

\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 798/2015 & CRL.M.A. Nos. 15810/2015, 15811/2015,**
15813/2015

% *Date of Judgment : 21.03.2016*

THE MINOR THROUGH GUARDIAN ZAREEN..... Petitioner
Through : Ms. Diya Kapur and Ms. Tejaswi
Shetty, Advocates.

versus

STATE (GOVT OF NCT OF DELHI) Respondent
Through : Mr. Rahul Mehra, Standing Counsel
(Crl.) for State with SI Dharam Pal,
PS – Mehrauli.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. The petitioner has filed the present writ petition seeking enhancement and grant of fair compensation. A direction is also sought to the respondent to reformulate the Delhi Victims Compensation Scheme, 2011 by providing enhanced and a more rational scheme for compensation for victims of child sexual assault and abuse. According to the petitioner, the present schedule is arbitrary, unfair, irrational and discriminatory and also contrary to the Articles 14, 15 & 21 of the Constitution of India.
2. The necessary facts to be noticed and which have given rise to the facts of the present writ petition are that the petitioner is a minor of 13 years and at the time of filing of the writ petition, he was studying in

Class-9 in Government Boys Senior Secondary School, Vasant Kunj, B-I, New Delhi. On 17.10.2013, when the Minor was studying in Sarvodaya Bal Vidyalaya, Qutub Minar, Mehrauli, at the end of his third period, he was called outside his classroom by 4 students of class 9, 11, and 12, aged less than 18 years (“Juveniles in conflict with law” or “Juveniles”). They abducted the minor, took him to a jungle located behind the school premises, attacked him and committed a brutal sexual assault upon him. They took turns in attacking him, assaulting him through penile penetration, and penetrating him with a stick. Initially, the minor, being fearful, did not reveal the incident to his parents or any other person. However, subsequently, on 21.10.2013, he went to P.S. Mehrauli, along with his mother and met S.I. Rajesh Kumar, who recorded his statement in the presence of his mother. On the very same date, S.I. Rajesh Kumar and Woman Constable Sarita, went to Sarvodaya Bal Vidyalaya, to investigate the scene of crime.

3. Thereafter, S.I. Rajesh Kumar and Woman Constable Sarita accompanied the minor and his mother to AIIMS Hospital for medical examination of the minor. The medical examination confirmed brutal sexual assault after which an FIR, being FIR No. 789/2013, under Section 4 of POCSO Act was registered.
4. During the course of investigation, the charges under Section 323 (voluntarily causing hurt), Section 377 (unnatural offences), Section 363 (Kidnapping) and Section 120-B (Criminal Conspiracy) were also added.
5. The trial was concluded by the Juvenile Justice Board, Delhi Gate,

Delhi on 25.08.2014 and one of the accused was found guilty for commission of the offences punishable under Section 323, 377, 363 read with 120-B of the Indian Penal Code, and Section 4 of the POCSO Act.

6. Counsel for the petitioner submits that since the minor was in immense trauma due to the attack on him, his parents were constrained to change his school to Government Boys Senior Secondary School, Vasant Kunj – B1, where he is presently studying. The parents of the victim have also been trying to change their residence as, post the incident, the stigma attached to it, and the consequent trauma faced by their child as a consequence of continuing to live in the same locality, has made it difficult for the minor to truly recover. However, the parents are unable to afford such a move owing to their poverty. Furthermore, the Minor's parents have also suffered loss of earning opportunities following the incident. The Minor's mother worked as a beautician and was forced to quit her job after the incident as the Minor was suffering from severe psychological trauma. The Minor's father works as a driver. The Minor and his family made repeated visits to lawyers, doctors and counsellors for legal, medical and psychological support that was required by the Minor and his family as an aftermath of the incident.
7. The Minor also continues to suffer physically as a consequence of the brutal attack upon him. He had to change his school as the accused were in the same school and the teacher in the school caused greater trauma by ridiculing him, disbelieving him and not being supportive. He had to file multiple complaints to the local police station and DCP

as he continued to receive threats from the accused, even after the incident.

