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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : November 01, 2019
Decided on : December 03, 2019

\+ Crl. Appeal no. 187/2018

RAJ KUMAR .... Appellant
Through: Mr. Sharad Malhotra, Adv. for DHCLSC.

versus

STATE ..... Respondent
Through: Mr. Kewal Singh Ahuja, APP for the State with ASI Ram Vilas, PS Pahar Ganj.
Mr. Sarfraz Khan, Adv. for DSLSA.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

1. This criminal appeal assailing conviction on charge of rape, notwithstanding the testimony of the prosecutrix conceding the relationship to be consensual, has led to revelation of a pattern of irresponsible exercise of jurisdiction vis-à-vis victim compensation scheme necessitating measures to be taken so as to curb misuse of public money.

2. The appellant was brought to trial in the court of Sessions (case no.28940/2016) in the wake of report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.PC) dated 23.08.2016 submitted by the Station House Officer (SHO) of police station Pahar Ganj upon conclusion of investigation into first

information report (no.247/2016), on the accusations of his complicity in certain acts of commission or omission, the same statedly constituting offences punishable under Sections 376(2)(n) and (f), 313 and 506 of Indian Penal Code, 1860 (IPC). The Additional Sessions Judge presiding over the trial, by his judgment dated 27.12.2017, held the appellant guilty and thus convicted him, as charged, for the said offences.

3. By order dated 06.01.2018, sentence of rigorous imprisonment for ten years with fine of Rs.2,000/- was awarded as the punishment for offence under Sections 376(2)(n) and (f) and Section 313 IPC respectively. In addition to this, the trial judge also awarded imprisonment for two years with fine of Rs.2,000/- for offence under Section 506 (Part-I) IPC. The order on sentence further directed that in case of default in payment of fine, the appellant would undergo simple imprisonment for one year on the first three counts and simple imprisonment for six months on the last count. The benefit of set off under Section 428 of the Code of Criminal Procedure, 1973 (Cr. PC) for the period of detention already undergone was also accorded. The trial court, accepting the application of Delhi Commission for Women (DCW), further directed the District Legal Services Authority (DLSA) to pay Rs.1,00,000/- (Rupees One Lakh only) as compensation to the prosecutrix.

4. Feeling aggrieved by the aforementioned judgment of conviction, and order on sentence, the appeal at hand was filed alongwith an application for suspension of sentence.

5. The application for suspension of sentence and release on bail pending hearing on the appeal came up before this court on 19.11.2018 which was allowed by a detailed order, pursuant to submissions made at which stage it was also deemed proper that report be called from DLSA with regard to the release of compensation to the prosecutrix, it at the same time being directed that in the event of the compensation not having been released, it to be ensured by suitable steps that no such release was allowed till further directions from this court. The proceedings recorded in the wake of the said directions shall be noted later at appropriate stage in the course of this judgment.

6. It is essential to take note of the background facts before proceeding further.

7. The prosecutrix (PW-2) is the daughter of the elder brother of the appellant, she being one of the five siblings which include two brothers and two sisters, her father concededly having two brothers including the appellant, he living in a separate accommodation. The prosecutrix concededly was 21 years' old on the date of FIR (Ex. PW1/B) being registered at her instance and on her complaint (Ex. PW1/A) in the police station, it being part of the *rukka* which contains endorsement (Ex. PW13/A) of SI Devinder Kaur (PW-13), the investigating officer (IO). According to the allegations made in the FIR, registered on 08.06.2016, which were reiterated by her (PW-2) in her statement under Section 164 Cr. PC (Ex. PW2/B) before the Metropolitan Magistrate (PW-12) on 10.06.2016, the incident which became subject matter of the charge of rape (as framed against the

appellant) had occurred on the day of the Holi festival in 2016 (described in the charge-sheet as 23.03.2016). By all accounts, including the material gathered during investigation, also medical examination of the prosecutrix by Dr. Smita Datta (PW-4) and Dr. Chhavi Gupta (PW-5), as indeed the version of her father (PW-3), the prosecutrix was a girl who was major having attained the age of consent on the crucial date.

8. From the events that have been narrated in the evidence, particularly by the prosecutrix (PW-2) and her father (PW-3), it emerges that the former (PW-2) had become pregnant with a child, there being some complication on account of bleeding per vagina noticed by her mother on 06.06.2016. The prosecutrix was taken by the parents to nearby railway hospital where her medical examination statedly brought to light the pregnancy. The medical examination confirmed that she was carrying a fetus of about two months' duration when the complications had begun, it being also confirmed by the examining doctors that the prosecutrix had consumed some medicine on the previous day (i.e. 05.06.2016), the bleeding having eventually led to miscarriage.

9. The record of the medical examination of the prosecutrix was proved at the trial through two medical officers i.e. PW-4 (Chief Gynaecologist) and PW-5 (Assistant Divisional Medical Officer), they having, *inter alia*, referred in the course of their testimony to the medico-legal certificate (Ex. PW2/A), casualty card (Ex. PW4/A) and indoor treatment file (Ex. PW4/B). The pregnancy was confirmed with the help of urine pregnancy test kit. Pertinent to note here that

the gynaecologist (PW-4) in her clinical notes recorded at 1.40 a.m. on 06.06.2016 (Ex. PW4/A) also indicated that the prosecutrix had been "*changing statement*" and had also admitted that she had taken a pill on the previous day, it not being the case that any medicinal tablet was administered forcibly. The prosecutrix herself confirmed to the examining doctor that the pregnancy was the end-result of coitus in which she was engaged about two months' prior to this visit to the hospital, the excessive bleeding resulting in the mis-carriage (described as incomplete abortion) being apparently an event triggered by consumption of the pill. During the treatment, part of the placenta and detached cord with membrane were removed from the uterus, the said biological exhibits having been handed over by PW-4 to the IO on her formal request (Ex. PW4/C), the same described in the proceedings as "*product of conception*" having been deposited initially in the Malkhana (vide Ex. PW11/A), as proved by the *Moharrar* (*Malkhana*) ASI Jal Singh (PW-11), and would eventually reach the Forensic Science Laboratory (FSL), the result of examination whereof is inconsequential on all important issue of consent.

10. It is against the above backdrop of events leading to medical examination of the prosecutrix, that the matter was brought to the notice of the police station by the hospital administration where initial input was recorded vide DD no.16B dated 06.06.2016 (Ex. PW10/A) at 8.33 p.m. on 06.06.2016. The matter was entrusted initially to SI Raj Kumar (PW-10) who reached the hospital, accompanied by HC Manoj. As per the version of the said police official (PW-10), he had found the prosecutrix admitted in the hospital against MLC but she

was reportedly not in a condition to give her statement. He returned and lodged DD entry no.63B, keeping the matter pending. He paid another visit to the hospital on the next day and tried to record the statement of the prosecutrix but was told by her that she would give her statement only after her father had reached the hospital. The matter was thereafter inquired into by PW-13, the investigating officer.

11. The statement (Ex. PW1/A) of the prosecutrix thus came to be recorded by PW-13 in the afternoon of 08.06.2016. As per the endorsement (Ex. PW13/A), the prosecutrix was then still under treatment as an indoor patient in the same hospital.

12. In her version in the FIR, the prosecutrix stated that on the date of the Holi festival in 2016 (23.03.2016), she was alone at home in the evening hours when the appellant, her *Chacha* (younger brother of her father), came there at about 5.30 p.m. She told the IO in the FIR that the appellant had tried to force himself on her without her consent and would not deter even though she had refused to cooperate. She stated that the appellant had forcibly removed all her clothes and thereafter committed rape upon her also extending threat that in case she were to reveal this to anyone, he would kill her. She stated that, out of modesty and fear, she had not disclosed this incident to anyone. She further stated that she had become pregnant on account of the said sexual intercourse and when she had disclosed the pregnancy to the appellant, he had asked her to abort. She also stated that on 05.06.2016 in the morning, the appellant had brought some pill which she had been asked to consume stealthily. She stated

that she had started bleeding immediately thereafter and had disclosed the facts to her mother who took her to the hospital. It was further recorded in her statement forming the basis of the FIR that she had discarded and thrown out all the clothes which she was wearing at the time of the sexual intercourse because they had become soiled.

13. On the request (Ex. PW12/A) of the investigating officer (PW-13), the prosecutrix (PW-2) was examined under Section 164 Cr. PC by the Metropolitan Magistrate on 10.06.2016. The said statement has been proved by the Metropolitan Magistrate (vide Ex. PW2/B), it also having been referred to during the deposition of the prosecutrix (PW-2) at the time of her court testimony. In the said statement (u/s. 164 Cr. PC), the prosecutrix reiterated that she had become pregnant on account of sexual intercourse in which she had been engaged by her *Chacha* (the appellant), she stating that this was without her consent. She also stated that it was he who had brought the medicine on 05.06.2016 on account of which she had suffered from acute pain, this being followed by admission in the hospital, her parents having come to know of the pregnancy on 06.06.2016. She further added in the said statement (before the Metropolitan Magistrate) that after the alleged event on the day of the Holi festival, the appellant had subjected her to forcible sexual intercourse two or three times in a week and further that she had been kept under fear so as to deter her against disclosure.

14. As indicated earlier, the appellant was put to trial on charges being framed for offences punishable under Sections 376(2)(n) & (f), 506 and 313 of IPC. In the case as set out by the prosecution on the

basis of evidence noted above, the version of the prosecutrix, as indeed that of her father who only was examined additionally (her mother conspicuously not being a witness) was most crucial.

15. In her court testimony, however, the prosecutrix turned hostile. She explained that the family (including her) were living in a servant quarter at the fourth floor level made available by her employer in his residence in a government departments' colony and on the day of the Holi festival at about 5.00 p.m., while other members of the family were away, she being alone at home, the appellant had come and established physical relation with her, this being followed by such physical intimacy two or three times subsequently, all along with her consent. She deposed that the appellant had not extended any threats to her. She stated that because of the (consensual) physical relationship, she had become pregnant and that she had aborted her pregnancy willingly by consuming some medicine. She confirmed the prosecution version that the bleeding which was triggered had brought the knowledge of her state of pregnancy to her mother who had taken her to the hospital where she was admitted for treatment for three days. She was confronted with her statement (Ex. PW2/A) on the basis of which FIR had been registered and also her statement (Ex. PW2/B) before the Magistrate, in answer to which she stated that she had become confused and was not in a fit state of mind and on that account had alleged the use of force and absence of consent. The prosecutrix was cross-examined by the Public Prosecutor, but nothing in support of the charge could be brought out against the appellant in such exercise. She reiterated, during her cross-examination, that

physical intimacy leading to pregnancy was out of her own free will and with her consent, there being no duress exercised at any stage.

