

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 27TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR JUSTICE ANIL B KATTI

CRIMINAL APPEAL NO. 100269 OF 2022

BETWEEN:

SMT. LALITHA W/O NARASIMHA SIDDI
AGE. 47 YEARS, OCC. COOLIE,
RES. BAKKALTAGGA, MAGOD,
YELLAPUR TALUKA,
U. K. DISTRICT, MAGOD-581423.

...APPELLANT

(BY SRI. NARAYAN G. RASALKAR, ADV.)

AND:

- 1 . THE STATE OF KARNATAKA
THOUGH SPECIAL PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, DHARWAD
BENCH DHARWAD, BY POLICE INSPECTOR,
YELLAPUR POLICE STATION,
YELLAPUR-581359.
- 2 . CHANDRASHEKHAR PANDU SIDDI,
AGE. 23 YEARS, OCC. COLLIE,
R/O. OF UPALESHWAR DESAI HOUSE

YELLAPUR, TALUKA YELLAPUR,
U.K. DISTRICT-581359.

...RESPONDENTS

(BY SRI. PRAVEEN K. UPPAR, HCGP FOR R1:
AND NOTICE SERVED FOR R2)

THIS CRIMINAL APPEAL IS FILED U/SEC. 372 OF CR.P.C. SEEKING TO (A) GRANT LEAVE TO APPEAL AGAINST THE ORDER DATED 17.01.2022 AND 18.01.2022 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC 1 KARWAR IN SPECIAL CASE NO.13 OF 2021 IN SO FAR AS IT ONLY RELATED TO, RESTRICTED TO AND LIMITED TO THE AWARD OF INADEQUATE COMPENSATION PAYABLE UNDER THE NALSA'S COMPENSATION SCHEME FOR WOMEN VICTIMS/SURVIVORS OF SEXUAL ASSAULT/OTHER CRIMES 2018 AND (B) ENHANCE THE COMPENSATION NOW AWARDED FROM OF RS.1,00,000 LACKS TO RS. 7 LACKS PLUS 50% OF THE SAID RS. 7 LACKS AT RS. 3.5 LACKS AND THUS AWARD TOTAL COMPENSATION OF RS.10.50 LACKS TO BE PAYABLE UNDER THE NALSA'S COMPENSATION SCHEME FOR WOMEN VICTIMS/SURVIVORS OF SEXUAL ASSAULT/OTHER CRIME 2018, TO THE APPELLANT.

THIS APPEAL COMING ON FOR FINAL HEARING AND THE SAME HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 13.04.2023, THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

JUDGMENT

Appellant/complainant in this appeal is challenging the adequacy of compensation awarded by the trial Court on the file of Additional District and Sessions Judge FTSC-1 UK Karwar (Special Court for trial of cases filed under POCSO) Act in special case No.13/2021 dated 18.01.2022.

2. The factual matrix necessary for disposal of this appeal can be stated in nutshell to the effect that on the strength of the complainant filed by Smt.Lalitha W/o Narasimha Siddi criminal law was set into motion by registering the case in Yellapur P.S. crime No. 219/2010 for the offences punishable under Section 376 of IPC and Section 4 and 6 of POCSO Act. The accused was tried for the said offences in special case No.13/2021. The trial Court after appreciation of evidence on record convicted the accused for the aforesaid offences vide judgment dated 17.01.2022 and imposed sentence as per order of sentence dated 18.01.2022.

3. The trial court apart from fine of Rs.1,00,000/- in exercise of its power under Section 357 (1) of Cr.P.C awarded compensation of Rs.1,00,000/- by exercising the power under

Section 357(A) of Cr.P.C. for the rehabilitation of victim girl. The trial Court has directed the District Legal Service Authority (for short 'DLSA') to deposit the said amount in the name of victim girl in any of the nationalized bank and interest accrued on the said deposited amount shall be used for maintenance and rehabilitation of the victim girl.

4. The member secretary District Legal Service Authority, Karwar by letter No.123/2022 dated 22.06.2022 requested Karnataka State Legal Service Authority (for short 'KSLSA') for release of compensation amount of Rs.1,00,000/- awarded by the trial Court. In response to the same KSLSA by letter 58/VCS/856/2022 dated 05.04.2022 directed DLSA Karwar to file appeal for enhancement of compensation as per Karnataka Victim Compensation Scheme, 2011 as per the Schedule Module Victim compensation scheme guidelines framed by NALSA vide government order No.HD42PCB2018, Bangalore dated 25.09.2018, since victim girl being minor is entitled for enhanced compensation as per Sub clause (3) of clause (9) of NALSA compensation scheme for woman victims/survivors of sexual assault/other crimes-2018. In

pursuance of the same DLSA by letter No.DLSA/KWR/253/2022 dated 04.05.2022 requested the member secretary High Court Legal Services Committee, Dharwad Bench to prefer appeal. Thereafter by order No.HCLSC/DB/65/2022 dated 18.05.2022 authorized penal advocate to file appeal and on such authorization the present appeal is filed.