8. In light of the above facts, in September 2014, an application under Section 357A of the Code of Criminal Procedure, 1973, was filed before the Juvenile Justice Board for the grant of compensation to the minor.
9. Pursuant to the application, the Juvenile Justice Board, passed an order dated 28.11.2014 (“Impugned order”), directing the State to pay the minor a sum of Rs. 50,000/- as victim compensation in terms of Rules 3 and 5, read with Entry 7, i.e., under the head of ‘Victim of Human Trafficking, Child Abuse and Kidnapping’ in the Impugned Schedule, read with Section 357A of the Code of Criminal Procedure.
10. Learned counsel for the petitioner submits that the compensation received by the minor was grossly inadequate and consequently his fundamental rights have been violated.
11. Ms.Kapur, points out that initially, when the writ petition was filed, a direction was sought to the respondent to declare the schedule of Delhi Victims Compensation Scheme 2011 as far as it related to victims of child abuse and assault as unconstitutional. A direction was also sought to reformulate the scheme with an enhanced and more rational scheme of compensation. During the pendency of this writ petition, the Delhi Victims Compensation Scheme 2011 was replaced with the Delhi Victims Compensation Scheme 2015.
12. Be that as it may at this stage counsel for the petitioner and counsel for the State are in agreement that the scheme would not be applicable with respect to cases under The Protection of Children from Sexual

Offences Act, 2012 (POCSO Act – hereinafter referred to as ‘Act’). However, Ms. Kapur, learned counsel for the petitioner submits that necessity of approaching this court has arisen for the reason that the Special Court while deciding the question of compensation, has relied upon terms of the Delhi Victims Compensation Scheme 2011 and granted Rs.50,000/- as compensation as according to the Special Court, this was the maximum amount which could have been awarded as per Delhi Victims Compensation Scheme 2011.

13. Counsel for the petitioner has strongly urged before this Court that keeping in view the trauma faced by the minor and having regard to the after effect of the incident this Court should enhance the compensation.
14. We have heard the counsel for the parties. Two questions arise for consideration before this Court. First, whether there was any restriction upon the trial court while granting compensation to the petitioner. The second question is whether adequate compensation has been granted in the facts of the present case.
15. In the present case, in our view, the learned trial court has wrongly relied upon the Delhi Victims Compensation Scheme, 2011, and granted only Rs.50,000/- to the victim.
16. The learned Special Judge lost track of Section 33 of The Protection of Children from Sexual Offences Act, 2012 Act read with Rule 7 of the POCSO Rules. Section 33 of the Act reads as under :

“33. Procedure and powers of Special Court :-

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a

complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial :

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation. – For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be

prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.
(Emphasis Added)

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session.”

17. Rule 7 of POCSO Rules 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 and 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 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.”

18. It would also be useful to reproduced Section 357 (A) of the Code of Criminal Procedure :

“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 sub-section (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."

19. Reading of Section 357 (A) of the Code of Criminal Procedure would show that the legislature in its wisdom has referred to a victim or its dependants who has suffered a loss or injury as a result of crime and who require rehabilitation.
20. The definition under Section 357 (A) is very wide and would in fact even cover cases which are covered under The Protection of Children from Sexual Offences Act, 2012 but then the reading of Section 33 of the Act would show that the power has been given to the Special Court to grant compensation and there is no outer limit which has been fixed while granting the compensation.
21. Since in the present case, only Rs. 50,000/- has been granted, the counsel had approached this Court for enhancement.
22. During the pendency of this writ petition, we had directed the petitioner to file a subsequent affidavit which would enable the court to ascertain the loss suffered by the victim and to enable the court to grant compensation. Rule 7 of POCSO Rules provides the factors

which are to be taken into consideration while awarding the compensation. Rule 7 has been reproduced hereinabove. One of the prime factor to be considered is the gravity of the offence. In this case, the gravity of the offence can be ascertained from the fact that the victim was 13 years of age at the time when the offence took place. He was studying in Class-9. He was called outside the classroom by force by 4 students of Class – 9, 11 and 12 who abducted the boy, took him to a jungle and thereafter attacked him and he was brutally sexually assaulted and penetrating with a stick. The petitioner not only suffered physically but also mentally. He was forced to change his school and his family was also traumatised.

23. In view of the facts and circumstances of the present case, compensation granted to the victim is enhanced to Rs. 3,00,000/- (total). The petition stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MARCH 21, 2016

sc/msr