

(2020) 01 KAR CK 0023

In the Karnataka High Court

Case No : Criminal Revision Petition No. 306 Of 2018

Karnataka State Legal

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 02-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 354A
Protection Of Children from Sexual Offence Act, 2012 — Section 7, 8
Code Of Criminal Procedure, 1973 — Section 357, 357A, 357(1), 357(3), 357A(5), 428
Protection Of Children from Sexual Offence Rules, 2012 — Rule 7(2), 7(3), 7(4)
Karnataka Victim Compensation Schedule, 2011 — Rule 7

Citation : (2020) 01 KAR CK 0023

Hon'ble Judges : K.Natarajan, J

Bench : Single Bench

Advocate : B.V.Vidyulatha, Mahesh Shetty, Rupert M.Rosario

Final Decision : Allowed

Judgement

1. This Criminal Revision Petition is filed by the Karnataka State Legal Services Authority ('KSLSA') being aggrieved by the order of the LIII Additional City Civil & Sessions Judge, Bangalore (hereinafter referred to as 'Trial Court') passed in Spl.CC.No.431/2017, dated 02.11.2017, directing the KSLSA to pay compensation of Rs.35,000/- to the victim.

2. Heard learned counsel appearing for the petitioner/KSLSA and learned High Court Government Pleader appearing for respondent No.1/Police as well as learned counsel for respondent No.2/accused.

3. The case of the petitioner/KSLSA is that respondent No.1/Police filed charge sheet against respondent No.2-accused for the offence punishable under Section 354-A of Indian Penal Code, 1860 (for short 'IPC') and Sections 7 and 8 of Protection of Children from Sexual Offence Act, 2012 (for short 'POCSO Act'). The Trial Court, after framing the charges against respondent No.2/accused and during the course of trial, on the application filed by the public prosecutor,

altered the charges in respect of Section 354-A of IPC and discharged respondent No.2/accused for the offence punishable under the POCSO Act. After the trial, the Trial Court found the accused guilty of the offence punishable under Section 354-A of IPC and sentenced respondent No.2/accused to undergo rigorous imprisonment for a period of 4 months and to pay fine of Rs.15,000/-, in default, to undergo simple imprisonment for two months. The Trial Court further directed to pay compensation after collecting fine amount from the accused and gave set-off under Section 428 of Cr.P.C. for the sentence already undergone by the accused. Further, relying upon the provisions of Rule 7(2) and Rule 7(4) of the Protection of Children from Sexual Offence Rules, 2012 (for short 'POCSO Rules'), the Trial Court directed the KSLSA to pay the compensation of Rs.35,000/- in addition to the compensation already awarded under Section 357 of Code of Criminal Procedure, (for short 'Cr.P.C.'). The same is challenged by the KSLSA before this Court in this revision petition.

4. Smt. B.V. Vidyulatha, learned counsel appearing for the petitioner-KSLSA contended that as per Section 357 of Cr.P.C., the Trial Court has power to award compensation to the victim out of the fine amount that was already ordered, but as per Section 357-A of Cr.P.C., the victim compensation shall be paid in accordance with the Karnataka Victim Compensation Scheme, 2011 of the Government and the quantum of the compensation amount cannot be fixed by the Court. The same has to be fixed by the DLSA after making enquiry and considering the injury sustained by the victim as per the Schedule mentioned in the said Scheme. She further contended that in this case, the Trial Court has already discharged respondent No.2/accused for the offence under the POCSO Act. Therefore, the Trial Court cannot direct the KSLSA to pay compensation and also contended that absolutely there is no injury sustained by the victim in this case. Therefore, the question of awarding additional compensation under Section 357-A of Cr.P.C. does not arise and hence, prayed for setting aside the order.

5. Learned High Court Government Pleader also supports the contention of learned counsel for the petitioner. However, learned High Court Government Pleader submits that the State has not preferred any revision or appeal before this Court against the judgment passed by the Trial Court. Learned counsel appearing for respondent No.2/accused submits that the accused had already deposited Rs.15,000/- fine amount imposed by the Trial Court.

6. Upon hearing the arguments of learned counsel for the parties, the only question that arises for consideration of this Court is as under:

" Whether the Trial Court has power to fix the quantum of compensation under the POCSO Act or under Section 357-A of Cr.P.C., by ignoring the POCSO Rules and the Karnataka Victim Compensation Scheme, 2011?"

