

(2019) 05 CHH CK 0004

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 1150 Of 2016

State Of Chhattisgarh

APPELLANT

Vs

Budharu Ram Meravi And Ors

RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Protection Of Children From Sexual Offences Rules, 2012 — Rule 7, 7(1), 7(2), 7(3), 7(4), 7(5), 7(6)
Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 6, 33(8)
Indian Penal Code, 1860 — Section 363, 366(a), 376(2)(g), 506B
Code Of Criminal Procedure, 1973 — Section 357, 357A, 357A(2), 357A(3), 482

Citation : (2019) 05 CHH CK 0004

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : S. Agrawal

Final Decision : Disposed Of

Judgement

1. The petitioner herein i.e. the State of Chhattisgarh calls in question the direction issued by the learned Additional Sessions Judge, Rajnandgaon while delivering judgment in Special Case No.2/2014 on 20.07.2016 by which an amount of Rs. 1,00,000/- has been awarded to the father of the gang rape victim (minor) after having held that the accused persons/respondents herein are guilty of offence punishable under Sections 363, 366(a), 376(2)(g), 506-B of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act").

2. Learned Government Advocate appearing for the petitioner / State submits that learned Additional Sessions Judge, Rajnandgaon has committed illegality in directing the State Government to pay an amount of Rs. 1,00,000/- to father of the rape victim. He also submits that the said Court should have only made recommendation under Section 357 of the Cr.P.C. for payment of compensation and only after acceptance of recommendation, compensation if any should have been made payable to the rape victim, as such the order of learned Additional

Sessions Judge directing payment of compensation is unsustainable and bad in law.

3. I have heard learned counsel for the petitioner / State, considered his submissions and went through the records with utmost circumspection.

4. It is not in dispute that the respondents herein have been convicted for offence punishable under Sections 363, 366(a), 376(2)(g), 506-B of the IPC and they have also been convicted for offence under Section 6 of the POCSO Act i.e. punishment for aggravated penetrative sexual assault and since, they have been sentenced under Section 376(2)(g) of the IPC, therefore, no separate sentence has been awarded to them for violation of Section 6 of the POCSO Act.

5. At this state, it would be appropriate to notice sub-section (8) of Section 33 of the POCSO Act which states as under:-

"33(8) in appropriate cases, the Special Court, in addition to punishment, direct payment of such compensation to the child for any physical or mental trauma caused to him or for immediate rehabilitation for such child."

6. Sub-rules (1) to (6) of Rule 7 of the Protection of Children from Sexual Offences Rules, 2012 (hereinafter referred to as "the Rules of 2012") read as under:-

"7. 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 357A 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."

7. A conjoint reading of sub-section (8) of Section 33 of the POCSO Act and Rule 7 of the Rules of 2012 would show that the Special Judge (POCSO) is empowered to direct payment of compensation to the victim/child for physical or mental trauma which he or she has suffered for immediate rehabilitation of such victim and that award of compensation is in addition to the punishment that is ultimately imposed upon the accused and the compensation awarded by the Special Judge is to be paid by the State Government from the Victim Compensation Fund or other scheme or fund established under the provisions of Section 357-A of the Cr.P.C.

8. The Supreme Court, in the matter of Tekan alias Tekram v State of Madhya Pradesh (Now Chhattisgarh) (2016) 4 SCC 461 directed the State Government/ Union Territories to formulate a scheme for providing compensation to rape victim as under:-

"13. On perusal of the aforesaid Victim Compensation Schemes of different States and the Union Territories, it is clear that no uniform practice is being followed in providing compensation to the rape victim for the offence and for her rehabilitation. This practice of giving different amount ranging from Rs 20,000 to Rs 10,00,000 as compensation for the offence of rape under Section 357-A needs to be introspected by all the States and the Union Territories. They should consider and formulate a uniform scheme specially for the rape victims in the light of the scheme framed in the State of Goa which has decided to give compensation up to Rs 10,00,000.