16. PW-3, the father of the prosecutrix, is in no position to prove facts as may render the charge believable. He only deposed about learning the facts concerning involvement of the appellant leading to pregnancy of his daughter based on information that he had gathered from his wife (i.e. the mother of the prosecutrix). It has already been noted that the mother of the prosecutrix has not been examined. It may be added here that, even if she were to be examined, her version would not aid or assist the prosecution case in bringing home facts beyond what has been testified by the prosecutrix. The testimony of PW-3 on the crucial aspects is thus nothing but hearsay.

17. In his statement under Section 313 Cr. PC, the appellant while denying the evidence of the prosecution showing his complicity in the crimes with which he has been charged claimed innocence and attributed false implication to some dispute involving him on one hand with the *Naani* (maternal grandmother) and *Mausi* (maternal aunt) of the prosecutrix, on the other.

18. Inspite of the statement to above effect of the prosecutrix, she being totally hostile to the prosecution case, the trial judge was not impressed with her explanation. He believed the version set out in the FIR, as reiterated in the statement under Section 164 Cr. PC, and found the appellant guilty. The reasoning for such conclusion, as articulated in the impugned judgment, may be extracted as under :-

> *"60. Had the physical relation established by the accused would have been with the consent of the prosecutrix, she would not levelled allegation*

against accused in her statement Ex. PW1/A recorded at the hospital where she was got admitted by her mother and thereafter during the course of investigation she reiterated the allegation against the accused in her statement u/s. 164 Cr.PC recorded on oath.

61. Needless to mention that the statement u/s. 164 Cr. PC recorded by Ld. Metropolitan Magistrate after ascertaining the voluntariness of making the statement by the victim which completely rules out possibility of prosecutrix being not in a fit state of mind at the time of giving the said statement.

62. The explanation for leveling the allegation against the accused in both the statements given by the prosecutrix that she was not in a fit state of mind at the time of giving her said statements is not only incompatible with the sequence of event right from the incident, and recording of her both the said statements, she being taken to hospital for treatment but also not plausible and does not appeal to the reason. Hence, unbelievable.

65. Keeping in mind her entire narration which she had given by her on oath, it become apparently clear that had PW2 Prosecutrix not been aggrieved by the offence committed by the accused with her, she would have not given statement alleging that accused committed rape upon her to the police at the very first instance which lead the registration of present FIR and that for the similar reason she reiterated the entire facts in her statement recorded by Magistrate u/s. 164 Cr. PC.

68. Father of the prosecutrix who has been examined as PW3 is witness of hearsay fact. In his statement u/s. 313 Cr. PC, accused had stated that he has been implicated falsely due to dispute between him and Naani and Mausi of prosecutrix. It is not expectable in any such type of case no

prosecutrix being niece would level false allegation against the accused / real uncle.

70. Prosecutrix has been declared hostile by Ld. Addl. PP for the State as she did not support the case of prosecution on any point. Further, there is no explanation by the accused in the statement u/s. 313 Cr. PC on the fact that why he had given abortion pills to the prosecutrix. Simply he has stated that it is incorrect. Rather he had submitted that he has been implicated falsely due to dispute between him and Naani and Mausi of prosecutrix.

71. Further, Naani and Mausi of the prosecutrix has not been examined in defence evidence.

72. Submission of ld. counsel for accused that prosecutrix was consented for sexual intercourse with the accused is not acceptable because even if prosecutrix consented accused being uncle / guardian of prosecutrix was duty bound to take her to her father despite that he did not bring the prosecutrix to her father and indulged himself in sexual intercourse with the prosecutrix which leads her pregnancy thereon accused has also extended threat not to disclose anything to any person. In the present case consent of the prosecutrix also corroborate the case of prosecution. It does not make any difference if the prosecutrix was consenting for sexual intercourse with accused."

19. Having heard the learned counsel for the appellant and the additional public prosecutor representing the State and having perused the record, this Court is of the opinion that the judgment rendered by the Additional Sessions judge holding the appellant guilty cannot be sustained. The reasoning set out for such conclusion,

as extracted above, appears to be more a case of moral judgment than a judgment based on facts and law.

20. As is not in dispute, the prosecutrix was not a minor but an adult having attained the age at which she could take her own decisions, particularly in such matters as of her engagement in sexual activity with a person of her choice. Her amorous involvement with the younger brother of her father may be immoral or taboo in personal law but the definition of rape under Section 375 IPC does not factor in inhibitions of such kind.

21. There is no doubt that the prosecutrix had levelled allegations in the FIR, followed by similar statement before the Magistrate under Section 164 Cr.P.C., accusing the appellant of use of duress, this having a direct bearing on the issue of her willingness or consent. But then, she has herself disowned the said allegations before the police and during investigation as those which were levelled because of her confusion and being not in a fit state of mind at the relevant point of time.

22. It is not correct to proceed on the assumption that because she is real niece of the appellant, the prosecutrix could not have levelled false allegations against him. Judicial precedents are replete with examples where such allegations made against close relatives, or kith or kin, have been found to be not only false but also motivated.

23. Motive to falsely implicate may have been the defence pleaded by the appellant but failure on his part to adduce evidence does not mean the burden of proof has shifted from the prosecution. The

testimony of the prosecutrix in the court is the substantive evidence which fully exonerates the appellant from any culpability.

24. It appears that the factum of she having become pregnant with a child having been exposed to her parents on account of bleeding, the prosecutrix was constrained to share background facts with them. For some reasons, she chose to take the position of innocence and thus coined the theory of use of duress which led to the present prosecution. The reluctance on her part to give her version to police for two days, particularly when she first wanted to consult the father, throws up the possibility of some external influence having coloured the story. But, her court testimony demonstrates that her conscience would not allow her peace and consequently she opted to reveal the truth at the trial owning up to her pro-active and consensual participation in the physical intimacy. Her deposition on oath at the trial has to be taken as the evidence which must be the basis of findings on facts, it being unfair on the part of the trial court to treat the FIR and the statement under Section 164 Cr.P.C. as the material which controls the conclusion.

25. For above reasons, the charge of rape under Section 376 (2) (n) and (f) IPC must fail. Same must be the result of the charge for offences under Sections 313 and 506 (Part I) IPC. The prosecutrix has admitted on oath that she had consumed certain medicinal tablets out of her own free will and that there was no intimidation exercised by the appellant. There has been no effective investigation carried out as to the nature of medicinal preparation which was consumed by the prosecutrix, not the least drawing a nexus between consumption of

such medicinal preparation and the bleeding resulting in pre-mature termination of pregnancy.

26. On the foregoing facts, and in the circumstances, the judgment dated 27.12.2017 of the Additional Sessions Judge holding the appellant guilty for offences under Sections 376 (2) (n) (f), 313 and 506 (Part I) IPC and the order on sentence passed on 06.01.2018 awarding substantive punishment on each count are hereby set aside. The appellant is acquitted.

27. This case, however, has given rise to certain concerns about the directions for payment of compensation to the prosecutrix by the trial court and the action taken thereupon by the legal services authority. This calls for further consideration and appropriate directions.

28. As has been noticed earlier, the Additional Sessions Judge while awarding punishment by order on sentence passed on 06.01.2018 directed the District Legal Services Authority (DLSA) to pay to the prosecutrix compensation in the sum of rupees one lakh referring in this context to considerations such as age, status of prosecutrix, her education, mental trauma and future prospects. Such directions were given on the application moved by the counsel for Delhi Commission for Women (DCW).

29. When the above discussed nature of evidence that had been adduced by the prosecution at trial came to be referred in the context of application – Crl.M. (Bail) 285/2018 – for interim suspension of sentence, this Court, by order dated 19.11.2018, had also called for a report from DLSA and issued a restraint order against release of the compensation in the meanwhile. On 03.12.2018, the report dated

29.11.2018 of Special Secretary, Delhi State Legal Services Authority (DSLSA) came on record whereby the Court was informed that the Secretary of the Central DLSA had communicated that *"final compensation"* of rupees three lakhs had been paid to the prosecutrix in terms of the order dated 20.02.2018 of Victim Compensation Committee, such amount having been transferred into the bank account of the prosecutrix through RTGS/NEFT on 25.04.2018. The subsequent inquiries by DSLSA, under the directions of the Court, revealed that the said amount was withdrawn by the prosecutrix almost immediately after its remittance into her account.

30. What stands out from the above narration is that though the trial judge had directed compensation in the sum of rupees one lakh by order dated 06.01.2018, the Central DLSA deemed it appropriate to award an enhanced compensation of rupees three lakh from the victim compensation fund and issued an order to that effect on 20.02.2018, transferring such amount on 25.04.2018, there being no consideration of the fact that the judgment in question had by then been appealed against in February, 2018.

31. The expectation of victim of a crime for complete justice in the form not only of punishment but also by reparation in the shape of compensation has now come to be accepted as legitimate, it being the obligation of the court to factor in such concerns in every case, the provisions of Sections 357 and 357-A Cr.P.C. – certain others on the subject, such as Sections 357-B and 357-C Cr.P.C. adding to the jurisprudence – guiding the course of justice.

32. Prior to amendment of the Code of Criminal Procedure, 1973 by Act No.5 of 2009, made effective from 31.12.2009, the provision contained in Section 357 Cr. PC was the solitary statutory command and guidance (besides Section 5 of the Probation of Offenders Act, 1958) on the subject of compensation. Section 357 Cr. PC would read thus :

> "*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 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;*
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> *(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."