7. On perusal of the record, it is an admitted fact that respondent No.2/accused has been charge sheeted by the Police for the offence punishable under Section 354-A of IPC and Sections 7 and 8 of the POCSO Act. During trial, the Trial Court

altered the charges under Section 354-A of IPC and discharged the accused for the offences under Sections 7 and 8 of POCSO Act. The arguments advanced by learned counsel for the petitioner is that once the Trial Court discharged the accused for the offences under the POCSO Act, the Trial Court has no power to continue to conduct trial as the special court loses its jurisdiction under the POCSO Act, but the Trial Court continued to proceed with the trial, which is not correct. However, the jurisdiction of the Court conducting the trial Court cannot be questioned by KSLSA as the trial has already concluded and judgment has been delivered. The only question before this Court is whether the Trial Court can award compensation under Section 357-A of Cr.P.C. in addition to the compensation already awarded under Section 357 of Cr.P.C. when there is no injury sustained by the victim and when the Scheme is already framed by the Government for quantifying the compensation for various category of offences by the Schedule mentioned in the Scheme. Before advertng to the contentions of learned counsel for the petitioner, it is worth to extract provisions of Section 357 of Cr.P.C., which is as under:

"357. Order to pay compensation.-

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied -

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855, (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe that same to be stolen, in compensating any bonafide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who

has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section."

8. On a bare reading of Sub-section (1) and (3) of Section 357, the Court has power to impose fine on the accused and order to pay compensation out of the fine amount under Sub-section (1) of Section 357 and Sub-section (3) of Section 357 of Cr.P.C., even the Court can award compensation other than the fine amount imposed by the Court. In this case, the Trial Court has awarded compensation Rs.15,000/- out of the fine amount to be deposited by the accused as per Section 357(1) of Cr.P.C. which is not in dispute, but the question is, whether the Court can award compensation under Section 357-A of Cr.P.C. in addition to the compensation awarded under Section 357(1) of Cr.P.C. by fixing the quantum of compensation. At this stage, it is worth to mention the provisions of Section 357A of Cr.P.C., which are under:

"357A. Victim compensation scheme

(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Services Authority or the State Legal Services Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) xxx xxx

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) xxx xxx."

9. On bare reading of the aforesaid provisions, sub-section (1) of Section 357-A empowers the State Government for preparing the Scheme for providing funds for the purpose of compensation to the victim and based upon this provision, the

State has framed the Scheme called s 'Victim Compensation Scheme, 2011'. As per Sub-section (2) of Section 357-A, the Court can recommend for compensation and the DLSA or SLSA shall decide the quantum of compensation and as per Sub-section (3) of Section 357-A, if the Trial Court holds that the compensation awarded under Section 357 of Cr.P.C is not adequate, then, the Court can recommend for compensation for the victim and as per Sub-section (5) of Section 357A, the DLSA or SLSA shall make an enquiry and pass award of adequate compensation after receipt of the recommendations from the Court or on the application filed by the victim/relative of the victim. Based upon these provisions, the Government of Karnataka framed the Karnataka Victim Compensation Scheme, 2011, which is explained in the subsequent paragraph of this order. That apart, under the provisions of the POCSO Rules especially for paying compensation to the victim of the offences under the POCSO Act, the POCSO Rules has been framed For the convenience, Sub-Rule(2) of Rule 7 of POCSO Rules, which reads as under:

" 7. Compensation -

(1) xxx xxx

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence."

9. Under Rule 7(2) of the POCSO Rules, the Court has power to recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or even discharge or the accused is not traced or identified. Thereby, even if the accused is discharged from POCSO charges, the special court has power to recommend the award of compensation under the POCSO Act. Learned counsel also fairly admitted that even if the accused is discharged from the charges under the POCSO Act, the Court has power to award compensation. However, on perusal of the case records i.e. Ex.P.5, the medical certificate of the victim, goes to show that absolutely there is no physical injury or bruises on her body which clearly goes to show that there is no injury sustained by the victim due to the act of the accused. That apart, the charges were also framed by the Court only under Section 354-A of IPC. Such being the case, awarding extra compensation does not arise. The Trial Court while awarding compensation vide its order has stated that the victim has sustained injury, but Ex.P.5, the wound certificate, does not reflect any such injury. Therefore, the question of imposing additional compensation under Section 357A of Cr.P.C. does not arise. However, the Trial Court at paragraph-3 of the operative portion of the order has clearly stated that out of the fine amount, collected from the accused, the victim shall be paid compensation which falls under Section 357(1) of Cr.P.C. Such being the case, when there is no injury sustained, the question of directing additional compensation payable to the victim does not arise. However, the Court has