5. In the light of above referred background, the moot question that arise for consideration in this appeal are

1. Whether Karnataka victim compensation scheme, 2011 (in shot 'KVCS') and POCSO Act what is the adequate amount of compensation at the interim and final stage?

2. Whether the special Court constituted under POCSO Act is competent to quantify the compensation or the DLSA?

3. Whether victim of offences under the provisions of POCSO can approach either the special Court or the respondent authorities for compensation including interim compensation?.

6. The Hon'ble Apex Court in the judgment in **STATE OF RAJASTHAN VS. OM PRAKASH** reported in **AIR 2002 SC**

PAGE NO.2235 while considering the need of rehabilitation of child victim held that

"Child sexual abuse cases are of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. The victims of sexual assault under POCSO Act need special care and protection. The responsibility of trial Court is more onerous, so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection and needs different approach is required to be adopted."

In the light of above referred principles enunciated by Hon'ble Apex Court, it is evident that the protection of children from sexual abuse has to be dealt with some responsibility. The trial Court in awarding compensation for rehabilitation of child victim under POCSO Act are required to adopt different approach.

7. The grant of compensation is covered in term of Section 357(1) and (3) of Cr.P.C. In term of Section 357(1) when a Court imposes a sentence of fine or sentence (including

sentence of death) of which fine forms a part, the Court may while passing judgment order the whole or any part of the fine amount recovered to be applied. In terms of Section 357(1) of Cr.P.C when a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment or order 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. On conjoint reading of both these proviso, it would go to show that the whole or part of the fine amount can be ordered to be paid to victim. The Court apart from imposing the fine amount and ordering for grant of compensation out of the fine amount, may award compensation in terms of Section 357(3) of Cr.P.C.

8. The proviso of Section 357A has been incorporated by Act 5 of 2009 with effect from 31.12.2009, which reads 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.

In terms of Section 357A (1) Cr.P.C. the State Government has formulated KVCS, 2011 as per the schedule model victim compensation Scheme guidelines have been framed by NALSA vide government order No.HD42PCB/2018, Bangalore 25.09.2018 and stated that NALSA's model compensation for women victims and rests continued as is prescribed in the victim compensation scheme, 2011 shall continue to be in effect.

9. The proviso under Section 357(A) of Cr.P.C is very wide and would in fact even cover cases which are covered under the POCSO Act. The reading of Section 33 of the Act would show that power has been given to the special Court to grant compensation. The POCSO Act is gender neutral and victim child is entitled for compensation for rehabilitating the victim child. The laudable object to enact special Act is to

protect children from offences of sexual assault, sexual harassment and pornography. whereas it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and prescribed by very person by all means and through all stages of judicial process involving the child. It is imperative that the law operates in a manner in the best interest and well being of the child are regarded as being paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child. The duty of special Court is not only for the protection of children from sexual offences and convict the accused where the accused is found guilty, but also to grant compensation in terms of Section 33(8) of POCSO Act in addition to the punishment as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child and determine the compensation in terms of Rule 9 (3) (i) to (xii) of Rules 2020.

10. The Hon'ble Apex court in Writ petition (C) No.565 of 2012 in ***NIPUN SAXENA AND ANOTHER VS. UNION OF INDIA AND OTHERS*** after noticing that as far as children as

concern, no scheme of this nature has been framed with regard to the victims of sexual abuse under the provisions of the POCSO Act has directed that NALSA compensation scheme should function as a guideline to the special court for the award of compensation to victims of child sexual abuse under Rule 9 until the rules are finalized by the Central Government. It has been further held that Special Judge will of course, take provisions of POCSO Act into consideration as well as any circumstances that are special to the victim while passing an appropriate order. Needless to say that scheme and the guidelines will be operational from the 02.10.2018.

11. It is thereafter the Protection of Children from Sexual Offences Rules, 2020 have been framed with effect from 09.03.2020 (herein after referred as "Rules 2020"). Rule 9 deals with grant of compensation reads as under:

9. 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 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 sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, 1973 (2 of 1974) 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 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;

(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 such child's 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, 1973 or any other law 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 child's 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.