33. Section 5 of the Probation of Offenders Act, 1958, on the other hand, runs as under :-

"5. Power of court to require released offenders to pay compensation and costs.—

(1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay—

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

34. A bare look at the word of the law quoted above would reveal that the criminal court may direct compensation to be paid either under Section 357 Cr.PC or Section 5 of the Probation of Offenders Act only in the event of a person being held guilty and convicted of the crime, the idea being to recompense for the loss or injury consequently caused, such amount of compensation contemplated as an amount which would eventually be adjustable in the event of a civil court also being approached for award of damages (under the law of torts). But, there have been difficulties faced vis-a-vis the scheme of Section 357 Cr. PC. As was observed by the Supreme Court in its judgment reported as *Gang-rape Ordered by Village Kangaroo Court in W.B., (2014) 4 SCC 786,* Section 357 Cr. PC (which only covered the field earlier) is "*not mandatory in nature*" and "*only the offender can be directed to pay compensation to the victim*" there-under.

35. Taking note of the deficiencies in the main provision of Section 357 Cr. PC, the following observations of a division bench of Punjab and Haryana High Court in *Rohtash vs. State of Haryana (Crl. A.*

No.250/1999, decided on 01.04.2008) were quoted with approval by the Supreme Court in *Suresh v. State of Haryana (2015) 2 SCC 227:*

> "*21. Though a provision has been made for compensation to victims under Section 357 Cr.PC, there are several inherent limitations. The said provision can be invoked only upon conviction, that too at the discretion of the Judge and subject to financial capacity to pay by the accused. The long time taken in disposal of the criminal case is another handicap for bringing justice to the victims who need immediate relief, and cannot wait for conviction, which could take decades. The grant of compensation under the said provision depends upon financial capacity of the accused to compensate, for which, the evidence is rarely collected. Further, victims are often unable to make a representation before the court for want of legal aid or otherwise. This is perhaps why even on conviction this provision is rarely pressed into service by the courts. Rate of conviction being quite low, inter alia, for competence of investigation, apathy of witnesses or strict standard of proof required to ensure that innocent is not punished, the said provision is hardly adequate to address to the need of victims...*"
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> (emphasis supplied)

36. If the sentence imposed against a convict includes the sentence of fine, by virtue of Section 357(1), the compensation that can be awarded by the court must necessarily be restricted to the fine that has been imposed and recovered. In contrast, Section 357 (3) Cr. PC stipulates that the court may direct the amount specified by it to be paid as compensation if the punishment awarded does not include imposition of fine. To put it simply, there is no restriction on the amount of compensation to be directed to be paid under Section 357

Cr. PC if only sentence of imprisonment has been awarded. Otherwise, the amount of fine imposed and recovered is the ceiling to the award of compensation. On the other hand, if the court intends to provide reasonable compensation, without facing any such restrictions on the amount, it perforce would have to give the benefit of release without substantive punishment, by applying the provision of Sections 3 or 4 of the Probation of Offenders Act, 1958.

37. Be that as it may, what stands out from Section 357(2) Cr. PC is the fact that the entitlement of the victim to receive compensation for the loss or injury suffered is dependent on finality of the decision on the issue of guilt and conviction for the reason that no payment (to the victim) of compensation is permitted by law to be made till such time as the period for presenting an appeal has elapsed or, if an appeal be presented, till such time the appellate court has taken a decision thereupon.

38. The provision contained in Section 357A Cr. PC was added by the amendment Act of 2009 ushering in major reforms on the subject of victim restitution in criminal law process, in the wake, *inter alia*, of Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 adopted by UN General Assembly. It provides thus :

> *"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."

39. In *Suresh* (supra), the Supreme Court while construing Section 357-A Cr.P.C., taking note of various decisions including *Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770: (2014) 1 SCC (Crl.) 285; Mohd. Haroon vs. Union of India, (2014) 5 SCC 252 : (2014) 2 SCC (Crl.) 510; Laxmi vs. Union of India, (2014) 4 SCC*

427 : (2014) 4 SCC (Crl) 802, Abdul Rashid vs. State of Odisha, 2013 SCC Online Ori. 493 : ILR (2014) 1 Cut 202 and *Delhi Domestic Working Women's Forum vs. Union of India, (1995) 1 SCC 14: 1995 SCC (Cri) 7,* observed thus :

> "13. ...*The object and purpose of the provision is to enable the Court to direct the State to pay compensation to the victim where the compensation under Section 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated.*
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> (emphasis supplied)

40. In *Ankush Shivaji Gaikwad* (supra), the court ruled that "*while the award or* refusal *of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case."* In *Suresh* (supra), the jurisprudence on the subject was expanded further thus :

> "16. ...*it is the duty of the courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of*

such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case."

(emphasis supplied)

41. As is clear from the plain reading of Section 357A Cr. PC (unlike under Section 357 Cr. PC), the award of compensation to the victim is not dependent on an individual being found guilty. The compensation may be awarded from out of the funds made available by the State under the Victim Compensation Scheme, even though the offender be not traced or identified or case brought against an individual were to end in acquittal or discharge. But, there can be no doubt as to the fact that in order to have a legitimate claim for compensation under the Victim Compensation Scheme in terms of Section 357A (like under Section 357), there must be requisite proof of commission of an offence, the victim of such offence being properly identified and requiring rehabilitation, the philosophy behind such statutory command being that compensation for the victim of crime is integral to the judicial process, the plight of victim not to be ignored "*even when a crime goes unpunished for want of adequate evidence*" [*Manohar Singh vs. State of Rajasthan, 2015 (2) SCC (Cri) 332]*. To put it more clearly, there can be no compensation awarded, either under Section 357 or under Section 357A Cr. PC or, for that matter, under any other statutory provision, in case the criminal court were to conclude that no offence had been committed.

42. It is in the above context that the inhibition against release of compensation under Section 357 Cr. PC, before elapse of the period

for presenting appeal (or till the decision is rendered on such appeal, if presented) assumes significance. One must, however, hasten to add here that given the scheme of the law such restrictions on release of final compensation cannot be applied, for obvious reasons, against the grant of interim compensation foremost because there is no occasion for appeal and particularly when such emergent and tentative relief is afforded bearing in mind pressing factors such as immediate needs of the victim for purposes of rehabilitation, urgent medical aid, treatment, etc. As is, however, also clear, *inter alia*, from the afore-quoted observations of the Supreme Court in *Suresh* (supra) that grant of interim compensation must be "*subject to final compensation being determined later*" and based on "*tangible material to show commission of crime*" and, therefore, with strings attached.

43. Almost all States and Union Territories of India, including National Capital Territory of Delhi, have framed and notified Victim Compensation Schemes in terms of the statutory obligation under Section 357A Cr. PC. The scheme earlier framed for Delhi has since been modified and promulgated as *Delhi Victim Compensation Scheme, 2018* ("Delhi scheme"), brought into effect from 02.10.2018. As has been reported by the Member Secretary, DSLSA, the Delhi scheme is in two parts, the second of which specifically deals with the subject of *"Compensation Scheme for Women Victims/ Survivors of Sexual Assault / other Crimes, 2018"*, which provides detailed guidelines not only as to the factors to be considered while awarding compensation (including interim compensation) but also as to the procedure for making an application for such award and the manner in which such requests are to be enquired into, additionally dealing

with subjects such as the method of disbursement through banking channels and also of possible recovery of the amount (thus paid to victims) from persons responsible for the crime.

44. As highlighted earlier, the liability to comply with the order to pay compensation under Section 357 Cr. PC is fastened against the offender whose guilt has been proved whereas the compensation awarded under Section 357A is from out of the Victim Compensation Fund made available by the State under the scheme controlled by the Legal Services Authority. No doubt, the court at the conclusion of the trial may require compensation to be paid not only under Section 357 Cr. PC but also from the funds under Section 357A Cr. PC but for having resort to both the provisions, it must record satisfaction that the compensation awarded under the former provision is "*not adequate*" for rehabilitation of the victim. It is only upon reaching such satisfaction that it can "*make recommendation"* for compensation to be paid under the Victim Compensation Scheme. The decision to pay such compensation under Section 357A, upon receipt of such recommendation, rests with the legal services authority.

45. Some of the guidelines provided in (clauses 11 and 12 of) part II of Delhi Victim Compensation Scheme, 2018 are important for the present discussion and may be quoted as under :-

> "*11. METHOD OF DISBURSEMENT OF COMPENSATION— (1) The amount of compensation so awarded shall be disbursed by the SLSA by depositing the same in a Bank in the joint or single name of the victim/dependent(s). In case the victim does not have any bank account, the*

DLSA concern would facilitate opening of a bank account in the name of the victim and in case the victim is a minor along with a guardian or in case, minor is in a child care institution, the bank account shall be opened with the Superintendent of the Institution as Guardian. However, in case the victim is a foreign national or a refugee, the compensation can be disbursed by way of cash cards. Interim amount shall be disbursed in full. However, as far as the final compensation amount is concerned, 75% (seventy five percent) of the same shall be put in a fixed deposit for a minimum period of three years and the remaining 25% (twenty five percent) shall be available for utilization and initial expenses by the victim/dependent(s), as the case may be.

(2) In the case of a minor, 80% of the amount of compensation so awarded, shall be deposited in the fixed deposit account and shall be drawn only on attainment of the age of majority, but not before three years of the deposit.

Provided that in exceptional cases, amounts may be withdrawn for educational or medical or other pressing and urgent needs of the beneficiary at the discretion of the SLSA/ DLSA.

(3) The interest on the sum, if lying in FDR form, shall be credited directly by the bank in the savings account of the victim/dependent(s), on monthly basis which can be withdrawn by the beneficiary.

12. INTERIM RELIEF TO THE VICTIM— The State Legal Services Authority or District Legal Services Authority, as the case may be, may order for immediate first-aid facility or medical benefits to be made available free of cost or any other interim relief (including interim monetary compensation) as deemed appropriate, to alleviate the suffering of the victim on the certificate of a police officer, not below the rank of the officer-in-charge of the police station, or a Magistrate of the area concerned or on the application of the victim/ dependents or suo

moto. Provided that as soon as the application for compensation is received by the SLSA/DLSA, a sum of Rs.5000/- or as the case warrants up to Rs. 10,000/- shall be immediately disbursed to the victim through preloaded cash card from a Nationalised Bank by the Secretary, DLSA or Member Secretary, SLSA. Provided that the, interim relief so granted shall not be less than 25 per cent of the maximum compensation awardable as per schedule applicable to this Chapter, which shall be paid to the victim in totality.

