

(2020) 06 DEL CK 0077

In the Delhi High Court

Case No : Criminal Writ Petition No. 3244 Of 2019

Mother Minor Victim No. 1 & 2

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 15-06-2020

Acts Referred:

Protection Of Children From Sexual Offences Rules, 2012 — Rule 7, 7(1), 7(4)
Protection Of Children From Sexual Offences Rules, 2020 — Rule 9, 9(1)
Indian Penal Code, 1860 — Section 354, 509
Protection of Children from Sexual Offences Act, 2012 — Section 10, 28, 33, 33(8), 45
Code of Criminal Procedure, 1973 — Section 357A, 357A(1), 357A(2), 357A(3),
357A(4), 357A(5)

Citation : (2020) 06 DEL CK 0077

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : S.D. Windlesh, Sanjay Lao, Karanjeet Sharma

Final Decision : Allowed

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition impugning an order dated 22.07.2019 passed by the Secretary, Delhi Legal Services Authority, East Delhi (hereafter 'DLSA'), whereby the petitioner's application seeking interim compensation for her minor daughters, was rejected. The petitioner also impugns an order dated 01.06.2019 passed by the learned ASJ, referring the petitioner's application for seeking further compensation to the DLSA.

2. The petitioner has two minor daughters. One of her daughters had filed a complaint with PS New Ashok Nagar, Delhi alleging that her father (the petitioner's husband) had sexually assaulted her, as well as her younger sister. She also made allegations against her paternal grandfather. Pursuant to the aforesaid complaint, an FIR (FIR bearing No. 1618/2015 under Sections 354 & 509 of the IPC read with Section 10 of the Protection of Children from Sexual

Offences Act, 2012 [hereafter 'POCSO Act']) was registered with PS New Ashok Nagar. At the material time, the age of the complainant was thirteen years. She had alleged that her father had been beating and torturing her as well as her sister for the past seven to eight years. She had also alleged that since the past three-four years, her father had sexually assaulted her. Subsequently, a charge-sheet were filed against the accused and they are being tried.

3. On 29.08.2018, the petitioner filed an application on behalf of her minor daughters (victims) seeking interim compensation. The Trial Court sought for a report from the Incharge, PS Ashok Nagar and after considering the same and hearing the parties, passed an order dated 14.09.2018. The Trial Court accepted the contention that the victims (the complainant and her younger sister) required immediate monetary help. Considering the facts and circumstances of the case, their poor financial condition and the trauma caused to them, the Trial Court recommended that a compensation of ₹ 50,000/- be paid to each of the victims under the Delhi Victims Compensation Scheme, 2015. The said order indicates that the same was passed in exercise of powers under Section 33 of the POCSO Act read with Rule 7 of the Protection of Children from Sexual Offences Rules, 2012.

4. Admittedly, the said compensation was paid to the victims as was recommended.

5. Thereafter, on 08.04.2019, the petitioner filed a second application seeking further interim compensation. The petitioner prayed that compensation be awarded as per NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018. The said application was opposed by the State. It was contended that since interim compensation had already been paid as recommended, no further compensation could be awarded at that stage. It was also contended that the matter regarding compensation be referred to the DLSA for consideration in accordance with law. This contention was accepted and by an order dated 01.06.2019 - which is impugned herein - the learned ASJ directed that a copy of the application for further interim compensation as well as the order dated 14.09.2018 be forwarded to the DLSA for dealing with the same, in accordance with law. The petitioner was directed to appear before the Secretary, DLSA on 03.06.2019.

6. In compliance with the aforesaid order, the petitioners/victims appeared before the Secretary, DLSA through their representative and pressed the application for interim compensation. The said application was disposed of by an order dated 22.07.2019, which is impugned by way of the present petition. DLSA held that in cases under the POCSO Act, the Special Court has the power to quantify the compensation amount after considering the provisions of the Delhi Victims Compensation Scheme, 2018. He held that since in the present case, interim compensation had been quantified and awarded by the learned Trial Court. The DLSA could not review or enhance the compensation and accordingly, by the order dated 22.07.2019, rejected the petitioner's application for further

interim compensation.

Reasons and Conclusion

7. DLSA passed the impugned order holding that it had no jurisdiction to decide the question of interim compensation, as the power to award such compensation has been conferred on the Special Court designated under Section 28 of the POCSO Act.

8. Sub-section (8) of Section 33 of the POCSO Act is relevant and is set out below:

"(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child."