14. While going through different schemes for relief and rehabilitation of victims of rape, we have also come across one Scheme made by the National Commission for Women (NCW) on the direction of this Court in Delhi Domestic Working Women's Forum v. Union of India (1995) 1 SCC 14 , whereby this Court, inter alia, had directed the National Commission for Women to evolve a "scheme" so as to wipe out the tears of unfortunate victims of rape. This Scheme has been revised by NCW on 15-4-2010. The application under this Scheme will be in addition to any application that may be made under Sections 357 and 357-A of the Code of Criminal Procedure as provided in Para 22 of the Scheme. Under this Scheme, maximum of Rs 3,00,000 (Rupees three lakhs) can be given to the victim of rape for relief and rehabilitation in special cases like the present case where the offence is against a handicapped woman who requires specialised treatment and care.

.....

19.1. All the States and Union Territories shall make all endeavour to formulate a uniform scheme for providing victim compensation in respect of rape/sexual exploitation with the physically handicapped women as required under the law taking into consideration the scheme framed by the State of Goa for rape victim compensation;"

9. Thereafter, in the matter of Nipun Saxena v. Union of India 2018 SCC OnLine SC 2010 , the Supreme Court while considering the provisions contained in Section 33(8) of POCSO Act held that Special Court may in appropriate cases on its own motion, or an application having been filed, pass an order for interim compensation for immediate needs of the child and held the rule to be gender natural provision and further finding that there are no guidelines or rules that are applicable on the basis of which the Special Court can pass appropriate orders, directed that till the rules are framed, NALSA Compensation Scheme should function as guidelines to the Special Court and held as under:-

"9. 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.

10. 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.

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

12. 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.

13. A copy of the NALSA's Compensation Scheme as well as a copy of this order should be sent by the Registry to the Registrar General of every High Court with a direction that the Registrar General will circulate them to all the concerned District Judges for circulation to the Special Judges and the State, District and Taluka Legal Services Committees.

14. A copy of the Scheme and a copy of the order passed by this Court will also be sent by the Registry to all the Judicial Academies for information.

15. We also direct that the publicity should be given to the Scheme as well as the order passed by us on regular basis until the Rules are finalized by the Central Government.

Learned Additional Solicitor General assures us that the needful will be done on a regular basis through all forms of media.

16. Needless to say that the Scheme and the Guidelines will be operational from 2nd October, 2018."

10. As such with effect from 02.10.2018, for the rape victim, NALSA Compensation Scheme will be applicable w.e.f. 02.10.2018 till the rules are finalized by Central Government and in that scheme, for victim of gang rape minimum compensation has been prescribed as five lacs and upper compensation limit has been prescribed as Rs. 10,00,000/-.

11. In view of above-stated legal position, Special Judge has power and jurisdiction to award compensation under Section 33(8) of the POCSO Act and rules made thereunder, and thus, it cannot be held that learned Special Judge while convicting the accused for offence under Section 376(2)(g) of IPC read with Section 6 of the POCSO Act has no power and jurisdiction to award compensation to the rape victim, as such the award of compensation to the extent of Rs. 1,00,000/- to the gang rape victim is on lower side. The State of Chhattisgarh in

exercise of power conferred under Section 357-A of the Cr.P.C. by notification dated 03.08.2011 has framed scheme for providing a fund for the purpose of compensation to the victim or dependents, who have suffered loss or injury as a result of crime. Schedule-IV of said scheme serial no. 4 as amended vide notification dated 26.10.2013 relates to rape victim (minor) and compensation to be granted is three lacs; whereas learned Special Judge has awarded only one lac, though no appeal has been filed by rape victim or her parents. Looking to the object sought to be achieved, while granting compensation to rape victim in exercise of jurisdiction under Section 482 the Cr.P.C., to secure the ends of justice, I deem it appropriate to award two lacs more making it at par with the scheme (three lacs total) in vogue at the time of judgment. However, I hope and trust, the Special Courts dealing with offences under the POCSO Act will grant compensation to the rape victim as per NALSA Compensation Scheme as directed by the Hon'ble Supreme Court in *Nipun Saxena* (supra).

12. The petition under Section 482 the Cr.P.C. is disposed of with the above-stated direction. The balance amount of two lacs will be paid to the rape victim, who has now become major, within two months, by the State Government.