Provided further that in cases of acid attack a sum of Rs. One lakh shall be paid to the victim within 15 days of the matter being brought to the notice of SLSA/DLSA. The order granting interim compensation shall be passed by the SLSA/DLSA within 7 days of the matter being brought to its notice and the SLSA shall pay the compensation within 8 days of passing of order. Thereafter an additional sum of Rs.2 lakhs shall be awarded and paid to the victim as expeditiously as possible and positively within two months."

(emphasis supplied)

46. The guidelines provided in (clauses 12 and 13 of) the first Part of the Delhi Scheme are *mutatis mutandis* similar to those quoted (from the second Part) above.

47. A learned single Judge of this court while dealing with the issues of payment of compensation to the victims of motor accidents, had issued certain guidelines, *inter alia*, by order dated 13.02.2017 in FAO 842/2003 *Rajesh Tyagi & Ors vs. Jaibir Singh and Ors.*, and extended the benefit thereof for purposes of securing the corpus of compensation disbursed to victims of Railway accidents by order dated 21.04.2017 in FAO 22/15, titled *Geeta Devi vs. Union of India*,

2019 SCC Online Del 8919, specifying the staggered manner in which the benefit is to be afforded such that dispensation is more beneficial.

48. In the wake of the judgment dated 06.01.2018 passed against the appellant herein and the direction for payment of final compensation of rupees one lakh by the impugned order of sentence, an inquiry was conducted by Secretary of DLSA (Central) under the Delhi Victim Compensation Scheme. It has been reported by the Member Secretary, Delhi State Legal Services Authority that the final compensation of rupees three lakh was awarded to the prosecutrix of the case at hand pursuant to order dated 20.02.2018 of the District Victim Compensation Committee which reads thus :-

> *"20.02.2018*
>
> *Central District Legal Services Authority received Judgment dated 06.01.2018 passed by Sh. Ramesh Kumar-II. Ld. ASJ/SFTC-02 Central, THC, Delhi for considering the final compensation of Rs.1,00,000/- to the victim. Pursuant to the receipt of the aforesaid Judgment, an enquiry was conducted by the Secretary, DLSA (Central) as per Section 357A(5) of the Code of Criminal Procedure, 1973 ("Cr.PC").*
>
> *During the inquiry, victim deposed that :*
>
> > *"I am victim in the present case. I have studied upto 10th class. My father is doing a private job and earning about Rs.6,000/- per month. My mother is a housewife. I have two brothers and two sisters.*

I have not received any compensation from any Government Authority till date. I will use the compensation money for my sustenance."

The Committee examined the statement of victim, statement of IO and considered the provisions of Delhi Victim Compensation Scheme, 2015.

The inquiry was conducted by Secretary, CDLSA, in exercise of power conferred vide a letter and corrigendum issued by teh DSLSA viz. Letter bearing Ref. No.Legal Aid Wing / DSLSA/VCS 2011 / 2013/6296 dated 25.09.2013 and its corrigendum bearing Ref. No. Legal Aid Wing / DSLSA/VCS/2014 / 3809 dated 12.08.2014.

Upon considering the same, the Committee is of the considered view that the case of the victim falls under Sl. No.3 of the Schedule to the Delhi Victim Compensation Scheme, 2015. Though the court has recommended an amount of Rs.1,00,000/- (Rupees One Lacs Only) as Final Compensation but after going through the relevant documents and the gravity of the case, the committee after considering all the aspects, has decided to award additional compensation of Rs.2,00,000/- (Rupees Two Lacs Only) i.e. the total amount of Final Compensation is of Rs.3,00,000/- (Rs.Three Lacs Only) should be paid to the victim for her rehabilitation.

Thus, in exercise of power under Section 357A (2) of Cr.P.C., it is recommended that a sum of Rs.3,00,000/- (Rs. Three Lacs Only) be paid to the victim as Final Compensation from the Victim Compensation Fund constituted under Rule 3 of the Delhi Victim Compensation Scheme, 2015.

The aforesaid amount of Rs.3,00,000/- (Rupees Three Lacs Only) may be disbursed by the Delhi

State Legal Services Authority ("DSLSA"), Patiala House Courts as per Rule 12 of the Delhi Victim Compensation Scheme, 2015 i.e. 25% be made available immediately and 75% of the amount (in case of minor 20% be made available immediately and 80% of the amount be kept in FDR till Majority but not before 3 years of the deposit) shall be deposit in terms of rule 12 of the scheme and in terms of judgment of the Hon'ble Delhi High Court in Geeta Devi vs. Union of India (FAO 22/2015, decided on 21.04.2017) and Sachindra Mishra Vs. Sunita and Others [WP(C) No.7398/2016, decided on 04.05.2017] for payment of compensation amount to the beneficiaries in a phased manner as follows :-

Sl.No.	*FDR Amount (For Victim 'P')*	*Period of FDR (in months)*
1.	*Rs.10,000/-*	*36*
2.	*Rs.10,000/-*	*37*
3.	*Rs.10,000/*	*38*
4.	*Rs.10,000/*	*39*
5.	*Rs.10,000/*	*40*
6.	*Rs.10,000/*	*41*
7.	*Rs.10,000/*	*42*
8.	*Rs.10,000/*	*43*
9.	*Rs.10,000/*	*44*
10.	*Rs.10,000/*	*45*
11.	*Rs.10,000/*	*46*
12.	*Rs.10,000/*	*47*
13.	*Rs.10,000/*	*48*
14.	*Rs.10,000/*	*49*
15.	*Rs.10,000/*	*50*
16.	*Rs.10,000/*	*51*
17.	*Rs.10,000/*	*52*
18.	*Rs.10,000/*	*53*
19.	*Rs.10,000/*	*54*
20.	*Rs.10,000/*	*55*
21.	*Rs.10,000/*	*56*
22.	*Rs.15,000/-*	*57*

Investments of the above FDR(s) would be subject to the following conditions :-

1. Original fixed deposit receipts be retained by the bank in safe custody. However, the statement containing FDR(s) number, FDR(s) amount and date of maturity be furnished to the beneficiary.

2. The maturity amount of the FDR(s) be credited in the above account of the beneficiary.

3. No loan, advance or pre-mature discharge of the FDR(s) would be permissible without the permission of this authority.

4. The bank shall not permit any joint names other than that of beneficiary in the above said saving bank account as well as the FDR without the permission of this Authority.

5. The liberty is given to the beneficiary to approach his Authority for pre-mature release of the FDR(s) in the event of need for withdrawal of amount for educational medical other pressing and urgent needs of the beneficiary, in exceptional cases.

6. Interest accruing on the said deposit shall be deposited in the said account of the beneficiary.

Copy of this Order be forwarded to DSLSA, Patiala House Courts in a sealed cover with a request to immediately disburse the compensation amount of Rs.3,00,000/- (Rupees Three Lacs Only) to the victim and send an intimation to this Authority.

Copy of the Order be also sent to the Ld. Concerned Court for information and record.

Copy of the Order be also forwarded to the SHO, PS Pahar Ganj, in a sealed cover, for information and assistance of the victims.

Copy of this order be also forwarded to the Branch Manager, Karnataka Bank, Overseas, New Delhi (Account No.5422500100864401 & IFSC Code-KARB0000542). Copy of the bank passbook be attached with the intimation to be sent to the Bank."

49. Noticeably, the District Victim Compensation Committee while adopting the above decision to grant compensation of Rs.3,00,000/- (Rupees three lakhs) to the prosecutrix took note not only of the judgment of conviction rendered on 06.01.2018 but also referred to afore-quoted provisions of (Part II of) Delhi Victim Compensation Scheme, 2018 as indeed the decisions in cases of *Geeta Devi* (supra) and *Sachindra Mishra* (supra). To put it simply, the decision of the District Victim Compensation was to disburse the amount of compensation in phased manner – twenty five per cent (25%) immediately and the balance in the form of twenty-two fixed deposit receipts, the maturity proceeds of the first of which was to come in hands of the prosecutrix only on the elapse of thirty-six months. Noticeably, the District Victim Compensation Committee, while directing final compensation to be paid as aforesaid on 20.02.2018 did not ascertain as to whether any appeal had been preferred against the judgment of conviction by the person who was alleged to be the offender of the crime. Noticeably further, the amount of compensation in entirety was made over to the banker of the prosecutrix by a communication dated 31.03.2018, sent under the signatures of Member Secretary, DSLSA, pursuant to communication

dated 15.03.2018 of Secretary, Central DLSA about decision dated 20.02.2018.

50. Further, from the facts reported by the Member Secretary, DSLSA, by his submissions dated 17.09.2019 and 10.10.2019, it is clear that banker to the prosecutrix credited the entire amount in her saving bank account and permitted its immediate withdrawal without any restriction, this against the directions of the District Victim Compensation Committee in its order dated 20.02.2018 and the communication dated 15.03.2018 of the Secretary, Central DLSA. The letter dated 31.03.2018 was addressed by DSLSA only to its own banker, the decision to pay in phased manner not being reflected therein. It is also clear that the concerned authorities in DLSA or DSLSA were not alive to such manner of disbursement, in breach of its decision and communication, till these facts came to light during the hearing on the appeal at hand.

51. On 14.10.2019, this court observed thus :

> *"It appears from the reports earlier filed by the Member Secretary, DSLSA that there has been a communication gap between the authorities competent in law to award compensation from the Victims Compensation Fund governed by Delhi Victims Compensation Scheme, 2018 on one hand and the banks in question on the other. It appears that in spite of decision of the Victim Compensation Committee in the case at hand to remit the payment of final compensation in staggered manner, the entire amount was transferred to the account of the beneficiary (the prosecutrix) in one go. The learned counsel for DSLSA submitted that the inquiries have evinced the response of the banker of the beneficiary that he was ignorant and cannot say as to why the*

entire amount was allowed to be credited in favour of prosecutrix and withdrawn immediately by her.

The Member Secretary, DSLSA, by his further report dated 11.10.2019, has indicated that an advisory has been issued on 10.10.2019 to all the Secretaries of District Legal Services Authority to ensure that the disbursement to the beneficiaries is made in a phased manner and, for this, compliance reports are to be called for from their bankers. In view of the court, such advisory may not be sufficient inasmuch as it should in first place be the responsibility of the banker of DSLSA to secure proper compliance, if necessary by requisite follow-up.