9. In terms of Section 45 of the POCSO Act, the Central Government is empowered to frame rules for carrying out the purposes of the POCSO Act. In exercise of the said powers, the Central Government had notified the Protection of Children from Sexual Offences Rules, 2012 (hereafter 'the said Rules'). The said Rules came into force on 14.11.2012 and were in force at the material time. Rule 7 of the said Rules is relevant and is set out below:

"Compensation - (1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

(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.

(3) Where the Special Court, under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:-

(i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;

(ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;

(iii) loss of educational opportunity as a consequence of the offence, including

absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

(iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

(v) the relationship of the child to the offender, if any;

(vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;

(vii) whether the child became pregnant as a result of the offence;

(viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;

(ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;

(x) any disability suffered by the child as a result of the offence;

(xi) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;

(xii) any other factor that the Special Court may consider to be relevant.

(4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357-A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government."

10. Sub-rule (4) of Rule 7 of the said Rules makes it amply clear that the compensation awarded by a Special Court is required to be paid by the State Government from the Victim Compensation Fund or other scheme of funds established by it for the purposes of compensating or rehabilitating victims under Section 357-A of the Code of Criminal Procedure, 1973 or any other law for the time being in force. It is also clarified that in case no such fund or scheme exists, the State Government would, nonetheless, pay the compensation as awarded by the Special Court. The said compensation is required to be paid within thirty days of the receipt of such order.

11. This Court finds no reason to restrict the meaning of the word compensation to exclude interim compensation. Thus, the expression 'compensation' would also encompass interim compensation as awarded by the Special Court under sub-rule (1) of Rule 7 of the said Rules.

12. The said Rules have been replaced by the Protection of Children from Sexual Offences Rules, 2020, which came into force with effect from 09.03.2020. However, it is seen that insofar as the provisions pertaining to award and payment of compensation are concerned, there is no material change in the Rules: Rule 9 of the Protection of Children from Sexual Offences Rules, 2020 is similarly worded to Rule 7 of the said Rules.

13. In *Nipun Saxena and Anr. v. Union of India and Ors.*: W.P.(C) 565/2012, vide the order dated 05.09.2018, the Supreme Court had considered the issue as to lack of guidelines or a scheme framed for awarding compensation to victims of sexual abuse under the provisions of POCSO Act. The Supreme Court had considered the National Legal Services Authority's (NALSA) Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018 and had noted that a scheme of such a nature had not been framed with regard to victims of sexual abuse under the POCSO Act. The Court - after noting the provisions of Section 33(8) of the POCSO Act and Rule 7 of the POCSO Rules, 2012 - directed that till such a compensation scheme is framed, the NALSA's Compensation Scheme would function as a guideline for the Special Court to award compensation to minor victims of sexual abuse, under Rule 7 of the POCSO Rules, 2012. The operative extract of the said order dated 05.09.2018 is set out below;

"Keeping this hiatus in mind, we are of the opinion, after hearing learned counsel for the parties as well as learned Additional Solicitor General, that the NALSA' Compensation Scheme should function as a guideline to the Special Court for the award of compensation to victims of child sexual abuse under Rule 7 until the Rules are finalized by the Central Government.

The Special Judge will, of course, take the provisions of the POCSO Act into consideration as well as any circumstances that are special to the victim while passing an appropriate order.

We need not emphasise that the legislation is gender neutral and, therefore, the Guidelines will be applicable to all children.

The Special Judge will also pass appropriate orders regarding actual physical payment of the compensation or the interim compensation so that it is not misused or mis-utilized and is actually available for the benefit of the child victim. If the Special Judge deems it appropriate, an order of depositing the amount in an interest-bearing account may be passed."

14. Concededly, no special scheme for awarding compensation to victims under the POCSO Act has been framed as yet and therefore, NALSA's Scheme is

required to serve as a guideline for award of compensation to the victims under the POCSO Act.

15. It is relevant to note that NALSA had set up a committee to prepare model rules for compensation to victims of sexual offences and acid attacks, pursuant to an order passed by the Supreme Court in *Nipun Saxena* (supra). The said committee held various meetings and prepared a separate chapter within the then extant victim compensation scheme for victims of sexual assault. The said Chapter was incorporated in the Scheme and was called "Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes- 2018".

