate legal remedy against the strictures passed against you before the appropriate court and the expenses of the same will be borne by this Authority."

09.07.2019: (Annexure P10) - The learned Member Secretary, HSLSA also issued a clarification, as approved by Mr. Justice Rajiv Sharma, the then Executive Chairman of the Authority, and Judge, Punjab and Haryana High Court, to all the Ld. District and Session Judges-cum-Chairpersons of District Legal Service Authorities in the State of Haryana while marking copies of the same to all the Chief Judicial Magistrates-cum-Secretaries, District Legal Services Authorities in the State of Haryana including the present petitioner, requesting them to sensitize the presiding officers of Special Courts under POCSO Act to quantify the amount of compensation as per Section 33 (8) of POCSO Act, 2012 and Rule 7 of POCSO Rules, 2012 and in view of the directions given by the Hon'ble Apex Court in the case of Nipun Saxena (Supra).

10.07.2019: (Annexure P9 (Colly)) - The petitioner requested the Learned District and Sessions Judge-Cum-Chairman, District Legal Service Authority, Hisar to send all the enquiries marked to the petitioner vide impugned order dated 02.05.2019, back to the Ld. Special Court with a request to fix the amount of compensation in the said cases.

3. Ld. Counsel for the parties are in agreement that in view of the above admitted facts, the present petition deserves to be allowed.

4. Accordingly, in view of the facts as noticed hereinabove, the present petition is **allowed** and the impugned order dated 02.05.2019 is set aside to the extent whereby aspersions have been cast on the work, act and conduct of the petitioner; and further the matter is remanded back to the learned Special Court to pass appropriate orders in inquiries sent by the petitioner for grant of compensation to victims in cases relating to POCSO, and to quantify the amount of compensation as per the provisions of Section 33 (8) of POCSO Act, 2012 and Rule 7 of POCSO Rules, 2012, as well as judgment of the Hon’ble Supreme Court of India, in case of **Nipun Saxena & Another Vs. Union of India & Others in Writ Petition (C) No. 565 of 2012.**

5. Pending application(s) if any also stand(s) disposed of.

20.02.2024
Sunena

(Nidhi Gupta)
Judge

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