



2024:DHC:7103



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 05.09.2024

+ **CRL.M.C. 51/2023**

X

....Petitioner

Through: Mr. Rohit Bhardwaj and Mr. Shiv
Nath Sawhney, Advocates

versus

STATE AND ANR

.....Respondents

Through: Mr. Laksh Khanna, APP for State.
Dr. Amit George and Mr. Arkaneil
Bhaumik, Advocates for R- 2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present petition, the petitioner seeks setting aside of the order dated 15.03.2022 passed by Ld. ASJ-06 (POCSO Act), South-East District, Saket District Courts, New Delhi in SC No. 65/2019 whereby the Special Court, on an Application filed by the petitioner under Section 33(8) of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') and Rule 9 of POCSO Rules, 2020 awarded a final compensation of Rs.10,000/- to the petitioner.

2. Learned counsel for the petitioner submits that the impugned order has been passed mechanically and without any application of mind and fails to provide any reasoning for coming to the figure of Rs.10,000/-. He further submits that the interim compensation to the tune of Rs 75,000/- which was



awarded to the petitioner by the Special Court vide order dated 12.02.2020 and the total sum of Rs.85,000/- received by the petitioner is sorely inadequate and incommensurate with the trauma undergone by the petitioner. He further submits that the Special Court failed to take into account the Victim Impact Assessment of the petitioner which would show that the petitioner was physically and sexually abused by her father for years and on account of the resulting trauma and financial distress she was unable to even attend school in 2018-2019. Moreover, he submits that the mother of the petitioner is the sole breadwinner who is earning a paltry sum of Rs.7,000/- per month in which she has to sustain herself, the petitioner and a younger brother of the petitioner. On the aspect of the Delhi Victim Compensation Scheme 2018, learned counsel for the petitioner submits that though the said scheme admittedly does not explicitly deal with aggravated assault, due to the gravity and the long lasting impact of the assault, however, the case of the petitioner ought to have been treated at par with that of a victim of 'Unnatural Sexual Assault' for which the range of compensation has been prescribed between Rs.4 Lacs and Rs. 7 Lacs. Lastly, he submits that the compensation limits prescribed in the scheme which are to be considered in appropriate cases are for DSLSA which is the distributing authority and that the power to decide the amount of compensation is entirely in the hands of the Court.

3. Learned Counsel for the Delhi State Legal Services Authority ('DSLISA') submits that the DSLISA and its subsidiary District Legal Service Authorities ('DSLAs') have no independent power to award compensation in POCSO cases and the sole prerogative to award compensation in this case lies with the Special Court, on account of Section 33(8) of the POCSO Act.



He further submits that the same is the position held by the Supreme Court in Nipun Saxena v. Union of India &Ors reported as (2020) 18 SCC 499. Lastly, he submits that the DSLSA is bound to dispense the amount as directed in the impugned order and cannot increase or decrease the same on its own accord.

4. Learned APP for the State submits that the FIR came to be registered at the instance of the petitioner, who had alleged that her father had physically and sexually abused her. The accused father was subsequently arrested on 12.12.2018. He further submits that age of the victim was verified from her first attended school to be 17 years and 02 months at the time of incident. Learned APP, on instructions, further submits that chargesheet was filed and charges were framed under Sections 354/354A/308 /509 IPC and Section 10 of the POCSO Act. Learned APP, further states that during the trial, the accused father committed suicide at his house on 20.03.2021 whereafter the proceedings were abated against him by the Special Court vide order dated 04.09.2021. He further submits that the Victim Impact Assessment Report was submitted to the Special Court on 12.02.2020.

5. I have heard the learned Counsels for the petitioner, DSLSA and the learned APP for the State and have gone through the Records.

6. Compensation to the victim is an essential part of curing justice. Compensation not only provides monetary relief but is also an act which seeks to make a person whole again so that the victim can take steps for rehabilitation and start afresh. It is worthwhile to quote :

"The root of 'compensate' is 'to weigh', i.e., to weigh different things together in order to establish a balance between them ... 'compensation' carries the connotation of providing something



equivalent in value to that which has been lost"

(Lomasky 1987, 142)

7. A Co-ordinate Bench of this Court in the case of X v. State of NCT of Delhi (Acting through its Secretary) &Anr, CRL.A. 63/2022 decided on 20.10.2022, while dealing with the aspect of compensation to victims of rape, observed as under:-

40. In other words, the victims can and ought to recover like any other victims from an accident, but that is possible only when there is a due discharge of the functions by the State. I only partly agree with statement. I agree that the victims must recover like any other victim but rape is personal in nature. In any other accident the victim is not targeted with intention to violate the survivor or preyed upon, for instance in motor vehicle accident the injury is due to an accident hence, to recover, does not require psychological healing. However, in cases of sexual assault there is deliberate targeting and dehumanisation and reduction of the victim to an object. Hence, the state must enlarge maximum benefit to the survivor of the sexual assault.

8. Section 33(8) of the POCSO Act provides that the Special Court may direct payment of compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child. Clause 9(3) of the POCSO Rules, 2020 formulated under the Act provide factors which need to be taken into account by the Special Court while deciding the compensation amount. They are enumerated below:-

- (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 child's medical treatment for physical or mental health or on both;*
- (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;

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

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

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

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

(x) financial condition of the child against whom the offence has been committed so as to determine such child's need for rehabilitation;

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

9. Pursuant to the order of the Supreme Court in Nipun Saxena v. Union of India, reported as **(2019) 13 SCC 719**, National Legal Services Authority's ('NALSA') Compensation Scheme for Woman Victims/Survivors of Sexual Assault/Other Crimes-2018 came into existence.