During the course of hearing on the appeal, under directions from the court, DSLSA has compiled and collated data respecting the cases in which interim compensation had been granted over a calendar year (2017 having been chosen by DSLSA) and the present status of such cases. As per the statistics presented, the DSLSA had paid, in 2017, interim compensation in as many as 247 criminal cases of various districts of Delhi. From out of them, 175 cases are stated to be still pending trial, 33 having resulted in closure of the proceedings either upon conviction or for other reasons such as abatement, abscondance or the case having been sent "untraced". The remaining 39 cases, which is quite a substantial portion of the entire lot, are reported to have resulted in "acquittal".

The ratio of cases resulting in acquittal, particularly where the finding of the court is that no crime was committed (as shown by some of the judgments) seems to be too high to be ignored. The figures which have been presented give rise to further cause of concern as to the possible abuse of the funds made available by the State for purposes

of victim compensation scheme. This possibility of abuse of public funds will have to be plugged by suitable guidelines. Suggestions given by DSLSA so far do not seem to cover this area.

The learned counsel for DSLSA sought time to come up with further report.

Be listed on 21.10.2019."

52. On 21.10.2019, the report from DSLSA being awaited, upon further consideration, it was directed thus:-

"No report has been submitted in terms of the directions in the order dated 14.10.2019. The learned counsel for DSLSA seeks extension of time.

It may be added here that some of the judgments rendered in the 39 cases resulting in "acquittal", as referred to in the order dated 14.10.2019, have given rise to further cause for concern. Particularly, two cases stand out, they being sessions case no. 100/2017 arising out of FIR no. 172/2016 of police station Lahori Gate titled State vs. Prem Kumar @ Rajesh decided by Additional Sessions Judge -02 (Central) on 20.08.2018 and sessions case no. 62/2016 arising out of FIR No. 142/2016 of police station Safdarjung Enclave titled State vs. Rajesh Kumar decided by judgment dated 26.04.2019 by Additional Sessions Judge (Special Fast Track Courts South district). In each of those cases, the prosecutrix was an adult woman, in the first mentioned case she disowned the entire case explaining that she had levelled false charges at the instance of her second husband because of his old enmity with the accused. In the second case, the evidence of the prosecutrix was found to be not credible. In both, the respective accused have been acquitted. Yet, in each, directions have been given for payment of compensation by DSLSA. In the first mentioned case, such directions have been given

because the prosecutrix was found to be poor and in need of financial help from the court. In the second, the compensation has been ordered to be paid to the child born out of the physical relationship between the prosecutrix and the accused who, in the opinion of the trial court, would suffer the stigma of being called "illegitimate"

Aside from the report called for, by directions in the order dated 14.10.2019, the Member Secretary, DSLSA shall also make a further report on the following aspects:-

> *(i) Steps, if any taken, under the Delhi Victim Compensation Scheme, for recovery of compensation (interim or final) in all such cases as have ended in acquittal at the trial court or in appeal.*
> *(ii) Steps, if any taken, under the Delhi Victim Compensation Scheme, for recovery of compensation (paid to the victims) from the person(s) found guilty for the crime.*
> *(iii) The details of payment of compensation, if any made, in the wake of directions by afore-mentioned judgments dated 20.08.2018 (FIR no. 172/2016 of police station Lahori Gate) and 26.04.2019 (FIR No. 142/2016 of police station Safdarjung Enclave), along with copies of all relevant documents including the order(s) of Victim Compensation Committee, communication to the concerned bank etc.*

A report in light of above directions, and in the directions in the order dated 14.10.2019, must be filed well in advance before next date of hearing with copy of the opposite parties.

Be listed for final hearing on 1st November, 2019."

53. The member Secretary, DSLSA, in compliance with the above, filed further report dated 30.10.2019. He has expressed some difficulty of the banker of the legal services authority about staggered payments referring in this context to lack of any mechanism of control or supervision over the other banks (i.e., the banks of the beneficiaries). It has been conceded in the said report of DSLSA that till date no action has been initiated by the legal services authority for recovery of compensation from the wrong-doers or from persons who may have wrongfully received such benefits.

54. Answering the queries with regard to the directions of the criminal courts in cases arising out of FIR No.172/2016 of police station Lahori Gate and FIR No.142/2016 of police station Safdarjung Enclave, the Member Secretary, DSLSA by his report dated 30.10.2019, has confirmed that the matter arising out of latter case is still pending for consideration before District Victim Compensation Committee, but with reference to former (i.e., FIR No.172/2016 of police station Lahori Gate) it has been reported that the District Victim Compensation Committee of Central District, by its order dated 18.09.2018, decided to award compensation of Rs. three lakh to the prosecutrix of the said case. A copy of the said order dated 18.09.2018 of District Victim Compensation Committee has been submitted with the report which also confirms that the amount was disbursed by instructions issued to the concerned bank on 06.10.2018.

55. Copies of the judgments of the other cases which have ended in acquittal (as mentioned in above quoted proceedings of 14.10.2019

and 21.10.2019) were also submitted and, upon perusal, it has been noticed that the findings returned in some of them are that no offence as alleged had been proved to have been committed. The case at hand would add to the said list, such result being reached at the stage of first appeal. It is essential to take note of some facts respecting a few of the other above-mentioned judgments.

56. Six of the above-mentioned other cases involved allegations, *inter alia*, of the offence of rape or of penetrative sexual assault (or its attempt) punishable under Protection of Children from Sexual Offences Act, 2012 (POCSO Act). Each of these cases have resulted in the accusations constituting such offences being disbelieved and the respective accused being acquitted. The brief facts and particulars may be summarized thus :-

(a). In Sessions case no.58830/2016, arising out of FIR no.1148/2015 of police station S.P. Badli, leading to the judgment of acquittal dated 22.10.2016 rendered by Additional Sessions Judge -01 (North), the accused was put on trial on charge for offences punishable under Sections 363, 366, 376(2)(i) IPC & 4 POCSO Act, the prosecutrix having been described as a girl aged fifteen years. The prosecutrix herself discredited the prosecution case by deposing that there had been no physical relationship established with her.

(b). In Sessions case no.59294/2016, arising out of FIR no.434/2016 of police station Bhalswa Dairy, leading to the judgment of acquittal dated 08.01.2019

rendered by Additional Sessions Judge -01 (North), the accused was put on trial on charge for offences punishable under Sections 363, 366, 376(2)(f)(i), 506(II) IPC & 6 POCSO Act, the prosecutrix having been described as a girl aged eleven years. The testimony of the material witnesses i.e. victim (PW-1) and her mother (PW-2) as to commission of offences was found "*not reliable and trustworthy*".

(c). In Sessions case no.44621/2015, arising out of FIR no.196/2015 of police station Bhajan Pura, leading to the judgment of acquittal dated 16.02.2017 rendered by Additional Sessions Judge -01 (North-East), the accused was put on trial on charge for offences punishable under Sections 376, 506 IPC & 6 POCSO Act, the prosecutrix having been described as a girl aged seven years. The accusations and the evidence led about commission of offences were disbelieved, the conclusion being that the prosecution had failed to prove its case.

(d). In Sessions case no.53675/2016, arising out of FIR no.1009/2016 of police station Mangol Puri, leading to the judgment of acquittal dated 19.03.2019 rendered by Additional Sessions Judge -01 (North-west), the accused was put on trial on charge for offences punishable under Sections 376, 323, 506 IPC & 6 POCSO Act, the prosecutrix having been described

as a girl aged less than three years. The evidence was found to be not credible, the conclusion being that the prosecution had failed to prove commission of any offence.

(e) In sessions case no. 361/2017, arising out of FIR no. 295/2017 of police station Bhalswa Dairy, leading to the judgment of acquittal dated 23.10.2017, rendered by Additional Sessions Judge-01 for North District, the accused was put on trial on charge for offences punishable under Sections 376 IPC and 6/10 POCSO Act, the prosecutrix being described as his own minor daughter. At trial, the prosecutrix and her mother deposed that false charges had been leveled on advice of some NGO to force the accused to give up alcohol. The offence was held not proved.

(f). In Sessions case no.14/2017, arising out of FIR no.323/2016 of police station Sonia Vihar, leading to the judgment of acquittal dated 20.04.2018 rendered by Additional Sessions Judge -01 (North-East), the accused was put on trial on charge for offences punishable under Sections 363, 366, 376 IPC and 6 POCSO Act, the prosecutrix having been described as a girl who had not attained majority. The evidence captured in the judgment shows it to be a possible case of elopement, the prosecutrix having testified that she had gone with

the accused of her own volition, having stayed with him though there being no physical relationship established.

57. As per the data presented in tabular form, DSLSA had granted interim compensation in all the above mentioned six cases to the prosecutrix, it being in the sum of Rs.30,000/- each in the first and last mentioned matters (i.e. FIR nos.1148/2015 and 323/2016) given on 27.02.2017 and 24.10.2017, the amount in other four cases being Rs.50,000/- each granted by orders dated 27.02.2017, 31.05.2017, 07.06.2017 and 22.06.2017 respectively.

58. There are five cases involving, *inter alia*, the charge of rape, each levelled by an adult woman, accusing the respective accused brought to trial of having subjected her to sexual intercourse on the false promise of marriage. These cases have also similarly resulted in acquittal, the finding returned at the end of respective trial being that the physical intimacy was consensual. The brief facts and particulars are as under :

(a). In Sessions case (number not given), arising out of FIR no.1601/2015 of police station Seema Puri, leading to the judgment of acquittal dated 04.02.2019 rendered by Additional Sessions Judge-02 (Special Fast Track Court) for Shahdara District, the accused was put on trial on charge for offences punishable under Sections 376, 506, 313, 406 IPC, the prosecutrix having been described as a receptionist in a clinic, she allegedly having been approached by the accused during his visits at her workplace. The prosecutrix herself testified that

she had entered into physical relationship with her own consent and free will, there being no force applied thereby disproving the charge.

