

(2018) 06 CAL CK 0215
In the Calcutta High Court
Case No : Writ Petition 4517 (W) of 2018

Serina Mondal Alias Piyada

APPELLANT

Vs

State Of West Bengal And Ors.

RESPONDENT

Date of Decision : 25-06-2018

Acts Referred:

Code Of Criminal Procedure 1973 — Section 4, 357A
Constitution of India, 1950 — Article 21, 38

Citation : (2018) 06 CAL CK 0215

Hon'ble Judges : RAJASEKHAR MANTHA, J

Bench : Single Bench

Advocate : Kaushik Gupta, Arnab Nandi, Anirban Tarafdar, Kallol Mondal, Krishan Roy, Amrita Chel, Jishnu Chowdhury, Robiul Islam

Final Decision : Disposed Of

Judgement

The writ petitioner has been a victim of trafficking. She was identified, traced out and brought back from Pune to West Bengal. Proceedings have

been lodged against the four accused persons. Two of such persons have been arrested and two are stated to be absconding. The victim had filed an

application under the West Bengal Victim Compensation Scheme of 2017. Such scheme came to be framed after the Criminal Procedure Code, 1973

was amended to bring in Section 357A in the year 2009(w.e.f 31.12.2009). Section 357A of the Code of Criminal Procedure was set out hereinbelow

:-

â??Section 357-A. 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 Service Authority or the State Legal Service 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) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(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) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid

facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the

police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit. The aforesaid Scheme of

2017 has laid down eligibility criteria at Clause 4 of the Scheme. The criteria is set out as follows:-

Eligibility for Compensation.- Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim

or his/her dependents may make an application to the State or the District Legal Services Authority for award of compensation if, --

a) he/she has not been compensated for the loss or injury under any other Scheme of the Central or State Government, insurance company or any other institution,

b) the loss or injury sustained by the victim has caused substantial loss of income to his/her family making it difficult to meet their both ends without

any compensation.

A plain reading of Section 357A and Clause 4 of the Scheme above would indicate that the object and purpose behind the same is compensation to the victim primarily for the purpose of rehabilitation. A victim can claim rehabilitation during the pendency of the trial, prior to its commencement or upon conclusion of a trial. The narrative behind Section 357A and the Scheme abundantly indicates the same. It is further evident that compensation can be awarded by the State Legal Services Authorities either upon a recommendation of the trial court where the trial had already commenced or on an application by the victim himself/herself prior to the commencement of the trial. It has been stipulated both under Section 357A as also the Scheme that a victim herself can make an application where the accused have not been identified or traced and the trial has not commenced. The writ petitioner being otherwise eligible under Section 357A read with Section 4 of the Scheme aforesaid had applied for compensation.

The same was rejected by the Learned Secretary, D. S. L. A in his order dated March 23, 2017 in V. C Case No. 2 of 2017. The appeal preferred by the writ petitioner before the Member Secretary, State Legal Services Authority being V. C. Appeal No. 1 of 2017 was also rejected. The ground for rejection by the State Legal Services Authority was, inter alia, that both conditions i.e., a) the accused not being traced or identified; as well as b) trial not having commenced, are required to be satisfied to entitle the writ petitioner for compensation under Section 357A read with the Scheme as aforesaid.

I find that the order of the appellate authority dated 28th August, 2017 cannot be sustained in law. The object and purpose of introduction of the

Scheme has been discussed and very succinctly laid down in the case of Piyali Dutta Vs. The State of West Bengal and Others being W. P.

26174(W) of 2014. In a judgement dated July 7, 2017, a Co-ordinate Bench of this Honâ??ble Court has held as follows :-

â??The Victim Compensation Scheme, 2012 and the West Bengal Victim Compensation Scheme, 2017 have come into being pursuant to and by virtue of Section 357A of the Code of Criminal Procedure, 1973. Section 357A does not introduce any criminal liability to the accused. It requires and enforces the directive principles enshrined in the Constitution of India under Article 38 which obligates the State to render social justice to its citizens.

Right to receive just compensation as a victim of a crime, notwithstanding the result of the criminal proceedings emanating out of the incident of crime

can be read into Article 21 of the Constitution of India guaranteeing Right to life. Right to life, encompasses within its fold, the Right to live with

dignity. A citizen cannot be asked to forfeit the right to live with dignity just because such citizen has become a victim of an act of crime. The state is

obliged to protect the life and property of its citizen.

The victim may or may not receive compensation in the criminal proceedings. The criminal proceedings may result in acquittal of the accused.

Disposal of such criminal proceedings with a particular result does not mean that, the incident of crime did not happen or that, the victim is not entitled

to or require compensation. In an acquittal, the Court does not find the accused guilty of the crime. Acquittal of the accused, ipso facto, does not mean

that, the incident of crime did not take place. The victim of the crime, may require support, monetary and otherwise to mitigate the loss and injury

suffered as a result of the crime. The victim may require rehabilitation.â??

The object and purpose of the Scheme of 2017 which itself replaced an earlier scheme of the year 2012 is inter alia that a victim of a serious crime

specially a woman needs urgent and immediate attention and both physical and mental rehabilitation. Such rehabilitation from the nature of the scheme

and Section 357A is not dependent on the pace on which either the investigation is conducted or the trial is carried on. If this be the object and purpose

of the Scheme and Section 357A read as a whole, I cannot countenance the findings of the State Legal Services Authority in the impugned order that

both the requirements i. e. accused not being traced or identified as well as the factum of trial not having commenced, need be satisfied.

Compensation is awarded under the scheme as formulated pursuant to Section 357A (supra) as the fundamental rights of the victim under Article 21

have been in fact violated. Denial of compensation to such victim would continue such violation and perpetrate gross inhumanity on the victim in

question. This cannot be the object of Section 357A and the 2017 Scheme referred to hereinabove. I therefore hold that both the requirements the

accused not being identified or traced as also that the trial should not have commenced, need not be satisfied for entitlement of compensation under

the 2017 scheme.

There is yet another way to address the issue. If the accused have not been identified a trial cannot commence anyway. The Legislature could not

have imposed an occurrence leading to the same result twice over, as a condition precedent. Any multiple preconditions must be independent

occurrences. Two similar events cannot form two different conditions. I, therefore, set aside the order dated 28th August, 2017 passed by the

Member Secretary, State Legal Services Authority, West Bengal in V. C. Appeal No. 1 of 2017. The State Legal Services Authority shall assess the

compensation payable to the petitioner and make over the same to her within a period of 10 days from the date of the communication of a copy of this

order.

The quantum to be disbursed either in one go or in intervals shall be decided by the State Legal Services Authorities. The victim writ petitioner shall be

entitled to claim and justify the amount of compensation she requires at a given point of time not exceeding the amount of compensation payable to her

in entirety. The same should be decided in accordance with available facts by the S. L. S. A. The investigation now pending against the accused and

the apprehension of the absconding persons may be taken up with expedition by the C. I. D, West Bengal. The C. I. D, West Bengal shall consider

taking appropriate steps for applying relevant Sections of the Criminal Procedure Code for proceeding with the trial against the available persons if

they so deem fit.

It is made clear that the amount of compensation or portion thereof payable to the writ petitioner by the S. L. S. A would be considered for recovery

in the form of fine from the accused persons at the end of the trial in the event of their conviction. This Court places on record appreciation for the

fair and appropriate submissions made by the learned advocate Mr. Jishnu Chowdhury appearing for the State and Mr. Kallol Mondal, learned

advocate appearing for the S. L. S. A. With the aforesaid observation, W. P. 4517(W) of 2018 is disposed of. There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.