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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 281/2022**

THE STATE (NCT OF DELHI)

.....Appellant

Through: Mr. Mukesh Kumar, APP for State
with Mr. Sonu Kr. Jha, SI, PS-
Ambedkar Nagar.

versus

ASHOK KUMAR

.....Respondent

Through: Mr. Saurabh Kansal, Ms. Pallavi S.
Kansal, Mr. Pratham Malik and
Mr. Suraj Kumar Jha, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
20.03.2025

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1. The present criminal appeal under Section 357(3) of the Code of Criminal Procedure, 1973¹, filed by the State, is directed against the judgment dated 7th December, 2020 and the order of sentence dated 22nd September, 2021 passed by Additional Sessions Judge-04, POCSO, South District Saket, Delhi, in Sessions Case No. 7679/2016 titled as ***State v. Ashok Kumar*** in FIR No. 1060/2015, registered at P.S. Ambedkar Nagar.
2. By the impugned order dated 22nd September, 2021, the Respondent has been sentenced *inter-alia* to undergo a period of 3 years of rigorous imprisonment for the offence under Section 8 read with Section 7 of the

¹ "Cr.P.C."



Protection of Children from Sexual Offences Act, 2012², in the following terms:

“8. ***Keeping in view the entire gamut of facts and circumstances of the case, the convict is sentenced for three years (03 years), Rigorous Imprisonment for offence committed under Section 8 of POCSO Act. In order to fairly assess the quantum of fine to be paid by convict in the present matter, I have perused the Affidavit as to his income and assets of convict and report of Secretary, DLSA (South). As per the report of Secretary DLSA (South), Saket, Affidavit of convict has been verified through SDM/Police/Prosecution. It is stated in the report of IO, the convict was working as plumber and earning around Rs. 7000-8000/- per month before his arrest in the present FIR. Further, no immoveable property was found registered in the name of convict Ashok Kumar. Considering financial, condition and capacity of convict, fine of Rs. 8,000/- is imposed on convict. Simple Imprisonment of 1.5 days in case of default of payment of fine. Fine, if recoverable, be released in favour of victim. The convict be given benefit of Section 428 Cr.P.C.***

9. ***Victim Impact Assessment Report received from DLSA (South), Saket perused. As per the report of Secretary DLSA (South), the victim and her mother have shifted to UAE and not available in India. Further, the victim suffered emotional trauma and mental stress due to the incident and was not able to concentrate on her studies. She was also fearful of going outside the house after the incident. She left the country alongwith her mother and shifted to UAE to change the social environment around them. Considering the totality of circumstances, compensation of Rs. 1,00,000/- (One Lac) is recommended to be awarded to victim u/s. 33(8) of POCSO Act read with Rule 9 of POCSO Rules, 2020 & Section 357A of Cr.P.C., Interim Compensation already received by victim, if any, shall be adjusted from the aforesaid amount alongwith other adjustments as per law.***”

3. Through the present petition, the State poses a limited challenge to the impugned order. The State urges that even though the Trial Court has directed Delhi State Legal Services Authority³ to disburse the compensation amount to the victim under Section 33(8) of POCSO Act, however, the Trial Court ought to have also directed the Respondent to pay INR 1,00,000/- as costs to the prosecution, through the State. On this issue, the State primarily

² “POCSO”

³ “DSLISA”



places reliance on the guidelines laid down by a three-judge bench of this Court in ***Karan v. State GNCT of Delhi***⁴.

4. The Court has heard the counsel for the parties. The judgment in ***Karan*** (Supra), laid down certain guidelines in paragraph Nos. 168 to 182 of the said decision, which included the following:

“177. The Trial Court shall thereafter consider the Victim Impact Report of the DSLSA with respect to the impact of crime on the victims, paying capacity of the accused and expenditure incurred on the prosecution; and after hearing the parties including the victims of crime, the Court shall award the compensation to the victim(s) and cost of prosecution to the State, if the accused has the capacity to pay the same. The Court shall direct the accused to deposit the compensation with DSLSA whereupon DSLSA shall disburse the amount to the victims according to their Scheme.

178. If the accused does not have the capacity to pay the compensation or the compensation awarded against the accused is not adequate for rehabilitation of the victim, the Court shall invoke Section 357A Cr.P.C. to recommend the case to the Delhi State Legal Services Authority for award of compensation from the Victim Compensation Fund under the Delhi Victims Compensation Scheme, 2018.”

