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

% *Reserved on: 25.08.2023*
Pronounced on: 07.11.2023

+ **W.P.(CRL) 2359/2023**

RAVI GUPTA

.....Petitioner

Through: Mr. Pradeep Kumar Arya, Mr.
Vishal Sheoran, Mr. Gaurav
Chaudhry, Mr. Pulkit Chadha,
Mr. Arpit Bamal, Advocates

versus

STATE(GOVT OF NCT OF DELHI) & ANR.Respondents

Through: Mr. Sanjeev Bhandari, ASC
for the State with Inspector
Surendra Kumar, PS Preet
Vihar & Mr. Kunal Mittal,
Advocate

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of instant petition filed under Article 226 of Constitution of India read with Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C. '), the petitioner seeks issuance of appropriate order/direction in the nature of mandamus or any other appropriate nature directing the respondents to compensate the petitioner towards his injuries suffered on 14.02.2018 and also for



directing the respondents to pay for the medical expenses incurred by the petitioner.

GRIEVANCE OF PETITIONER

2. The case set out by the petitioner is that he has been a victim of ill deeds and criminal acts of antisocial elements namely one Surinder Sodhi @ Shammi and Veer Singh @ Veeru and their associates. It is stated that the petitioner had been attacked for the first time by these persons on 28.08.2011, which had resulted into registration of FIR No. 08/2012, under Sections 336/427 of Indian Penal Code, 1860 at Police Station Preet Vihar. It is stated that though the complaint of the said incident had been lodged on 28.08.2011, the FIR had got registered after some inquiry only on 09.01.2012, and Section 307 of IPC had been added in the present case as per the order dated 18.02.2015 passed by learned Magistrate. It is stated that again on 15.02.2012, the aforesaid persons had attacked the petitioner when he was coming out from Karkardooma Court, and this incident had been reported to the police, for which FIR No. 36/2012 had got registered at Police Station Anand Vihar under Sections 324/506/34 of IPC. However, again on 25.02.2012, the glasses of the car of petitioner had been found broken and petitioner had lodged DD No. 54-B dated 25.02.2012 apprehending and expressing his suspicion against the aforesaid persons. Again on 22.02.2013, the petitioner's car had been attacked and NCR No. 364/2013 had been lodged by him with P.S. Preet Vihar. It is stated that, thereafter, on 29.12.2015, the aforesaid persons and their



associates had attacked the petitioner's son for which an FIR No.0359/2015 had been registered under Sections 308/34 of IPC at Police Station Connaught Place, New Delhi.

3. It is further submitted that on 14.02.2018, the aforesaid persons had visited the house of the petitioner, and Surinder Sodhi @ Shammi had told petitioner that a quarrel between Veer Singh@Veeru and petitioner's son Shakti Gupta had taken place at Surya Hotel, New Friends Colony, New Delhi and qua that incident, an FIR No. 22/2018 under Sections 307/503/34 of IPC read with Sections 27/54/59 of Arms Act had got registered at Police Station Preet Vihar, New Delhi. It is stated that during discussion about the said incident, Surinder Sodhi @ Shammi had taken out a gun from his pocket and had fired at the petitioner which had hit the petitioner's right shoulder. It is stated that the bullet had entered the petitioner's body from the right shoulder and after travelling inside the body, the bullet was struck on the left side of the stomach, thereby causing multiple critical injuries to the petitioner. After this, the aforesaid accused persons had run away from the spot, while the petitioner had fallen unconscious. The incident was reported to police and accordingly, FIR No. 22/2018, under Sections 307/506/34 of IPC read with Sections 27/54/59 of Arms Act was registered against Surinder Sodhi @ Shammi and Veer Singh@Veeru.

4. It is the case of petitioner that his family members had then taken him to the hospital where he had been operated upon. It is also stated that due to the gunshot injury, petitioner had to get admitted to the hospital about nine times, wherein he had undergone surgeries



seven times. It is stated that he was operated upon in Medanta Hospital, Gurugram and had to incur huge medical expenses of about Rs. 18,00,000/-, which were either directly paid by petitioner or through his Mediclaim policies. It is stated that petitioner was living his life comfortably but ever since this incident happened, petitioner has to get admitted in the hospital every other month because of which petitioner and his family are going through lot of trouble.

RELIEF SOUGHT

5. It is stated that the petitioner has been forced to depend upon his lifesavings or either to borrow money from relatives. It is submitted that petitioner has also undergone harassment, pains, mental agony and physical suffering. And therefore, *petitioner is entitled to the compensation from the State* in the following manner: -

- i. Medical expenses: Rs. 18,60,000/-
- ii. Loss of livelihood for about five years: Rs 35,00,000/-
- iii. Mental/Physical sufferings: Rs. 30,00,000/-

6. It is stated that the petitioner had also filed representations for the grant of compensation through State to (a) The Commissioner of Police, (b) Ministry of Law and Justice, (c) National Human Rights Commission of India, but to no avail. Thus, the present petition has been filed before this Court.

