

(2015) 11 SHI CK 0021
In the High Court Of Himachal Pradesh
Case No : CMP No. 11857 of 2015

Sheetal Thakur

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 30-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151, 94(c)
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 125
Family Courts Act, 1984 — Section 7(2)(a)
Motor Vehicles Act, 1988 — Section 140

Citation : (2015) 11 SHI CK 0021

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Sanjeev Kumar Suri, Advocate, for the Appellant; Shrawan Dogra, Advocate General, Romesh Verma, Addl. AG and J.K. Verma, Deputy Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.

CMP No. 11856 of 2015

1. Leave granted. The application is disposed of.

CWP No. 4524 of 2015

2. Issue notice. Mr. J.K. Verma, Deputy Advocate General waives notice on behalf of respondent No. 1 and Mr. Vivek Sharma, Advocate, waives notice on behalf of respondents No. 2 to 5. List on 5th April, 2016, along with CWP No. 318 of 2015. In the meantime, reply be filed by the respondents.

CMP No. 11857 of 2015

3. By the medium of this application, the applicant/petitioner has sought interim

compensation.

4. The moot question is - whether interim compensation can be granted in writ proceedings, while exercising power under Article 226 of the Constitution of India?. The answer is in the affirmative for the following reasons.

5. To determine the issue, it is necessary to have a glance of brief facts of the case, which have been made the foundation for claiming the compensation in the main writ petition. It is averred in the writ petition that the petitioner, who is barely a boy of 14 years of age in contact with the 11 KV. High Tension Wire (Amb-Nandpur-Chururu) has received grievous injuries and was referred from Civil Hospital to PGI Chandigarh, where he remained admitted w.e.f. 17.6.2014 to 30.7.2014. Due to the said injuries sustained by the petitioner, he had to be operated upon in which right arm of the petitioner was amputated. The said incident was reported to the police station Amb, District Una, H.P. The father of the petitioner is stated to have filed so many representations to the authorities but in vain. Hence the present petition.

6. The documents, placed on the file, do disclose, prima facie, that it is a case where a Writ Court should intervene and come to the rescue of the victims in order to save them from destitution, vagaries and social evils and also provide them some sort of help at this stage.

7. The Apex Court in Civil Appeal No. 11466 of 2014, titled as Raman vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors., decided on 17th December, 2014, has laid down guidelines how to assess and grant compensation in such like cases. One of us (Justice Mansoor Ahmad Mir, Chief Justice), the then Judge of Jammu and Kashmir High Court, has also dealt with such an issue in Chief Engineer and Others Vs. Mst. Zeba, , in which case, compensation was granted in favour of the victims.

8. We have also dealt with the similar issue in a public interest litigation, being CWPI No. 7 of 2014, titled as Court on its own motion vs. State of Himachal Pradesh and others, decided on 25th June, 2014, wherein interim compensation to the tune of Rs. 5.00 lacs, to each of the victims, was granted. It is apt to reproduce paragraphs 20 to 22 of the said order hereunder:

"20. In order to achieve the purpose of grant of interim or final relief promptly and spurn any attempt at procrastination in view of the facts and circumstances of the case, which are crying for the same, the Courts should not succumb to niceties, technicalities and mystic may be's.

21. We are of the considered view that the Writ Court can exercise powers in terms of the mandate of the Constitution read with the inherent powers and can grant interim relief, even though it is not specifically provided for.

22. We have laid our hands on a judgment which is delivered by one of us (Justice Mansoor Ahmad Mir, Chief Justice) as a Judge of Jammu and Kashmir High Court, wherein interim compensation was granted in a First Civil Appeal,

titled as Chief Engineer and Others Vs. Mst. Zeba, . It is apt to reproduce paras 10 to 17 of the said judgment herein:

"10. While going through the provisions of Section 151 , C.P.C., this Court can exercise inherent powers in order to do justice in between the parties and can pass such orders which are warranted in the interests of justice.

11. Section 140 of Motor Vehicles Act mandates how to grant interim compensation. This remedy stands introduced in terms of the recommendations made by the Apex Court in the judgments reported in 1977 ACJ 134 (SC), 1980 AC J 435 (SC) and 1981 ACJ 507 (SC). In terms of the said judgments the legislation was made. The aim and object of the said provision is to save the victims/sufferers from starvation, destitution and from other social evils. It is just to ameliorate the sufferings of the victims.