(b). In Sessions case no.2605/2016, arising out of FIR no.150/2016 of police station Sunlight Colony, leading to the judgment of acquittal dated 27.10.2018 rendered by Additional Sessions Judge (Special Fast Track Court) for South-East District, the accused was put on trial on charge for offences punishable under Section 376 IPC, the prosecutrix having attributed physical intimacy after formal engagement (for marriage) with the accused. The trial court held that the charge for offence had not been proved, the evidence showing that the relationship was consensual.

(c). In Sessions case nos.231/2014 and 2232/2016, arising out of FIR no.1036/2014 of police station Govind Puri, leading to the judgment of acquittal dated 26.07.2017 rendered by Additional Sessions Judge (Special Fast Track Court) for South-East District, the accused was put on trial on charge for offences punishable under Sections 376 and 384 IPC, the prosecutrix having been described as a college student who had befriended the accused, he having subjected her to forcible physical relationship. As per the judgment of the trial court, there was no medical evidence available in corroboration, the testimony of the

prosecutrix about commission of offences being disbelieved.

(d). In Sessions case no.19/2016, arising out of FIR no.1049/2013 of police station Mehrauli, leading to the judgment of acquittal dated 31.07.2018 rendered by Additional Sessions Judge (Special Fast Track Court) for South District, the first accused was put on trial on charge for offences punishable under Sections 376, 354B, 506, 509, 34 IPC (the other charged for sharing common intention), the prosecutrix having been described as a married woman whose husband had abandoned her and the daughter, the accused having allured her to be in sexual intimacy, she delivering a daughter as a result. The trial judge concluded that the relationship was consensual, no offence having been committed.

(e). In Sessions case no.35/2017, arising out of FIR no. 73/2017 of police station Saket, leading to the judgment of acquittal dated 01.11.2018 rendered by Additional Sessions Judge (Special Fast Track Court) for South District, the accused was put on trial on charge for offences punishable under Sections 376 and 313 IPC, the prosecutrix having described the accused as a neighbour who had proposed marriage to her and thereafter had established physical relationship on false promise of marriage. It was proved at the trial that the

prosecutrix was married to another person and had two children from out of such wedlock, the claim of death of her husband being not substantiated. Crucially, it was held that the physical intimacy was consensual, there being no occasion for false promise of marriage.

59. Interim compensation was granted by DSLSA in all the above mentioned cases by orders dated 22.05.2017, 30.05.2017, 04.07.2017, 13.09.2017 and 24.10.2017, the amount disbursed to the prosecutrix in each being Rs.35,000/-, Rs.25,000/-, Rs.50,000/-, Rs.1,00,000/- and Rs.1,00,000/- respectively.

60. There are two cases which also need notice, each involving allegations of use of duress or conceit, the prosecutrix in each being an adult woman, the evidence having been disbelieved, the accused being consequentially acquitted :

(a). In Sessions case no.52647/2016, arising out of FIR no.1105/2015 of police station Mangol Puri, leading to the judgment of acquittal dated 07.02.2019 rendered by Additional Sessions Judge (Special Fast Track Court) for North West District, the accused persons were put on trial on charge for offences punishable under Sections 376(2), 498A, 506, 34 IPC, the allegations (of rape) primarily being against the father-in-law (one of the accused), he having allegedly forced himself upon her with the suggestion that she could conceive from physical intimacy with him since she had failed to do so with her husband (also an

accused). The trial court disbelieved the evidence and rejected the charge of use of force, deceit, fraud and absence of consent.

(b). In Sessions case no.1553/2016, arising out of FIR no.419/2014 of police station Jaitpur, leading to the judgment of acquittal dated 07.10.2017, rendered by Additional Sessions Judge (Special Fast Track Court) for East District, the accused was put on trial on charge for offences punishable under Sections 376, 328, 323 IPC, the prosecutrix having alleged that the accused had taken advantage of her when she had contacted him in some context, subjecting her to forcible sexual intercourse after administering some intoxicant. The trial court held that the evidence was not worthy of reliance, the commission of offences not being proved.

61. In both the above mentioned cases, DSLSA had granted interim compensation in the amounts of Rs.50,000/- and Rs.1,00,000/- by orders passed on 23.01.2017 and 03.03.2017 respectively.

62. In yet another case, the charge was brought, *inter alia,* of offences of rape and outraging the modesty, the prosecutrix being a maid-servant in household of one of the accused. The Sessions case no.216/2015 arising out of FIR no.507/2015 of police station Rani Bagh ended in acquittal by judgment dated 02.06.2018 of Additional Sessions Judge (Special Fast Track Court) for North West District since the prosecutrix herself disowned the accusation explaining some

pressure. The DSLSA had earlier granted Rs.50,000/- to her by order dated 08.09.2017 as interim compensation.

63. Two other cases, in particular, stand out as stark examples of most irresponsible manner in which the jurisdiction to grant compensation under the cover of Section 357A Cr. PC has been exercised. These facts need to be noticed a little more elaborately.

64. Sessions case no.62/2016 had come up before the court of the Additional Sessions Judge (Special Fast Track Court) for South District on the basis of charge-sheet submitted pursuant to investigation in FIR no.142/2016 of police station Safdarjung Enclave. The accused was put on trial on the charge for offence under Section 376 IPC. The prosecutrix had alleged that she had befriended the accused who was working as a driver in the same household where she had been engaged as a cook. She attributed proposal of marriage by the accused, he having established physical relationship with her after promising marriage, having moved in to start living with her as her husband. The trial ended in judgment of acquittal passed on 26.04.2019, the testimony of the prosecutrix as to commission of offence having been disbelieved. It appears that the evidence also showed that due to the physical intimacy with the accused, the prosecutrix had given birth to a child. While acquitting the accused of the charge for the offence of rape, finding the testimony of prosecutrix unworthy of reliance, the trial judge proceeded to direct compensation to be given by DLSA to the child, setting out its reasons as under :-

> *"As per the allegations proved in this case, one female child was born on 04.09.2016 out of the*

sexual intercourse committed between the prosecutrix and Rajesh Kumar. Although, the prosecution has failed to prove the ingredients of offence of rape as defined in Section 375 Cr. PC against Rajesh Kumar but facts cannot be lost sight of that a female child has been born in the course of relationship between the prosecutrix and Rajesh Kumar and the said child will suffer the stigma of being called illegitimate. It is also to be noted that the prosecutrix is a poor person who is making a living by working as domestic help. In the circumstances, I will be failing in my duty if no order is passed for the welfare of the child and to protect her future.

x x x

In this, child who has been born out of relationship between the prosecutrix and Rajesh Kumar is the victim, as the said child has acquired the status of being illegitimate for no fault of her and at the same time, said child will suffer various hardships including emotional and mental trauma on account of lack of care and protection which would have been otherwise provided by a father in case she was a legitimate child. "

(emphasis supplied)

65. It may be mentioned here that as per the report of DSLSA, by an earlier order dated 23.05.2017 it had granted interim compensation of Rs. one lakh to the prosecutrix. Mercifully, as confirmed by the report dated 30.10.2019 of Member Secretary, DSLSA no further payment of compensation in this case has been made pursuant to directions of the court of sessions as quoted above, the matter being still pending before District Victim Compensation Committee. Yet,

the interim compensation which was granted earlier remains what may now be classified as *"wrongful gain"* to the prosecutrix.

66. The facts of Sessions case no.100/2017, decided by Additional Sessions Judge-02 (Central) – same judge as had rendered the judgment under appeal herein – are even more glaring. It had arisen out of charge-sheet laid after conclusion of investigation into FIR no.172/2016 of police station Lahori Gate. The accused was put on trial on charge for offences under Sections 328, 376 and 506 IPC and Section 66-E of IT Act. The husband of the prosecutrix had died in 2013 and she had a child aged about eight years when she got married again on 24.02.2016. The accused against whom she levelled allegations leading to the said prosecution was found at the trial to be the brother of the wife of younger brother of her second husband. She alleged that he had taken her to a guest house on some pretext and having administered to her some substance in a soft drink had committed forcible sexual intercourse without her consent. She, however, deposed at trial that the accusations were false, levelled under pressure from her second husband because he had some enmity with the accused. She denied that she had ever been taken by the accused to any such place or having subjected her to forcible sexual intercourse. In this view, the trial court dispensed with the statement of accused under Section 313 Cr. PC and acquitted him by judgment dated 20.08.2018. But, having done so it held and directed as under :-

> *"46. Since prosecutrix has been examined and her appearance reveals that she is from very poor family and needs financial help from the Courts. Although, she has been turned hostile in the present* case *but she has specifically deposed that she has made present*

complaint on the pressure of her husband who have deserted her.

47. Considering the status of the prosecutrix, this court is of the view that compensation of Rs.3 Lacs be given to the prosecutrix for her need.

48. Copy of this order be sent to the DLSA, Central District, Delhi for necessary action."

(emphasis supplied)

67. It may be mentioned here that earlier, by order dated 06.10.2017, the DSLSA had paid Rs.50,000/- as interim compensation to the prosecutrix. Shockingly, the District Victim Compensation Committee, by its order dated 18.09.2018, awarded compensation in the sum of Rs. three lakh to the prosecutrix on the basis of above-quoted directions of the court of sessions. Copy of the order dated 18.09.2018, as submitted with report dated 30.10.2019 of Member Secretary, DSLSA reveals a mechanical approach. The committee headed by a senior judicial officer simply referred to the judgment dated 20.08.2018 and recorded the statement of the victim (during inquiry) wherein the prosecutrix described herself as the "victim". The committee did not care to take note of the result of the criminal case, not the least the deposition of the prosecutrix at the trial wherein she had admitted the allegations (of rape) to be false and motivated. The order passed in the said case seems to be based on some template used in every next case. Apparently, there was total non-application of mind.

68. Interestingly, clause 9(5) of the second Part of Delhi Victim Compensation Scheme, 2018 provides thus :

> "*(5) In case trial/appellate court gives findings that the criminal complaint and the allegation were false, then Legal Services Authority may initiate proceedings for recovery of compensation, if any, granted in part or full under this Scheme, before the Trial Court for its recovery as if it were a fine."*

69. Clause 10(7) of the first Part of the aforementioned Scheme contains a similar provision vis-a-vis offences other than those involving women victims.