ARGUMENTS ADDRESSED BEFORE THE COURT

7. Learned counsel for the petitioner argues that it is the legal obligation of State to protect its citizens from criminal acts and in the



present case, the State had failed to prevent such criminal acts against the petitioner, thereby miserably failing to protect petitioner's fundamental right guaranteed to him under Article 21 of the Indian Constitution. It is also stated that expression 'life' used in Article 21 cannot be confined only to taking away of life i.e. by causing death, but the right to life includes the right to lead a healthy life so as to enjoy all facilities of the human body in their prime conditions. It is argued that due to failure of State to protect the petitioner from criminal acts of the accused persons, he had to suffer severe injuries and had to incur huge expenses on his medical treatment along with suffering other physical and mental agony as well as loss of livelihood.

8. Vehemently opposing the present petition, learned ASC for the State argues that present petition under Article 226 of the Indian Constitution is a misuse of process of law and ought to be dismissed at the threshold. It is argued that the State is only a prosecuting agency and once the trial in the present case concludes, the trial court has the power to grant compensation under Section 350 of Cr.P.C. It is also stated that if at all the petitioner has any grievance and wants compensation, he may approach the National Human Rights Commission. It is also stated that the allegations leveled by the petitioner against the accused persons are also to be proved during the course of trial. It is also submitted that there is no existing law in the country as per which it is the duty of the State to give compensation to each and every victim who suffers any injury due to any criminal act committed by an accused person.



9. In this regard, learned counsel for petitioner admits that there is no law which prescribes the duty of the State to provide compensation in such cases, however, it is submitted that the Courts will have to develop law someday to deal with such situations. It is also stated that the State should at least cover the medical expenses incurred by the petitioner, even if they do not wish to pay the compensation. Learned counsel also relies upon a judgment of this Court in case of *Kamla Devi v. Government of NCT of Delhi* 2004 SCC OnLine Del 721 and submits that compensation in this case was awarded to a victim of bomb blast and similarly should be awarded to the petitioner herein.

10. In rebuttal, learned ASC for the State submits that the Courts cannot develop any law in this area when there are appropriate provisions available in Cr.P.C. regarding grant of compensation to the victims. It is also submitted that the judgment relied upon by the learned counsel for petitioner is of the year 2004 wherein it has been categorically observed that legislation had been lacking in that field and thereafter, the legislature had brought Sections 357A, 357B, 357C etc. in Cr.P.C. which deal with the issue of compensation. Therefore, it is submitted that present petition be dismissed.

11. The arguments addressed by learned counsel for petitioner and learned ASC for the State have been heard and material on record has been considered by this Court.

ANALYSIS AND FINDINGS



12. The petitioner alleges significant harassment, mental agony, and physical suffering, and seeks compensation from the State for his medical expenses i.e. Rs. 18,60,000/-, loss of livelihood for five years i.e. Rs. 35,00,000/-, and towards his mental and physical sufferings i.e. Rs. 30,00,000/-. Despite prior representations to relevant authorities yielding no results, the petitioner has filed the present petition before this Court.

13. The first issue for examination before this Court is as to whether the petitioner herein is entitled to seek compensation under the provisions of law?

14. As regards the issue of grant of compensation to victims of crime, the Code of Criminal Procedure, 1973 provides the scheme as to when and how can compensation be granted to the victims. In this regard, a reference can be made to Section 357 of Cr.P.C., which reads as under:

“357. Order to pay compensation.—(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses of properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;



(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal 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.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.”

15. A bare perusal of Section 357 of Cr.P.C. clarifies that it empowers the Trial Courts to order that the fine imposed upon an accused at the time of order of sentence be paid as compensation to the victim.

16. However, the Code of Criminal Procedure, 1973 was amended by Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009) and the provision for **victim compensation scheme** was inserted, which provides as under:

“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.”

17. The definition of victim was also added in the Code and the same reads as under:

(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir..”

18. The Statement of Object and Reasons of the Code of Criminal Procedure (Amendment) Bill, 2006, provides as under in relation to victimology and victim compensation scheme:



“...At present, the victims are the worst sufferers in a crime and they don't have much role in the court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system...

...Clause 37 inserts a new section 357A in order to provide for the State Government to prepare, in coordination with the Central Government, a scheme called "victim compensation scheme" for the purpose of compensation to the victim or his dependants who have suffered loss or injury as a result of the crime...”