Thereafter, DSLSA incorporated the Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018 in Part II of the Delhi Victim Compensation Scheme, 2018. It is pertinent to note that the schedule in Part II of the DSLSA scheme is *pari materia* to the schedule



in the NALSA scheme and these schedules define the minimum and upper limit of compensation to be paid in case of various offences. The DSLSA scheme in the note to Clause 18 provides :-

Note: As per Order of Hon'ble Supreme Court of India in W.P. (C) No. 565/2012 titled Nipun Saxena &Anr. Vs. Union of India &Ors. dated 05.09.2018, it is clarified that this Part shall also function as a Guideline to the Special Court for the award of compensation to victims of child sexual abuse under Section 33 (8) of Protection of Children from Sexual Offences Act, 2012 and under Rule 7 of Protection of Children from Sexual Offences Rules, 2012 until the Rules are finalized by the Central Government. The Special Judge will take the provisions of the Protection of Children from Sexual Offences Act, 2012 into consideration as well as any circumstances that are special to the victim while passing an appropriate order. The guidelines will be applicable to all children as the legislation is gender neutral. 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 it 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.

Thus, the Special Court while deciding on the quantum of compensation to be paid to the victim, has to consider these schemes as a guideline. Although the POCSO Rules 2012 stand replaced by the POCSO Rules, 2020, it is to be noted that there is no change in the clause dealing with the aspect of compensation. Thus, the abovementioned note still holds weight.

10. A Co-ordinate Bench of this Court in the case of X (Through Mother and Natural Guardian v. State and ors) reported as **2021 SCC Online Del 2061** observed as follows:-

26. This court has given its anxious consideration to the matter and the submissions made on behalf of the parties. Upon a conspectus of the foregoing statutory framework, the position that emerges in relation to a minor who is victim of crime is the following:



xxx

(f) Insofar as the State of Delhi is concerned, if a victim applies for compensation to the DLSA or DSLSA, the concerned authority is required to assess and pay compensation under and in accordance with the DVC Scheme 2018; however, if a victim applies for compensation under section 33(8) before the special POCSO court, the DVC Scheme 2018 is not binding but serves merely as a 'guideline' for the court to assess and pay compensation, whether at the interim or final stage. This position is in conformity with the mandate of the Hon'ble Supreme Court in Nipun Saxena(supra);

11. In the present case, FIR No. 773/2018 came to be registered under Sections 354/354A/354B/323/509 IPC and Sections 10/12 of the POCSO Act at P.S. Jaitpur, Delhi at the instance of the petitioner, who had alleged that her father had physically and sexually abused her and thereafter her father was arrested on 12.12.2018. The petitioner moved an application under Section 33(8) of POCSO Act read with Rule 7(1) of the POCSO Rules, 2012 seeking monetary compensation before the Special Court which granted interim compensation of Rs.75,000/- vide order dated 12.02.2020. Thereafter, pending trial, the accused father who was out on interim bail committed suicide at his house on 20.03.2021 whereafter the proceedings were abated against him by the Special Court vide order dated 04.09.2021. Petitioner was constrained to again approach the Court by way of an application under Section 33(8) POCSO Act read with Rule 9 of the POCSO Rules, 2020 wherein the impugned order awarding final compensation of Rs.10,000/- came to be passed. A reading of the Victim Impact Assessment report would show that the petitioner has undergone severe mental trauma and has been subject to aggravated sexual assault at the hands of her father. Her mother is the only earning member of the family who earns a paltry amount of Rs.7,000/- per month which is insufficient to raise a family of



three. Moreover, the petitioner had to leave her schooling in between for a year on account of mental trauma and financial distress. To ensure that the petitioner can pursue higher education and take steps towards improving her well-being, further compensation needs to be paid. Thus, considering the factors enumerated in Rule 9(3) of the POCSO rules 2020, sufficient ground has been made out to enhance the compensation awarded by the Special judge.

12. Although the offence in the present case, i.e. aggravated sexual assault, is not explicitly mentioned in the Scheme, the same would not get in the way of this Court using a similar offence, being 'Unnatural Sexual Assault' as a reference while determining the quantum of compensation. The minimum limit of Compensation to be awarded for 'Unnatural Sexual Assault' is Rs. 4 lacs while the upper limit of the compensation that can be given is Rs. 7 lacs. Considering that POCSO is a beneficial legislation aimed to ameliorate the suffering of child victims of sexual abuse, the import of judgements given by the Co-ordinate Benches of this Court in X (Through Mother and Natural Guardian (Supra)) and X v. State of NCT of Delhi (Acting through its Secretary) (Supra) and further considering the fact and circumstances of the present case, this Court is of the opinion that the maximum compensation is to be treated as the minimum compensation which can be given. Since the petitioner was a 'minor' for whom Clause 9 (Part-II) of the DVC Scheme 2018 says that the minimum and maximum limits of compensation would be deemed to be 50% higher than those mentioned in the Schedule, in the petitioner's case the minimum and maximum limits would stand enhanced from Rs.4 lacs to Rs.6 lacs and from Rs.7 lacs to Rs.10.5 lacs respectively. Thus, the compensation which has



2024:DHC:7103



been finally determined by this Court to be payable to the petitioner is Rs.10.5 lacs. Since Rs.85,000/- already stands paid to the petitioner, the petitioner is now entitled to receive a further sum of Rs.9,65,000/-.

13. Thus, keeping in mind the facts and circumstances of the case and the legal framework within which it is to be decided, the DSLSA is hereby directed to disburse and pay further compensation in the sum of Rs.9,65,000/- (Nine Lacs and Sixty Five Thousand Rupees Only) to the petitioner forthwith and in any event within 04 weeks of receipt of this order through demand draft.

14. The petition is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 05, 2024
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