power to recommend for additional compensation to the victim if the Court is of the opinion that the compensation awarded under Section 357 of Cr.P.C. is inadequate. However, the Trial court/Special court has to recommend the DLSA/SLSA to decide and award the compensation in accordance with the POCSO Rules or the Victim compensation Scheme 2011, but should not decide the quantum of compensation which is against the provisions of Section 357-A(2) and (5) of Cr.P.C. That apart, as per the Government Notification dated 22.02.2012 under the Karnataka Victim Compensation Scheme, 2012, the Schedule has been fixed as under:

SCHEDULE

Sl.

No.

Particulars of Loss of Injury due to crime

Maximum limit of quantum of compensation.

1.

Loss of life

Rs.2.00 lacs.

2.

Loss of any limb or part of body resulting 80% or above handicap.

Rs.1.00 lacs.

3.

Loss of any limb or part of body resulting 40% & below 80% handicap

Rs.50,000/-

4.

Rape of Minor

Rs.50,000/-

5.

Rape

Rs.40,000/-

6.

Rehabilitation necessitated due to damage to house, vehicle etc.

Rs.20,000/-

7.

Loss of any limb or part of body resulting below 40% handicap.

Rs.20,000/-

8.

Grievous injuries other than the injuries mentioned above.

Rs.10,000/-

9.

Women and child victims in cases like human trafficking, who themselves or their dependents have suffered separation, dislocation and disturbance.

Rs.10,000/-

10. On perusal of the Schedule, the Government under the said Scheme has quantified the compensation and empowered the DLSA/SLSA to decide the compensation under Rule 7 of the Karnataka Victim Compensation Schedule, 2011, which reads as under:

"7. Procedure for grant of compensation.-

(1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (2) of section 357-A of the Act to the District Legal Service Authority, the District Legal Service Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to the victim and arising out of the reported criminal activity and the District Legal Service Authority may call for any other relevant information necessary in order to determine genuineness of the claims. After verifying the claim, the District Legal Service Authority shall after due enquiry award compensation within two months, in accordance with the provisions of this scheme.

(2) Compensation under this Scheme shall be paid subject to the condition that if the trial court while passing judgment at a later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, is paid or recovered and paid to the victim/claimant shall remit an amount ordered equal to the amount of compensation, or the amount ordered to be paid under the said sub section (3) of section 357 of the Act, whichever is less. An undertaking to this effect shall be given by the victim/claimant before the disbursal of the compensation amount.

(3) The District Legal Service Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss

caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on fact of each case.

(4) The quantum compensation to be awarded to the victim or his dependents shall not exceed the maximum limit specified in Schedule 1."

11. On a bare reading of sub-Rule (4) of Rule 7, the quantum of compensation to be awarded to the victim shall not exceed the maximum limit specified in the Schedule and as per Rule 7(3) the quantum of compensation shall be decided by the District Legal Service Authority (DLSA/SLSA). Such being the case, the Trial Court without application of mind and when the victim has not at all sustained any injury and the question of awarding and deciding the quantum of compensation under Section 357-A of Cr.P.C., at Rs.35,000/- and directing the KSLSA to pay compensation is not correct which is against Rule 7(3) and 7(4) of the POCSO Rules. Therefore, I hold the Trial Court has committed error in passing the said order by awarding compensation and directing the SLSA to pay compensation. Usually, the Trial Court has to recommend the victim to approach the DLSA/SLSA under Section 357-A or under the POCSO Rules or under the Victim Compensation Scheme for seeking/getting compensation as per the Victim Compensation Scheme, 2011, in addition to the compensation awarded under Section 357 of Cr.P.C. Therefore, the learned counsel for the petitioner appearing for the KSLSA has rightly argued that the special Court ought not to have quantified or decided the compensation under Section 357-A of Cr.P.C. or under the POCSO Rules by ignoring the Schedule mentioned in the Victim Compensation Scheme, 2011. Therefore, the order directing the KSLSA to pay compensation of Rs.35,000/- is liable to be set aside. Hence, the following order;

The Criminal Revision Petition is allowed.

The order passed by the Trial Court directing the KSLSA to pay additional compensation of Rs.35,000/-under POCSO Rules to the victim is set aside.

However, the direction of the Trial Court for payment compensation to the victim for Rs.15,000/- recovered from the accused as fine remains unaltered.