19. Thus, as per Section 375A (3), if at the end of conclusion of trial, the Court is of the opinion that compensation awarded under Section 357 is inadequate for rehabilitation of the victim, or in cases where the trial results in acquittal or the accused gets discharged but the victim needs to be rehabilitated, it may make recommendation for compensation to the concerned Legal Services Authority.

20. Otherwise, as per Section 375A (4), if the accused is not traced or identified and where the trial does not takes place owing to any such issue, the victim can apply for grant of compensation to the State or District Legal Services Authority.

21. In both these cases, the concerned Legal Services Authority is required to conduct an enquiry and complete the same within a period of two months and award adequate compensation to the victim.

22. Three-judge Bench of this Court in *Karan v. State NCT of Delhi* 277(2021) DLT 195 (FB) had laid down several guidelines on the aspect of award of compensation by the Trial Courts under Sections 357/357A of Cr.P.C. at the time of passing order on sentence. These guidelines are as under:



“Victimology

156. Victims are unfortunately the forgotten people in the criminal justice delivery system. Victims are the worst sufferers. Victims’ family is ruined particularly in cases of death and grievous bodily injuries. This is apart from the factors like loss of reputation, humiliation, etc. The Court has to take into consideration the effect of the offence on the victim's family even though human life cannot be restored but then monetary compensation will at least provide some solace.

157. The criminal justice system is meant for doing justice to all - the accused, the society and the victim.

158. Justice remains incomplete without adequate compensation to the victim. Justice can be complete only when the victim is also compensated.

Sections 357 & 357A of CrPC

159. Section 357 CrPC empowers the Court to award compensation to victims who have suffered by the action of the accused.

160. The object of the Section 357(3) CrPC is to provide compensation to the victims who have suffered loss or injury by reason of the act of the accused. Mere punishment of the offender cannot give much solace to the family of the victim – civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread earner of the family.

161. Section 357 CrPC is intended to reassure the victim that he/she is not forgotten in the criminal justice system.

162. Section 357 CrPC is a constructive approach to crimes. It is indeed a step forward in our criminal justice system.

163. The power under Section 357 CrPC is not ancillary to other sentences but in addition thereto.

164. The power under Section 357 CrPC is to be exercised liberally to meet the ends of justice in a better way.

165. Section 357 CrPC confers a duty on the Court to apply its mind on the question of compensation in every criminal case.

166. The word “may” in Section 357(3) CrPC means “shall” and therefore, Section 357 CrPC is mandatory.

167. The Supreme Court in Ankush Shivaji Gaikwad (supra) has given directions that the Courts shall consider Section 357



CrPC in every criminal case and if the Court fails to make an order of compensation, it must furnish reasons.

Quantum of compensation

168. The amount of compensation is to be determined by the Court depending upon [the] gravity of offence, severity of mental and physical harm/injury suffered by the victim, damage/losses suffered by the victims and the capacity of the accused to pay. While determining the paying capacity of the accused, the Court has to take into consideration the present occupation and income of the accused. The accused can also be directed to pay monthly compensation out of his income.

Financial capacity of the accused

169. Before awarding compensation, the Trial Court is required to ascertain the financial capacity of the accused. This Court has formulated the format of an affidavit to be filed by the accused after his conviction to disclose his assets and income which is Annexure-A hereto.

Victim Impact Report

170. This Court has formulated the format of Victim Impact Report (VIR) to be filed by DSLSA in every criminal case after conviction. Victim Impact Report (VIR) shall disclose the impact of the crime on the victim. The format of the Victim Impact Report in respect of criminal cases, other than motor accident cases, is Annexure B(sic). The format of Victim Impact Report in respect of motor accident cases is Annexure B-1(sic).

Summary Inquiry

171. A summary inquiry is necessary to ascertain the impact of crime on the victim, the expenses incurred on prosecution as well as the paying capacity of the accused.

172. This Court is of the view that the summary inquiry be conducted by Delhi State Legal Services Authority (DSLSA) considering that DSLSA is conducting similar inquiry under the Delhi Victim Compensation Scheme, 2018 and is well conversant with the manner of conducting the inquiry.

173. After the conviction of the accused, the Trial Court shall direct the accused to file the affidavit of his assets and income in the format of Annexure-A within 10 days.

174. After the conviction of the accused, the Court shall also direct the State to disclose the expenses incurred on prosecution on affidavit along with the supporting documents within 30 days.



175. Upon receipt of the affidavit of the accused, the Trial Court shall immediately send the copy of the judgment and the affidavit of the accused in the format of Annexure-A and the documents filed with the affidavit to DSLSA.