16. Paragraph no. 9 of the said Chapter (Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes - 2018) sets out the procedure for grant of compensation and Paragraph no. 12 of the said Chapter contains provisions for grant of interim relief to the victim. Paragraphs nos. 9 and 12 of the said Chapter are relevant and are set out below:

"9. PROCEDURE FOR GRANT OF COMPENSATION-

(1) Wherever, a recommendation is made by the court for compensation under sub-sections (2) and/or (3) of Section 357A of the Code, or an application is made by any victim or her dependent(s), under sub-section (4) of Section 357A of the Code, to the State Legal Services Authority or District Legal Services Authority, for interim compensation it shall prima-facie satisfy itself qua compensation needs and identity of the victim. As regards the final compensation, it shall examine the case and verify the contents of the claim with respect to the loss/injury and rehabilitation needs as a result of the crime and may also call for any other relevant information necessary for deciding the claim.

Provided that in deserving cases and in all acid attack cases, at any time after commission of the offence, Secretary, SLSA or Secretary, DLSA may suo moto or after preliminary verification of the facts proceed to grant interim relief as may be required in the circumstances of each case.

(2) The inquiry as contemplated under sub-section (5) of Section 357A of the Code, shall be completed expeditiously and the period in no case shall exceed beyond sixty days from the receipt of the claim/petition or recommendation:

Provided that in cases of acid attack an amount of Rs. One lakh shall be paid to the victim within 15 days of the matter being brought to the notice of DLSA. The order granting interim compensation shall be passed by DLSA within 7 days of the matter being brought to its notice and the SLSA shall pay the compensation within 8 days of passing of the order. Thereafter, an amount of Rs. 2 lakhs shall be paid to the victim as expeditiously as possible and positively within two months of the first payment.

Provided further that the victim may also be paid such further amount as is admissible under this Scheme.

(3) After consideration of the matter, the SLSA or DLSA, as the case may be, upon its satisfaction, shall decide the quantum of compensation to be awarded to the victim or her dependent(s) taking into account the factors enumerated in Clause 8 of the Scheme, as per schedule appended to this chapter. However, in deserving cases, for reasons to be recorded, the upper limit may be exceeded.

Moreover, in case the victim is minor, the limit of compensation shall be deemed to be 50% higher than the amount mentioned in the Schedule appended to this chapter.

(4) The SLSA/DLSA may call for any record or take assistance from any Authority/ Establishment/Individual/ Police/Court concerned or expert for smooth implementation of the Scheme.

(5) In case trial/appellate court gives findings that the criminal complaint and the allegation were false, then Legal Services Authority may initiate proceedings for recovery of compensation, if any, granted in part or full under this Scheme, before the Trial Court for its recovery as if it were a fine.

xxxx xxxx xxxx

12. INTERIM RELIEF TO THE VICTIM-

The State Legal Services Authority or District Legal Services Authority, as the case may be, may order for immediate first-aid facility or medical benefits to be made available free of cost or any other interim relief (including interim monetary compensation) as deemed appropriate, to alleviate the suffering of the victim on the certificate of a police officer, not below the rank of the officer-in-charge of the police station, or a Magistrate of the area concerned or on the application of the victim/ dependents or suo moto.

Provided that as soon as the application for compensation is received by the SLSA/DLSA, a sum of Rs.5000/- or as the case warrants up to Rs. 10,000/- shall be immediately disbursed to the victim through preloaded cash card from a Nationalised Bank by the Secretary, DLSA or Member Secretary, SLSA.

Provided that the, interim relief so granted shall not be less than 25 per cent of the maximum compensation awardable as per schedule applicable to this Chapter, which shall be paid to the victim in totality.

Provided further that in cases of acid attack a sum of Rs. One lakh shall be paid to the victim within 15 days of the matter being brought to the notice of SLSA/ DLSA. The order granting interim compensation shall be passed by the SLSA/ DLSA within 7 days of the matter being brought to its notice and the SLSA shall pay the compensation within 8 days of passing of order. Thereafter an additional sum of Rs.2 lakhs shall be awarded and paid to the victim as expeditiously as possible and positively within two months."

17. The aforesaid scheme also includes a schedule which sets out the minimum and the upper limit of compensation to be paid to women victims of the crimes

as specified in the said Schedule.

18. It is also relevant to note that the explanation, as provided at the end of the Chapter, expressly provides that it does not apply to minor victims under the POCSO Act. The said explanation is set out below:

"Explanation: It is clarified that this Chapter does not apply to minor victims under POCSO Act, 2012 in so far as their compensation issues are to be dealt with only by the Ld. Special Courts under Section 33 (8) of POCSO Act, 2012 and Rules (7) of the POCSO Rules, 2012."