70. Delhi Victim Compensation Scheme, 2018 also permits recovery of compensation (paid to the victim) from the person found responsible for the crime and, in this context, clause 15 of its second Part may be quoted thus :

> "*15. <u>Recovery of compensation awarded to the victim or his/her dependent (s)</u> – Subject to the provisions of sub-section (3) of section 357 A of the Code, the Delhi State Legal Services Authority, in proper cases, may institute proceedings before the competent out of law for recovery of the compensation granted to the victim or his/her dependent (s) from person(s) responsible for causing loss or injury as a result of the crime committed by him/her."*

71. From the reports of Member Secretary, DSLSA, it appears that the above provisions have not been put to any use till date.

72. This court is not aware of the status of appeal or any other petition presented before any court by any person after the above mentioned judgments were rendered. Concededly, there has been no endeavour made by the DSLSA to recover the compensation which was paid in any of these cases.

73. The Code of Criminal Procedure, 1973 defines "victim" by Section 2(wa) as under :-

> *"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;"*
>
> (emphasis supplied)

74. The plain language of the statutory definition makes it clear and vivid that in order to be treated as a "*victim*", for purposes of criminal law, it must be established that there has been an act of commission or omission indulged in which has resulted in loss or injury being caused to the person. It is inherent in this scheme that commission of an offence punishable under the criminal law is a pre-requisite to the rights of the person who has consequently suffered loss or injury – in case of such person having died, his or her guardian or legal heir being included. To put it conversely, if no offence has been committed, for purposes of criminal law, there cannot be a victim. This is amply clear from the language of sub-Section (1) of Section 357A Cr. PC wherein provision of scheme and fund for purposes of compensation to the victim or his dependents is mandated, the expression "*victim*" being qualified by the words "*who have suffered loss or injury as a result of the crime and who require rehabilitation*" (emphasis supplied).

75. Some confusion may prevail on account of the language employed in sub-sections (3) and (4) of Section 357A Cr.P.C., which have been quoted earlier. Sub-section (3) deals with a situation where a case is brought for prosecution of an individual but it fails because,

in the opinion of the criminal court, there is either not sufficient evidence to put him on trial, this resulting in order of "*discharge*" or when the prosecution fails to prove the guilt, leading to judgment of "*acquittal*". The trial court, notwithstanding such result of discharge or acquittal of the accused, may "*make recommendation for compensation*" to the victim, provided a case is made out that s/he "*has to be rehabilitated*". Sub-Section (4), on the other hand, covers a situation where no prosecution is launched or, borrowing the expression used in the statute "*where no trial takes place*" because the "*offender is not traced or identified*". Yet, the legislation permits the Legal Services Authority to make an "*award of compensation*" in terms of sub-Section (5) if "*the victim is identified*". These provisions, however, are not to be misconstrued to say that compensation may be ordered under either of these clauses – whether or not trial take place – whatever be the result of investigation. It is inherent in the use of the expression "*victim*" in each that commission of crime qua the person "*identified*" as "*victim*" is *sine-qua-non*. The award of compensation, whether on recommendation by the court or by the DLSA upon application being made to it, under Section 357A Cr.PC necessarily requires commission of an offence, existence of a victim (a person who may have suffered "*loss or injury*" on account of commission of such offence) and her need "*to be rehabilitated*". It must be added that the criminal court cannot "*direct*", but only "*make recommendation*", for compensation to be paid under Section 357A Cr. PC and, before it does so, it must hold an inquiry to find as to whether there is possibility of compensation to be ordered to be paid by the accused whose guilt has been proved under Section 357 Cr.PC

and, if so, whether such compensation payable by the accused (under Section 357 Cr. PC) would be "*adequate*" or not.

76. There have been stories of false claims for compensation under the criminal law floating around for many a year. The other cases referred to above seem to only confirm the possibility of such theories being true. Since the data which has come up before this court is limited to one year (2017), and out of the total 247 cases in which interim compensation was paid in that year by the DSLSA, only 72 have reportedly reached some conclusive stage (till the time of compilation of data), what may have revealed itself as gross abuse may be only tip of an iceberg. The number of cases (39) in which acquittal has been ordered with clear finding that the commission of the offence was not proved when contrasted against the number of cases (33) which stand closed with finding of conviction (or on abatement, untraced etc.) being the result is too large to be ignored. The last two earlier mentioned other cases – those arising out of FIR no.142/2016 of police station Safdarjung Enclave and FIR no.172/2016 of police station Lahori Gate – are too appalling to be treated as stray aberrations. These are judgments rendered by senior judicial officers of sufficient standing. Recommending compensation to be paid (in the first case) to the child of the prosecutrix after disbelieving her, only because the child was begotten without a lawful marriage and might suffer the stigma of illegitimacy and directing compensation (in the second case) to be paid by DSLSA to the prosecutrix, who has admitted on oath that the case was falsely engineered with ulterior motive, only because she is from a poor family and in need of financial help are illustrations of grossly

irresponsible use of public funds governed by Victim Compensation Scheme.

77. Interestingly, DSLSA on one hand submits that the criminal courts are not authorized by law to issue "order" for compensation to be paid under section 357-A Cr.P.C. but may *"make recommendation"* it being the domain of the legal service authority to pass award in terms of the Victim Compensation Scheme. Yet, in the case arising out of FIR No.172/2016 of police station Lahori Gate the order for payment of compensation of Rs. three lakh to the prosecutrix of that case was treated as binding, justification being offered to the effect that the trial court *"had passed specific orders specifying the amount of compensation"*. This court is unable to locate any such direction in (paras 47 and 48 of) the judgment dated 20.08.2018 as quoted earlier. Be that as it may, it must also be noted that in the order dated 18.09.2018 of District Victim Compensation Committee it has been found that *"the victim falls under serial No.3 of the Schedule to the Delhi Victim Compensation Scheme, 2015".* For clarity, it may be mentioned that serial no.3 of the schedule appended to 2015 Scheme, as has been referred to, relates to a case of "rape". The committee failed to note that, by the same judgment wherein compensation had been recommended, the trial court had found that no such offence had taken place.

78. The compensation in the criminal law is not a matter of *largesse*. To say the least, the manner in which such orders have been passed smacks of gullibility or unacceptable tendency to be populist on the part of the criminal courts throwing law and caution to winds

resulting in public money (Victim Compensation Fund) being squandered.

79. From the above facts and material, the possibility of false claims of compensation being brought under the cover of trumped up charges of commission of crime cannot be ruled out. The utilization of victim compensation fund by legal services authority is expected to be based on scrutiny of the claims by inquiry guided by the provisions of the scheme under section 357-A Cr.P.C. It is assumed that before interim compensation is granted, the concerned officers of legal services authority would be searching for *"tangible material"* confirming the commission of the offence and the need for urgent interim compensation for the victim who has been properly identified. But, since the award of interim compensation is *"subject to final determination"*, it is necessary that the grant of such interim relief is subject to sufficient safeguards such that the possibility of false claims going through may be plugged and such that money if wrongly paid is retrieved. After all, the fund provided for Victim Compensation Scheme is public money, held in trust, to be utilized only for the intended purposes.

80. In case of award of final compensation there can be, generally speaking, no case of undue hurry in matter of disbursement. By the time the court renders its final decision determining the issues as to the commission of crime, complicity and guilt of the person brought to trial and the entitlement to compensation, long time would have lapsed. The emergent needs, if any, would ordinarily have been taken care of through dispensation under the jurisdiction to grant interim

relief or direct medical aid and assistance. The findings on the core issues – commission of the offence and the complicity of the person charged – before they become final and binding would almost invariably be tested in appeal. This is why the enforcement of the sentence may be suspended in terms of Section 389 Cr. PC and the dispensation of the amount of compensation awarded expected to be deferred for later in terms of Section 357(2) Cr. PC. In the considered opinion of this court, such inhibition against immediate release of the amount of compensation should also apply to the compensation awarded under Section 357A Cr. PC in as much as the decision of the trial court on the issue of inadequacy of the compensation under Section 357 Cr. PC or as to need of the victim to be "*rehabilitated*" by compensation from victim compensation scheme must also be similarly subject to scrutiny by the superior forum of appellate or revisional jurisdiction.

81. There is no doubt that the public money placed at the disposal of the judicial organ cannot be allowed to be abused, misused or pilfered. The victim may be entitled to compensation, under Section 357A Cr. PC, even in a situation where the offender is not traced or identified or where sufficient evidence to bring him to trial or prove his guilt cannot be gathered. But this does not mean that a person claiming to be the victim of a crime can receive money under Section 357A Cr. PC, or for that matter under any other similar provision of law, without it being proved that he or she has been subjected to a crime for which such compensation can be ordered or paid. In this view, the receipt of compensation by the complainant may turn out to be a wrongful gain if the decision of the trial court holding the

accused guilty or returning a finding as to commission of offence were to be upturned by the appellate or revisional court. The court cannot allow the judicial process to be used for wrongful gain at the cost of the public exchequer. It is, thus, incumbent that the legal services authority – custodian and trustee of the victim compensation scheme and fund – puts in position sufficient safeguards *vis-a-vis* disbursement.

82. A series of lapses is found to have occurred in the case from which this appeal has arisen and which need to be flagged and summarised.

83. As has been noticed in the context of the judicial review of the decision rendered by the trial court in the judgment under appeal, the finding as to the commission of the offence of rape was returned in the teeth of the admission of the prosecutrix, a major, that she had indulged in consensual physical relationship with the appellant (accused). As observed earlier, the trial court proceeded to find the appellant guilty more as a case of moral turpitude than on parameters of the requisite ingredients of the penal provision. Having found the appellant guilty, while considering the question of sentence, the trial judge did not at all examine the subject of compensation in terms of Section 357 Cr. PC. Instead, it allowed the application of DCW to direct DLSA to pay compensation which apparently would be a direction under Section 357A Cr.PC. Such order to DLSA to pay compensation, in the given facts and circumstances, was uncalled for since there was no scrutiny made, or satisfaction recorded, as to the

possibility of compensation under Section 357 Cr. PC, if awarded, being "*not adequate*".