12. The Apex Court has passed a judgment reported in Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, , wherein Their Lordships have granted interim compensation to the victims of a rape case. In terms of the said judgment the Court is not powerless to come to the rescue of victims and save them from social evils as discussed above. It is profitable to reproduce para-18 of the said judgment herein:

"18. This decision recognizes the right of the victim for compensation by providing that it shall be awarded by the Court on conviction of the offender subject to the finalization of scheme by the Central Government. If the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court the right to award interim compensation which should also be provided in the scheme. On the basis of principles set out in the aforesaid decision in Delhi Domestic Working Women's Forum, the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offences of rape which, as pointed out above is an offence against basic human rights as also the Fundamental Right of Personal Liberty and Life."

13. The Apex Court has also held in the judgment reported in Savitri Rawat Vs. Govind Singh Rawat, , that the Courts can grant interim maintenance in the proceedings under Section 488 (Section 125 , Cr.P.C.), Cr.P.C. It is profitable to reproduce relevant portion of para-6 herein:

".....if a Civil Court can pass such interim orders on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a Magistrate under Section 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the Magistrate to pass an order

directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to the pending final disposal of the application. In taking this view we have also taken note of the provisions of Section 7(2)(a) of the Family Courts Act, 1984 (Act No. 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by Magistrates under Section 125 of the Code to the Family Court constituted under the said Act."

14. While going through the said provisions of law and while keeping in view of the above discussion, I am of the considered view that Civil Court can exercise inherent powers and can grant interim compensation at any stage even though not provided by any other provision of law. It is profitable to reproduce relevant portion of para-4 of the judgment of Apex Court reported in State of Maharashtra and others Vs. Admane Anita Moti and others, .

".....Interim orders are granted by the Court as they are necessary to protect the interest of the petitioner till the rights are finally adjudicated upon. Even where it is not provided in the statute this Court has held that the Courts have inherent power to grant it....."

15. It is also profitable to reproduce paras 9 & 10 of the Apex Court judgment reported in Vareed Jacob Vs. Sosamma Geevarghese and Others, , herein:

"9. In the case of Ram Chand and Sons Sugar Mills Pvt. Ltd. Vs. Kanhaya Lal Bhargava and Others, , it has been held by this Court that the inherent power of the Court under Section 151 C.P.C. is in addition to and complimentary to the powers expressly conferred under C.P.C., but that power will not be exercised in conflict with any of the powers expressly or by implication conferred by other provisions of C.P.C. If there is express provision covering a particular topic, then Section 151 , C.P.C. cannot be applied. Therefore, Section 151 , C.P.C. recognizes inherent power of the Court by virtue of its duty to do justice and which inherent power is in addition to and complimentary to powers conferred under C.P.C. expressly or by implication.

10. In the case of Jagjit Singh Khanna Vs. Dr. Rakhal Das Mullick and Another, , it has been held that temporary injunction may be granted under Section 94(c) only if a case satisfies Order 39 Rule 1 and Rule 2 . It is not correct to say that the Court has two powers, one to grant temporary injunction under Section 94(c) and the other under Order 39 Rule 1 and Rule 2 . That Section 94(C), C.P.C. shows that the Court may grant a temporary injunction thereunder only if it is so prescribed by Rule 1 and Rule 2 of Order 39. The Court can also grant temporary injunction in exercise of its inherent powers under Section 151 , but in that case, it does not grant temporary injunction under any of the powers conferred by C.P.C. but under powers inherent in the constitution of the Court, which is saved by Section 151 , C.P.C."

16. In terms of the said judgments, the Civil Court can exercise inherent powers and grant interim compensation in order to do justice, save victims from social

evils and just to ameliorate their sufferings.

17. Thus, I am of the considered view that Civil Court can grant interim compensation in the cases, where the claimants/plaintiffs have lost their bread earner, son or daughter due to the negligence of the defendant/s and even in the cases where the plaintiff has sustained injuries due to the negligence of the defendants which has rendered the plaintiff permanently disabled."

9. Keeping in view the discussion made hereinabove, we are of the considered view that the applicant/petitioner has carved out a case for grant of interim compensation. Accordingly, interim compensation to the tune of Rs. 2 lacs, is awarded in favour of the applicant/petitioner. The respondents are directed to deposit the amount of Rs. 2 lacs, within a period of six weeks from today. The application stands disposed of accordingly.