176. Upon receipt of the judgment and the affidavit of the accused, DSLSA shall conduct a summary inquiry to compute the loss suffered by the victims and the paying capacity of the accused and shall submit the Victim Impact Report containing their recommendations to the Court within 30 days. Delhi State Legal Services Authority shall seek the necessary assistance in conducting the inquiry from SDM concerned, SHO concerned and/or prosecution who shall provide the necessary assistance upon being requested.

177. The Trial Court shall thereafter consider the Victim Impact Report of the DSLSA with respect to the impact of crime on the victims, paying capacity of the accused and expenditure incurred on the prosecution; and after hearing the parties including the victims of crime, the Court shall award the compensation to the victim(s) and cost of prosecution to the State, if the accused has the capacity to pay the same. The Court shall direct the accused to deposit the compensation with DSLSA whereupon DSLSA shall disburse the amount to the victims according to their Scheme.

178. If the accused does not have the capacity to pay the compensation or the compensation awarded against the accused is not adequate for rehabilitation of the victim, the Court shall invoke Section 357A CrPC to recommend the case to the Delhi State Legal Services Authority for award of compensation from the Victim Compensation Fund under the Delhi Victims Compensation Scheme, 2018.

179. In pending appeals/revisions against the order on sentence in which Section 357 CrPC has not been complied with, the Public Prosecutor shall file an application seeking a direction from the Court for directing the accused to file his affidavit of assets and income in the format of Annexure-A and directions to DSLSA to conduct a summary inquiry to ascertain the loss/damage suffered by the victim(s) and the paying capacity of the accused in the format of Annexures-B/B-1 in terms of Sections 357(4) CrPC in accordance with procedure mentioned hereinabove.

180. All the Courts below shall send a monthly statement to the Registrar General of this Court containing the list of cases decided each month. The list shall contain the name and particulars of the case; date of conviction; whether affidavit of



assets and income has been filed by the accused; whether summary inquiry has been conducted to assess the compensation and determine the paying capacity of the accused; and compensation amount awarded. The monthly statement shall also contain one page summary format of the above information. The first monthly report for the period 01st January, 2021 to 31st January, 2021 be submitted by 15th February, 2021 and thereafter, by 15th of each English calendar month. The Registrar General of this Court shall place these reports before ACR Committee of the Judicial Officers.”

23. Having examined the legal framework *qua* the grant of compensation to victims of crime, this Court notes that in the present case, since the trial is going on, the provisions of either Section 357 or 357A (3) of Cr.P.C. would not apply since the trial has yet not concluded and the judgment or order on sentence, if any, has not yet been passed. Thus, the Trial Court cannot provide any compensation at this stage to the victim in the present case i.e. the petitioner herein. The provision of Section 375A (4) of Cr.P.C. also has no application in the present case since the accused persons in the present case have been identified, chargesheet against them stands filed and the trial has already begun.

24. During the course of arguments, it was urged on behalf of petitioner that even if there is no provision of law under which he can seek any compensation, this Court using its extraordinary jurisdiction can direct the State to provide relief to the petitioner by granting him the compensation that he has claimed in this petition, since it was the State which had failed to fulfill its obligation to ensure the safety and security of the petitioner who is a citizen of this country.



25. Having given careful consideration to the grounds raised and the reliefs claimed in this petition, this Court is of the opinion that undoubtedly, the citizens' expectation of protection of their life and liberty by the State is a fundamental aspect of governance in any society. Citizens look to their government to provide safety, security, and a legal framework that safeguards their rights and well-being. However, it's crucial to distinguish between legitimate and reasonable expectations and illegitimate or unreasonable demands when it comes to the role of the State.

26. Legitimate expectations may refer to the reasonable and justifiable hopes that individuals have from the State. These expectations typically revolve around the protection of basic human rights, the rule of law, access to justice, and security. Citizens have every right to expect the State to provide these essential services as part of its social contract. On the other hand, there are situations where individuals may raise demands which do not fall within such scope. These demands may arise out of private affairs, personal disputes, or expectations that extend beyond the boundaries of what the State can reasonably provide or fall under remedy specifically provided under law.

27. The present petitioner seeks compensation from the State for harm inflicted by one individual upon him, as alleged. However, the allegations leveled by the petitioner are yet to be proved during the course of trial on the basis of evidence collected by the prosecution, for which the criminal law has already been set into motion. The benefit of provisions of Cr.P.C. i.e. Sections 357/357A shall be



available to the petitioner, as per law, as far as compensation is concerned, after conclusion of trial.

28. Thus, this Court finds no merit in the present petition.

29. Needless to say, the petitioner shall be at liberty to move applications/representations before appropriate authorities for seeking such claims.

30. Accordingly, the present petition is dismissed.

31. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 7, 2023/zp