19. It is at once clear that the Scheme is not applicable to victims under the POCSO Act, but since guidelines have not been framed for awarding compensation and interim compensation, either under the said Rules/Protection of Children from Sexual Offences Rules, 2020 or the POCSO Act; therefore, in terms of the order dated 05.09.2018 passed by the Supreme Court in Nipun Saxena (supra), the aforementioned Scheme is required to be considered as guidelines by the Special Judge while awarding compensation to victims under the POCSO Act.

20. The aforementioned Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes - 2018 was framed in terms of Section 357-A (1) of the CrPC, which requires every State Government to prepare a scheme in co-ordination with the Central Government for providing funds for the purpose of compensation to the victim or the victim's dependents who had suffered loss or injury as a result of the crime and those who require rehabilitation. The said Scheme is to be administered by the DLSA. The Court can certainly recommend compensation to be paid. However, the concerned Legal Services Authority is required to examine the case and verify the claims with respect to loss/injury as may have arisen as a result of the crime and the rehabilitation means of the victim. An application for compensation under the Victims Compensation Scheme can also be made directly to the concerned Legal Services Authority. However, when it comes to awarding compensation to victims under the POCSO Act or rules made thereunder, the power to award such compensation or interim compensation has been conferred on the Special Court.

21. It is well settled that every statutory power is also coupled with the duty to exercise it. In view of the express provisions of Section 33(8) of the POCSO Act and Rule 7 of the said Rules (Rule 9 of the Protection of Children from Sexual Offences Rules, 2020 as is currently in force), the duty to award compensation in appropriate cases has been conferred on the Special Court and therefore, it is incumbent on the Special Court to pass necessary orders for compensation/interim compensation in appropriate cases. It is not open for the Special Court to delegate the said power and direct the concerned Legal Services Authority to examine any claim for compensation payable to a minor victim of an offence punishable under the POCSO Act. In this view, this Court finds considerable merit in the contention that the learned ASJ could not have directed the petitioner's

application for further compensation to be considered by DLSA. It was incumbent upon the learned ASJ to examine the petitioner's application for additional compensation to the victims and pass necessary orders, if the Trial Court found the application to be merited.

22. In view of the above, the impugned order dated 01.06.2019 whereby the petitioner's application for further compensation was referred by the learned ASJ to DLSA is wholly without authority of law. The said order is, thus, liable to be set aside.

23. It is material to note that in the present case the learned ASJ had by an order dated 14.09.2018 directed that interim compensation of ₹ 50,000/- be paid to each of the victims under the Delhi Victim Compensation Scheme, 2015. A plain reading of the said order indicates that the learned ASJ had examined the facts and circumstances of the case including the financial condition of the victims as well as the trauma caused to them. The petitioner had accepted the said order and had not sought enhancement of the interim compensation at the material time. The said order had become final and was duly implemented. In the given circumstances, the question to be addressed is whether it is open for the petitioner to file another application for seeking further interim compensation.

24. Although Sub Rule (1) of Rule 7 of the said Rules (and in Sub-rule (1) of Rule 9 of the Protection of Children from Sexual Offences Rules, 2020) does not indicate that multiple applications for interim compensation can be made; nonetheless, since the said provision for compensation is a beneficial provision, the same must be considered liberally.

25. This Court is of the view that since there is no express bar which restricts the Special Courts to grant interim compensation only once, an application for further interim compensation can be considered by the Learned. ASJ, provided there are sufficient grounds for seeking further interim compensation. Needless to state that any further interim compensation awarded would also be liable to be adjusted with the compensation as awarded at the final stage as postulated in Sub-rule (1) of Rule 7 of the said Rules (and in Sub-rule (1) of Rule 9 of the Protection of Children from Sexual Offences Rules, 2020)

26. Having stated the above, it is also necessary to observe that an application for seeking further interim compensation cannot be premised on the ground that the order for payment of interim compensation passed in an earlier application is erroneous or inadequate. Such an application would be maintainable only if circumstances have subsequently arisen that were not in contemplation at the time when the special court had evaluated the requirement of interim compensation.

27. In view of the above, this Court finds no infirmity with the order dated 22.07.2019 passed by DLSA, holding that under the POCSO Act, the special court has the jurisdiction to award compensation to victims of offences punishable under the POCSO Act. However, as stated earlier, the impugned order dated

01.06.2019 passed by the learned ASJ, referring the petitioner's application for further compensation, is without authority of law and is thus, set aside.

28. The petition is, accordingly, allowed and the petitioner's application dated 08.04.2019 for seeking further interim application is restored on the file of the learned ASJ, for reconsideration afresh, in accordance with the Protection of Children from Sexual Offences Rules, 2020 and the observations made above.