5. As per the aforementioned guidelines, Trial Courts are directed to consider the Victim Impact Report of DSLSA with respect to the impact of crime on the victims, paying capacity of the accused and expenditure incurred on the prosecution. Further, after hearing the parties including the victims, the Trial Court is mandated award compensation to the victim and cost of prosecution to the State. This compensation and cost, however, is subject to the accused having the capacity to pay the same as can be seen from paragraph No. 177 extracted above.

6. Further, the aforementioned guidelines specifically stipulated in paragraph No. 178 extracted above that in case the accused does not have the capacity

⁴ 2020:DHC:3415-



to pay the compensation, the Court shall invoke Section 357A Cr.P.C. to recommend the case to DSLSA for award of compensation.

7. In the instant case, taking note of the paying capacity of the accused in Paragraph No. 8 of the sentencing order dated 22nd September, 2021, the Trial Court considered it appropriate to direct DSLSA to disburse the amount to the victim, but did not award any cost of prosecution. Nonetheless, a fine of INR 8,000/- was imposed on the Respondent, which has been paid by him.

8. At this juncture, the Court must also take note of the decision of a larger bench (five-judge bench) of this Court in ***Saif Ali v. State GNCT of Delhi***, wherein the Court, after carefully deliberating on the guidelines issued in ***Karan v. State*** has specifically held in paragraph No. 53 as follows:

“53. In the light of the aforesaid, we are of the considered view that the directions issued by the Full Bench in Karan (supra) for associating the DSLSA for determining the quantum of compensation, if any, to be awarded under Section 357 of the Cr.P.C. (Section 395, BNSS) are unsustainable and are required to be set aside. We, accordingly, declare that the guidelines issued by the Full Bench in paragraph nos. 169 to 187 of Karan (supra), would no longer be operative and, therefore, will not be required to be followed any further by the Trial Courts in any pending trials. This would, however, not have any impact on cases where the trial already stands concluded with the sentence being awarded after following the procedure laid down under these guidelines. In view of our aforesaid conclusion, that the guidelines issued in Karan (supra) are liable to be set aside, we do not deem it necessary to deal with the submission of the learned Amicus Curiae BAILAPPLN.1959/2021 & other connected matters Page 43 of 44 that the guidelines may be modified to reduce the delay in passing of orders on sentence and compensation.”

9. From the above, it is clear that the guidelines issued by Court in Karan v. State, in Paragraph Nos. 169 to 187, have been held to be no longer operative. However, this judgment of ***Saif Ali v. State*** is to be applied



prospectively as it has been clarified in Paragraph No. 53 as extracted above, that the judgement would not have any impact on cases where the trial stands concluded. In the present case, the arguments were concluded by the Trial Court on 25th November, 2020 and the judgment of conviction was pronounced on 7th December, 2020. Thus, the judgment of *Saif Ali v. State* will not be applicable in the present case.

10. Nevertheless, the Court must also take note of the judgment of this Court in *State v. Munesh Pal*⁵ wherein even though the Trial Court had not granted cost to the prosecution, this Court held that the analysis of the Trial Court was cogent and lawful, in light of the fact that the convict in the said case, worked as an auto-rickshaw driver and belonged to a socially and economically under-privileged section of society whereby he was barely able to make out his own livelihood.

11. Similarly in the present case, the Trial Court in the impugned order on sentence has analysed the convict's Affidavit as to his income and assets and the Victim Impact Assessment Report received from DLSA(South). As such, the Trial Court found that the present convict was working as a plumber and earned around INR 7000-8000/- per month before his arrest in the subject FIR and he had no immoveable property registered in his name. Thus, considering the financial condition and capacity of the convict, the Trial Court only imposed a fine of 8,000/- on him and granted compensation of INR 1,00,000/- to the victim to be disbursed by the DSLSA.

12. In light of the above discussion, this Court does not find any infirmity in the impugned order of the Trial Court for not granting the cost incurred in prosecution to the State, considering the financial incapacity of the convict.



13. Accordingly, the present appeal is disposed of.

SANJEEV NARULA, J

MARCH 20, 2025

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⁵ Crl. A. 460/2023, delivered on 10th July, 2023

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