84. The District Legal Services Authority acted on the decision of the trial court and treated it as "*recommendation*" under Section 357A Cr. PC. It took note of the result of the sessions trial but then, quite apparently, did not at all go into the merits, assumably because the judgment of the court of sessions was a judicial order which would bind the authority. As is shown from the order dated 20.02.2018 of Victim Compensation Committee (quoted earlier) the statement of the prosecutrix was recorded after the decision by the court of sessions. In the said statement before the Committee the prosecutrix described herself as the "victim". This statement was clearly untrue if seen against the backdrop of her deposition at the trial which was noted in the judgment of the court of sessions. If the District Victim Compensation Committee had taken care of going through the evidence on which the said decision had been rendered, it might have gone a little slow in passing the order of compensation on 20.02.2018 or, at least, in the follow-up action in its wake and instead awaited the result of the appeal.

85. As noted earlier, the trial judge had rendered his decision by passing the order on sentence on 06.01.2018. It may be noted that the order was corrected by a clarification issued on 02.02.2018. The period within which appeal could have been preferred against the said decision, thus, would have ended on 04.03.2018. The appeal had been submitted through jail visiting advocate of Delhi High Court Legal Services Committee on 05.02.2018 and came up before the

court on 19.02.2018. The District Victim Compensation Committee decided, by order dated 20.02.2018, to pay enhanced compensation of rupees three Lakhs to the prosecutrix and released the said amount by a communication dated 15.03.2018. There is nothing in the documents submitted with the reports of Member Secretary, DSLSA showing any effort on the part of the authority to ascertain if any appeal had been filed and, if so, its status.

86. Though the decision (of DLSA) expressly stated that the money would be made available to the prosecutrix in a phased manner, it was remitted in lump-sum by credit into the account of the prosecutrix by the end of March 2018. The banker of DSLSA was not asked to ensure disbursement of the money in a phased manner, there being no accountability placed on the banker of the beneficiary as to due compliance. The decision to pay the money in staggered manner, in this view, was more of a lip service. As is clear from the proceedings recorded on the file of this appeal, the exercise to retrieve the money from the prosecutrix turned out to be a very arduous task, it having come back to the victim compensation fund, upon being returned by the prosecutrix in piece-meal manner.

87. Against the backdrop of the above facts and circumstances, this court, by orders dated 24.05.2019 and 14.10.2019, had called upon the Member Secretary, DSLSA to make submissions in writing as to whether any guidelines can be laid down on the subject. Some suggestions have been given by the Member Secretary, DSLSA in his reports dated 17.09.2019 and 30.10.2019. This court has given anxious consideration to the same but is of the view that, in the

present context, a large number of guidelines which have been proposed are nothing but reiteration of the letter of the existing statutory law or of extant Delhi Scheme. To illustrate this point, reference may be made to Section 357A Cr. PC wherein the criminal court has the jurisdiction to make "*recommendation"* for compensation rather than *"direct"* such compensation from the victim compensation fund. Similarly, it is trite that before the trial court has resort to Section 357A Cr. PC for recommending compensation, it must record satisfaction as to inadequacy of the compensation that can be ordered under Section 357 for "*rehabilitation*" of the victim. The Delhi Victim Compensation Scheme 2018, which is in force, has the statutory backing. The money paid there-under may be recovered from the person found responsible for the crime (in terms illustratively of clause 15 of the second part). Similarly, the scheme also permits the money paid wrongly to be recovered back if the findings are returned to the effect that the criminal complaint and the allegations were "*false*" [clause 10(7) of first part and clause 9(5) of second part]. But then, there concededly has never been any action initiated by the legal services authority for such recoveries to be effected. The suggestions on above lines made in the report of the Member Secretary, DSLSA should rather be a reminder to the legal services authorities themselves of the need to put such provisions of the scheme to action.

88. In the opinion of this court, the case at hand, as also the cases (of acquittal of 2017) referred to earlier, should be a wake-up call for possibility of abuse of the victim compensation fund to be plugged by suitable amendments to the Delhi Victim Compensation Scheme

2018. Lest the prevalent practices in the criminal courts of Delhi, as illustrated by numerous instances quoted above, de-generate into a well-entrenched financial scam, corrective measures need to be adopted with a sense of urgency.

89. This Court thus holds that :-

(i). The obligation of the criminal court to consider direction for payment of compensation under Section 357 Cr. PC (as indeed under other provision of law such as Section 5 of Probation of Offenders Act) is a matter of inquiry by the criminal court and the amount paid there-under is subject to recovery from the person found guilty for the offence the commission of which has been proved.

(ii). The Victim Compensation Fund set up by the State in terms of the Victim Compensation Scheme under Section 357A Cr. PC is at the disposal of Legal Services Authority and the criminal court in *seisin* of the case may only "*make recommendation*" to, but not "*direct*", such authority to pay compensation to the victim (or his dependents) from such fund. In this view, the legal services authority before it decides to award compensation and disburses the amount must make proper inquiry to independently find whether a case is made out in law, and under the scheme, for such compensation to be paid guided, of course, by the

evidence led at trial and conclusion of the court based thereupon.

(iii). Before making a recommendation under sub-Section (2) of Section 357A Cr. PC for compensation to be paid in a criminal case wherein a person has been found guilty of complicity in the crime which has been proved, the criminal court must make inquiry as to whether :

(a). The victim (or his dependents) had suffered "*loss or injury as a result of the crime*" and "*require rehabilitation*";

(b). the compensation can be ordered to be paid under Section 357 Cr. PC by the convict;

(c). the compensation awarded under Section 357 Cr. PC is "*not adequate*" for "*rehabilitation*";

(iv) If a criminal case ends in "*acquittal*" or "*discharge*" of the person arraigned as the accused, the criminal court may "*make recommendation for compensation*" if :

(a). the commission of the offence has been duly proved;

(b). the victim of such offence has been duly identified; and

(c). there is a case made out of "*loss or injury as a result of the crime*" suffered by such victim requiring "*rehabilitation*".

(v). If the investigation into the crime which is alleged does not lead to the offender being "*traced*" or "*identified*", the legal services authority may award "*adequate compensation*" but, before it does so, it must hold an enquiry and find, on the basis of "*tangible material*", that :

(a). the crime was in fact committed;

(b). there is a victim duly identified who has "*suffered loss or injury as a result of the crime*" and requires "*rehabilitation*".

(vi). The authorisation in law by virtue of sub-section (6) of Section 357A Cr. PC to arrange for "*immediate first-aid facility or medical benefits*" or "*any other interim relief"* to be made available to the victim, on the certificate of police or the magistrate also necessarily requires due proof, on the basis of "*tangible material*", of commission of an offence and it having resulted in loss or injury on which account the victim is in need of being helped "*to alleviate the suffering*"

(vii). The payment of interim compensation under the Victim Compensation Scheme is "*subject to final determination*" of the right to receive compensation under the law and, therefore, it must be awarded and disbursed with appropriate riders to take care of the possibility of being recovered back in the event of it being ultimately concluded that the accusations were unfounded.

(viii). Unless the exigencies of the case so demand, compensation (whether interim or final) ought not be released by DSLSA in lump sum, care to be taken that the money meant for rehabilitation of the victim is not frittered away and also such that in the event of superior courts in hierarchy upturning the decision, the money if wrongly paid, can be recovered back and, for such purposes, the existing practice of DSLSA, as also ordained by various provisions of the Delhi Victim Compensation Scheme, 2018, to release the compensation in a phased manner should be scrupulously followed and ensured to be complied with by all concerned including the bankers of the authority and the beneficiary.

(ix). Unless the exceptional circumstances of the case so demand, the final compensation awarded by DSLSA in terms of the Victim Compensation Scheme under sub-Section (3) of Section 357 Cr. PC ought not

be released by DSLSA unless and until the period allowed for bringing a challenge to the decision of the trial court (by appeal or a petition) has elapsed or if an appeal (or petition) be presented, before decision thereupon, it being incumbent on DSLSA to approach the superior hierarchal court to seek early release of compensation in case the prevalent circumstances concerning the victim so justify.

90. On the available facts, and in the circumstances, noted above, and, of course, in light of above conclusions, this court directs as under :-

(i). Delhi Victim Compensation Scheme, 2018 be appropriately modified and improved upon keeping in view, *inter alia*, the conclusions reached by this court as summarized above.

(ii). In addition to formal amendment of the Delhi Victim Compensation Scheme 2018, measures be taken by Member Secretary, DSLSA, amongst others, by issuing guidelines and holding sensitization programmes so that there is no abuse of the Victim Compensation Fund and such that it attains its intended objectives.

(iii). The Member Secretary, DSLSA shall formulate the standard operating procedure such that the decisions of the competent authorities to release the

compensation in a phased manner is scrupulously complied with by all concerned – including bankers of the authority and the beneficiary – and there is proper accountability and follow-up.

(iv). The Member Secretary, DSLSA shall create a permanent mechanism for monitoring of the progress and result of investigation or trial of all such cases in which interim relief of compensation has been provided under the Victim Compensation Scheme such that :

(a). In the event of it being found by investigation or at trial that no offence was committed, the money paid to the victim can be recovered back.

(b). In the event of an accused being found guilty, and convicted, the money paid as compensation from the Victim Compensation Fund under Section 357A Cr. PC may be recovered from him.

(v). For ensuring that there is a possibility of the amount to be recovered back from the victim in the eventuality mentioned above, suitable safeguards in the form of appropriate documentation (undertaking, indemnity bond or such like other measures) shall be evolved and adopted by DSLSA for future use.

(vi). The data of 2017 has been referred to in this judgment only by way of illustration. The Member Secretary, DSLSA shall arrange for an appropriate scrutiny of all such past cases where interim compensation was awarded (including those of 2017 noted earlier) and take necessary measures for recovery in accordance with law of such amounts as have been wrongfully paid.

(vii). Such provisions of Delhi Victim Compensation Scheme, 2018 as permit recovery of the amount paid to the victim from the wrong- doer, lying dormant and in disuse, shall be enforced in accordance with law by legal services authority.

91. The appeal is disposed of in above terms.

92. A copy of this judgment shall be circulated by the District & Session Judges amongst all judicial officers under their respective control.

93. The copies of this judgment shall also be sent to the Member Secretary, Delhi State Legal Services Authority and the Chief Secretary, Government of NCT of Delhi for further necessary action at their respective end. A report of action taken on these directions shall be submitted to the court, by the said authorities, within three months.

R.K.GAUBA, J.

DECEMBER 03, 2019
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