12. The procedure and powers of special Court and recording of evidence is contemplated under Section 33 of the POCSO Act. In terms of Section 33(8) of POCSO Act 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 trauma caused to him or for immediate rehabilitation of the child.

13. On careful reading of Section 33 of POCSO Act and Rule 9 of Rules 2020 manifestly makes it clear that it is the duty of special court to determine the interim or final compensation, so as to rehabilitate the child victim. The Hon'ble Apex court in **NIPUN SAXENA** case referred above directed that till the framing of compensation scheme specifically for child victims in POCSO cases is not in place, the NALSA compensation scheme shall act as a guideline to special Courts to award compensation to child victims of sexual abuse.

14. In the light of judgment of Hon'ble Apex Court in **NIPUN SAXENA** case referred above High Court of Karnataka under letter No.RSB-252/2019 dated 20.11.2020 issued circular No.13/2020 with the following directions:

Keeping the above directions given by Hon'ble Supreme Court and the special provisions contained in the POCSO Act and POCSO Rules 2020 in view, the presiding officers of the special courts have to determine the amount of compensation. While so fixing the amount

of compensation the special Court shall also keep in mind the minimum and maximum amount of compensation provided by the NALSA's compensation scheme for Women Victims/survivors of other crimes - 2018 as guideline.

Further, when fine is imposed by the special court under POCSO Act, which is to be paid to the victim care should be taken to ensure that the same is infact paid to the child and credited to the bank account of the victim as per Rule 10 of POCSO Rules 2020.

In spite of the guidelines of the Hon'ble Apex court in **NIPUN SAXENA** case referred above and the guidelines issued by this Court by way of above referred circular, it is found that some of the judges of special Court are still not determining the quantum of compensation and are passing the decision to DLSA. The final compensation is not being given in cases that end in acquittal or for that matter where the accused not been traced or cannot be identified, despite the fact of sexual assault getting established.

15. On careful reading of Section 33(8) POCSO Act and Rule 9 of Rules 2020, it is evident that it is only the special court have the power to quantify the compensation to the child victims and forward the same to the DLSA for disbursal of the

award amount. The DLSA is under legal obligation to give effect to the compensation determined by the special Court. The power to determine compensation either interim or final is vested with the special court to achieve the laudable object of rehabilitation process to victim child. The Special Courts constituted under the POCSO Act have adequate infrastructure, facilities and human resources to ensure that not only the quality of evidence of child is not diminished but it also provides for speedy adjudication of the claims.

16. Therefore in view of the guidelines of Hon'ble Apex court in **NIPUN SAXENA** case and pursuant circular issued by this court as referred above, it is obligatory on the part of Special Court Judges under POCSO Act to determine appropriate compensation to which victim child is entitled in the light of NALSA's scheme and Rule 9 of Rules 2020 till the framing of a compensation scheme specifically for a child victims in POCSO cases. The role of DLSA is to enforce the compensation determined by the Special Court and to make payment to victim child in terms of Rule 10 of Rules 2020 in

compliance with the circular issued by this court as referred above.

17. On same set of facts and circumstances involved in the present appeal, the Hon'ble Dehli High Court very recently dealt with the issues relating to grant of compensation for the victims under the POCSO Act in **"X" VS. STATE OF NCT DEHLI (ACTING THROUGH ITS SECRETARY) AND ANOTHER IN CRIMINAL APPEAL NO.63/2022 DATED 20.10.2022**, wherein the appeal was filed by the appellant for his victim daughter, challenging the adequacy of compensation is held to be maintainable. It has been further held that it is duty of the special Court constituted under the POCSO Act to determine the compensation in terms of Section 33(8) of POCSO Act and Rule 9 of Rules 2020. The duty of DLSA is to disburse the compensation awarded by the special Court and payment is to be ensured in terms of Rule 10. It is true that Hon'ble Dehli High court was considering grant of compensation as per the Dehli State Legal Services Authority. However the principles enunciated in the said decision regarding the duty of the special court to grant compensation in terms of Section

33(8) of POCSO Act and Rule 9 of Rules 2020, further to follow NALSA scheme 2018 while determining the compensation holds good. In the present case KVCS 2011 is applicable and till the framing of compensation scheme specifically for child victim in POCSO cases, the NALSA scheme 2018 shall act as guideline to special court to award compensation to child victims of sexual abuse.

