

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 5804 of 2023

Petitioner :- Sri Ramesh Alias Mehendi Hasan

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shrikant Srivastava, Archana Srivastava

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma, J.

1. Sri Srikant Srivastava, learned counsel for the petitioner and Sri S.C. Mishra, learned A.G.A. for the State are present.

2. This petition has been filed challenging the order dated 09.02.2023, passed in a case arising out of Case Crime No. 793 of 2010 under sections 363, 376 I.P.C. by which, the application moved by the victim in the light of order passed in Writ No. 41664 of 2018 for grant of compensation, was dismissed.

3. The relevant facts of the case are as below.

(i) In a criminal case tried by Second Additional Sessions Judge, i.e. S.T. No. 629 of 2010 under sections 363 and 376, the petitioner was a victim of rape. The accused was put to trial and was convicted and sentenced to life imprisonment along with fine of Rs. 25,000/- for the offence of 376 (2) (cha).

(ii) The learned Second Additional Sessions Judge also ordered that half of the fine shall be payable to the victim as compensation.

(iii) It is submitted by the petitioner that the convict is in judicial custody and he has filed an appeal challenging the above judgment and order. The convict is lodged in jail and the appeal is pending and that till now, no fine has been deposited, therefore, no compensation could be obtained by her.

(iv) The victim filed a Writ No. 41664 of 2018 with a prayer for grant of compensation under section 357, 357-A Cr.P.C. which was decided by the order passed by the High Court 18.12.2018 as below:

"Heard Sri Shailesh Kumar Srivastava, learned counsel for the petitioners and the learned Standing Counsel for the State-respondent nos.1 to 3.

By means of this writ petition, the petitioner no.1 through her mother, the petitioner no.2 is claiming compensation being victim of rape. The accused has been convicted.

Learned Standing Counsel submits that corpus has been created in pursuance to the provisions of Section 357 & 357 (A) of Cr.P.C. for that petitioners have to approach the same court.

In case, such an application is filed, the same be considered and decided, in accordance with law.

With the aforesaid observation, the writ petition stands disposed of."

(v) In pursuance of the aforesaid order, the victim moved an application dated 21.02.2019 before the trial court concerned. The District Probation Officer, Gautam Buddh Nagar, submitted a report stating therein that the scheme "Uttar Pradesh Rani Laxmi Bai Mahila Evam Bal Samman Kosh" was promulgated in the year 2015, whereas the incident of the instant case occurred in 2010, therefore, it shall not be possible to grant any compensation to the victim under that scheme.

(vi) The learned Sessions Judge, on the basis of aforesaid report, dismissed the application by passing an order on 09.02.2023. Now, this order is under challenge in this petition.

4. The way, the matter of compensation has been handled by the court concerned, gives an impression that the court was unaware of the scheme and the formalities required for grant of compensation as provided in **U.P. Victim Compensation Scheme, 2014**. Before I proceed further, I find it appropriate to go through the relevant provisions of law.

5. Section 357 Cr.P.C. provides that when a court imposes a sentence of fine while passing a final judgment, whole or any part of the fine recovered, may be applied for payment of compensation for any loss or injury caused to any person, however, no such payment shall be made before the period allowed for presenting the appeal has elapsed or if an appeal be presented, before the decision of the appeal.

6. Section 357-A, which has been introduced in Cr.P.C. by Act V of 2009 w.e.f. 31.12.2009, empowers the State Government, in coordination of the Central Government, to prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who suffered loss or injury as a result of a crime.

7. The provisions of Section 357-A Cr.P.C. are as below:

"[357A. 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 subsection (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."

8. Under the powers as available under section 357-A, the Uttar Pradesh Victim Compensation Scheme 2014, has come into force.

9. Schedule-1 annexed with the scheme provides for the maximum limit of compensation which can be paid to a rape victim. A victim compensation fund, from which the compensation can be defrayed under the scheme, has already been established. This fund is operated by **Secretary, State Legal Services Authority**.

10. Para-5 of the scheme provides that the recommendation for grant of compensation can be made by the court. This recommendation can be made on the application moved by the victim or by the court *suo moto*. Whenever, such recommendation is received by District Legal Services Authority, it shall examine the case and verify the contents of the claim and after observing other formalities, as provided under the scheme and after due inquiry, award compensation within two months from the date of receipt of the recommendation in accordance with the provisions of the scheme. This may also be noted that the '**eligibility**' of the victim for grant of compensation and **quantum** thereof can only be decided by the D.L.S.A. The court concerned can only make a 'recommendation'. It falls within the jurisdiction of D.L.S.A. to decide whether the 'claim' falls within the parameter of the scheme of 2014 or not. The role of the court, in such circumstances is formal and no more.

11. It appears that the learned trial court while considering the application given by the victim, was not aware of such scheme. It also appears that the provisions of section 357-A were not considered by the court concerned in right perspective and the application was dismissed on the basis of report of Probation Officer only.

12. This fact has been brought to my knowledge that an appeal filed against the judgment and order passed by the trial court is pending. Undisputably, the matter for grant of compensation can be considered by the court whether it is trial court or the court of appeal and accordingly, the District Legal Services Authority may be asked to verify the claim and to proceed as per provisions of the scheme.

13. In view of the above legal position, this petition is finally **disposed of**, with liberty to the petitioner to move suitable application either before the

Court considering the matter of appeal or before the concerned District Legal Services Authority, within a month. In case, the matter comes before the District Legal Services Authority, it shall be considered by the authority, as per law.

Order Date :- 16.12.2023

Sumit Kumar