

(2017) 04 CHH CK 0021
In the Chhattisgarh High Court
Case No : 528 of 2017

**State of Chhattisgarh, through the District Magistrate,?
Distt.Rajnandgaon (CG) Vs Dilip Verma, S/o Ghanshyam Verma**

Date of Decision : 26-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 357A](#), [Section 357A\(2\)](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 363](#), [Section 376\(1\)](#) - Punishment for kidnapping - Punishment for rape
[Protection Of Children From Sexual Offences Act, 2012](#), [Section 3](#), [Section 4](#), [Section 33\(8\)](#) -
Protection of Children from Sexual Offences Rules, 2012, Rule 4, Rule 7

Citation : (2017) 04 CHH CK 0021

Hon'ble Judges : Sanjay K. Agrawal

Bench : Single Bench

Advocate : Gary Mukhopadhyay, ?Ashish Surana

Judgement

1. In Special Case No.11/2014 the Additional Sessions Judge, Khairagarh has convicted respondent No.1 for commission of offence under Sections 363 and 376(1) of the IPC read with Section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter called as "POSCO Act") and sentenced to undergo R.I. for three years and fine of Rs. 1000/- and R.I. for ten years and fine of Rs. 1000/-, in default of payment of fine to further undergo R.I. for one month for each default. Learned Additional Sessions Judge also awarded compensation of Rs. 1,00,000/- to the rape victim directing the State Government to pay the said amount. Feeling aggrieved against the order granting compensation to the tune of Rs. 1,00,000/- to rape victim, the State Government has filed this petition under Section 482 of the CrPC.

2. Mr.Gary Mukhopadhyay, learned Deputy Government Advocate appearing for the petitioner, would submit that the Additional Sessions Judge has committed an

illegality in directing to pay such an amount to the victim. The trial Court would have only made recommendation under Section 357-A(2) of the CrPC for payment of compensation and thereafter upon acceptance of the said recommendation, only in accordance with law, compensation was payable to the victim and as such, the order of the trial Court is without jurisdiction and without authority of law.

3. Mr.Ashish Surana, learned counsel appearing as Amicus Curiae would bring to notice of this Court sub-section (8) of Section 33 of the Act of 2012 which provides that in appropriate cases, the Special Court (POSCO), 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. He would also bring to notice of this Court Rule 4 of the Protection of Children from Sexual Offences Rules, 2012 (hereinafter called as "Rules of 2012) which provides that the compensation awarded by the Special Judge 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 CrPC or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.

4. I have heard learned counsel appearing for the parties and perused the judgment impugned.

5. It is not in dispute that respondent No.1 has been convicted for offence under Section 376(1) of the IPC and he has also been held guilty for violation of Section 3 of the POSCO Act i.e. penetrative sexual assault for which he is punishable under Section 4 of the POSCO Act. Since he has been sentenced under Section 376(1) of the IPC, therefore, no separate sentence has been awarded to respondent/accused for violation of Section 3 of the POSCO Act.

6. At this stage, it would be appropriate to notice sub-section (8) of Section 33 of the POSCO 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."

7. Sub-rule 1 to 6 of Rule 7 of the Rules of 2012 reads 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 subsections (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."

8. A conjoint reading of sub-section (8) of Section 33 of the POSCO Act and Rule 7 of the Rules of 2012 would show that the Special Judge (POSCO) 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 Victims Compensation Fund or other scheme or fund established under the provisions of Section 357-A of the CrPC.

9. Thus, learned Additional Sessions Judge trying offences under the provisions of the POSCO Act and the Rules 2012 was fully empowered to award compensation to the victim and such power is an additional jurisdiction conferred to the Special Judge. The Special Judge (POSCO) has tried the offence under the POSCO Act, therefore, submission of learned Deputy Government Advocate that the Additional Sessions Judge has no power and jurisdiction to award the compensation and can only make recommendation for payment of compensation is absolutely without merit and deserves to be rejected.

10. Accordingly, the petition is dismissed in limine at admission stage without notice to other side.

11. At this stage, it is brought to my notice that direction to frame victim compensation scheme has been directed to be paid by the Supreme Court, which has not been framed yet by the State Government. The Supreme Court in the matter of Tekan alias Tekram Vs. State of Madhya Pradesh (Now Chhattisgarh), (2016) 4 SCC 461 has directed 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 357A 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 of Women (NCW) on the direction of this court in Delhi Domestic Working Women's Forum vs. Union of India and Ors. [Writ Petition (Crl) No. 362/93], 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 the NCW on 15th April 2010. The application under this scheme will be in addition to any application that may be made under Section 357, 357A of the Code of Criminal Procedure as provided in paragraph 22 of the Scheme. Under this scheme maximum of Rs.3,00,000/- (Three lakhs) can be given to the victim of the rape for relief and rehabilitation in special cases like the present case where the offence is against an handicapped woman who required specialized 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."

12. I hope and trust that the State Government would frame the scheme as directed by the Supreme Court in the above-stated judgment (supra) expeditiously. A copy of this order be sent to the Principal Secretary (Home), State of Chhattisgarh for compliance and needful action.