18. In the present case the victim is not only minor girl, but mentally retarded and dumb against whom penetrative sexual assault has been committed by the accused. The trial Court has convicted the accused for the offences punishable under Section 376 of IPC and Section 6 of POCSO Act. However in exercise of power in terms of Section 357(A) of Cr.P.C has awarded compensation of Rs.1,00,000/-. The grant of compensation to the victim child under the POCSO Act either interim or final shall not be based on the whims and fancy of trial Court, but the compensation has to be determined on the basis of Rule 9 of Rules 2020 and by following NALSA scheme 2018. The trial court on the basis of evidence on record, nature of injury suffered by the victim, the circumstance under which

the offence has been committed, the need of victim child for rehabilitation, medical treatment, education has to be considered for determination of the compensation. The trial Court has not taken into consideration all the relevant factors enumerated in Rule 9 of Rules 2020 and NALSA scheme 2018 for determining the compensation. It is the duty of the trial Court to take into consideration clause (i) to (xii) of Rule 9(3) of Rules 2020 and apply the NALSA's scheme 2018 then determine the compensation.

19. In the present case the evidence of P.W.1 and 2 parents of the victim would go to show that they are doing coolie work and they have no other source of income. P.Ws. 1 and 2 are having three children. The victim as on the date of incident was not only minor, but also mentally retarded and dumb. The victim has no any worldly knowledge and she talks to herself. When the parents of the victim girl and other two children goes for coolie work then they used to carry the victim along with them. On account of above referred disablement of victim, she could not study even in the school specially meant for such disabled person. The accused who was working with

P.W.1 took advantage of his acquaintance with family of victim, carried the victim for collecting "Bembalakai" for preparing food as requested by P.W.1 from the Areca garden and there accused has committed penetrative sexual assault on victim girl. On account of above referred disablement of victim, she was not examined before the trial Court. It is only on the basis of evidence of P.W.1, medical evidence and other evidence on record, the trial Court has convicted the accused. If these factors are taken into consideration for loss or injury caused to victim in terms of Rule 9(3) (i) to (xii) then in my opinion, the victim girl is entitled for maximum compensation under NALSA scheme.

20. In terms of the schedule applicable to women victim of crimes, minimum compensation to be awarded is Rs.4,00,000/- and upper limit of compensation is Rs.7,00,000/- . The NALSA's scheme clause 9 provides that in case victim is minor, the limit of compensation shall be deem to be 50% higher than the amount mentioned in the schedule appended to this chapter. While fixing the compensation in between Rs.4,00,000/- to 7,00,000/- i.e minimum and maximum, the

trial Court judges shall have to appreciate the evidence on record in terms of rule 9 (3) (i) to (xii) of Rules 2020. It is to be remembered that in all cases under the POCSO Act, the grant of maximum compensation of Rs.7,00,000/- is not mandatory. On the other hand the trial court has to consider the evidence on record, the need of medical expenses, the money required for rehabilitation so as to bring the victim child to main stream for leading dignified life. The role of trial court while awarding interim and final compensation in attending to the rehabilitation process of victim child is more onerous and adopt pragmatic approach for the welfare and well being in taking care of victim child as a guardian for the victim child.

21. In the present case in view of reasons recorded above and to rehabilitate the victim, so also injury suffered by the victim, in my opinion the maximum compensation Rs.700,000/- has to be granted in view of peculiar facts of the present case and disablement of the victim girl. The NALSA's scheme 2018 provides for 50% enhancement if the victim is minor. In the present case victim is not only minor, but also mentally retarded and dumb, therefore in terms of Rule 9 (3) of

NALSA's scheme 50% of Rs.700,000/- has to be awarded which would come to Rs.3,50,000/-. Thus the victim is entitled for total compensation of (Rs.7,00,000/-+3,50,000/-)= Rs.10,50,000/-. Consequently, proceed to pass the following:

ORDER

Appeal filed by the complainant is hereby allowed.

The order of the trial Court dated 18.01.2002 in special case NO.13/2021 on the file of Additional District and Sessions Judge-FTSC-1, UK Karwar (Special Court for trial of cases filed under POCSO) Act only so far as the grant of compensation in terms of Section 357 (A) of victim compensation scheme 2018 is ordered to be modified as under.

The victim is entitled for total compensation of Rs.10,50,000/- . The compensation awarded by the trial Court if it is paid to the victim then the same is to be adjusted in the final compensation now awarded.

The member secretary DLSA, Kavar to take necessary steps for disbursement of the compensation amount awarded in accordance with law.

The registry is directed to transmit the records to trial Court with copy of this judgment and copy of judgment also be sent to member secretary DLSA, Karwar for compliance.

**(Sd/-)
JUDGE**

AC/-