

Calcutta High Court (Appellate Side)

Piyali Dutta vs The State Of West Bengal & Ors on 7 July, 2017

W.P. No. 26174 (W) of 2014  
IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
Appellate Side

Piyali Dutta

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mrs. Pritha Bhaumik, Advocate  
Mr. Apalak Basu, Advocate

For the State : Mr. Amitava Mitra, Advocate

For the SLSA : Mr. Kaushik Gupta, Advocate  
Mr. Anirban Tarafdar, Advocate

Hearing concluded on : June 21, 2017

Judgment on : July 7, 2017

DEBANGSU BASAK, J.:-

An acid attack victim seeks compensation.

The claim for compensation is sought to be resisted on behalf of the respondents on the ground that, the incident of acid attack having

happened prior to the introduction of Section 357A to the Code of Criminal Procedure, 1973, the West Bengal Victim Compensation Scheme, 2017 and the Victim Compensation Scheme, 2012 as well as the judgment and order of the Hon'ble Supreme Court reported at 2016 Volume 3 Supreme Court Cases page 669 (Laxmi v. Union of India & Ors.), the petitioner is not entitled to the compensation as sought for.

Learned Advocate for the petitioner submits that, the petitioner is a victim of an acid attack perpetuated on her on August 4, 2005. At that material point of time, the government had no scheme for compensating a victim of acid attack. A victim of acid attack requires substantial assistance to reconstruct, if possible, her personal self and life. She also requires compensation. The provisions of Section 357A of the Code of Criminal Procedure, 1973 was not in place at the time of occurrence of the attack on her. Consequently, the petitioner could not lodge her claim. She is entitled to compensation in the terms of the scheme. The scheme granting compensation and Section 357A both being beneficial in nature, an interpretation should be given to the scheme and the provisions of such section so as to grant relief to the persons for whom such provisions have come into being.

Learned Advocate for the petitioner submits that, Laxmi (supra) is a case where the petitioner therein had suffered an acid attack prior to 2006. The Supreme Court considering the plight of an acid attack victim had directed the authorities to formulate a scheme for the purpose of compensating an acid attack victim. Section 357A of the Code of Criminal Procedure, 1973 was inserted with effect from December 31, 2009. The petitioner in Laxmi (supra) was allowed to receive the compensation, although the acid attack had happened prior to 2006. The petitioner is similarly situated and circumstanced as the petitioner in Laxmi (supra). The incident of acid attack is prior to the amendment to the Code of Criminal Procedure, 1973 and the decision rendered in Laxmi (supra). The petitioner herein and petitioner in Laxmi (supra) being similarly situated and circumstanced, the relief granted in Laxmi (supra) should be extended to the petitioner herein. She also relies upon orders passed by the Bombay High Court in support of the contention that, directions can be issued to pay acid attack victim of incidents of crimes happening prior to Laxmi (supra) as well as the amendment to Section 357A of the Code of Criminal Procedure, 1973. The State has formulated two schemes for compensating an acid attack victim. The first scheme is of November 1, 2012. The same was replaced by a scheme of 2017 coming into being on February 17, 2017. She refers to both the schemes and submits that, none of the two schemes being with a cut-off date, the State should be directed to compensate an acid attack victim prior to the two schemes and the amendment to the Code of Criminal Procedure, 1973. She refers to 2016 Volume 3 Supreme Court Cases page 571 (Parivartan Kendra v. Union of India & Ors.) and submits that, the Supreme Court noticing the plights of the acid attack victims, in addition to the other directions contained therein, has directed the States and the Union Territories to take appropriate steps to include the victim in the disability test. Learned Advocate appearing for the State submits that, every acid attack victim is not entitled to compensation under the scheme of 2017 which is presently under force. The earlier scheme of 2012 was replaced by the scheme of 2017. He refers to clause (4) of the scheme of 2017 and submits that, acid attack victims prior to the insertion of Section 357A of the Code of Criminal Procedure, 1973 are not entitled to claim compensation as an acid attack victim. The incident in respect of the petitioner happening in 2005, the petitioner is not entitled to compensation.

Learned Advocate appearing for the State Legal Aid Services submits on instructions that, an expansive interpretation of the provisions of Section 357A or the directions contained in Laxmi (supra) should not be favoured by the Court. A cut-off date has to come into being. An acid attack victim suffering an incident prior to December 31, 2009 is not entitled to compensation by virtue of Section 357A of the Code of Criminal Procedure, 1973 or the schemes of the State.

The following issues arise for consideration in the present writ petition:-

- (1) Is a person suffering acid attacks prior to December 31, 2009 entitled to compensation under Section 357A of Code of Criminal Procedure, 1973?
- (2) Does the Schemes of the State dated November 1, 2012 and February 17, 2017 cover acid attack victims suffering such attacks prior to November 1, 2012?

(3) Does Section 357A of the Code of Criminal Procedure, 1973 and the Schemes of the State contemplate any date beyond which an acid attack victim would not be entitled to compensation? (4) What, if any, relief or reliefs, are the parties entitled to? In its 154th Report, Law Commission has recommended insertion of a section in the Code of Criminal Procedure, so as to provide for, compensation and rehabilitation of victims of criminal offences, such as rape and acid attack. A writ petition filed by Laxmi seeking a direction to make appropriate amendments in the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 had received the consideration of the Hon'ble Supreme Court. In such writ petition various orders were passed by the Hon'ble Supreme Court from time to time. One of such order is Laxmi (supra). Section 357A came to be inserted in Code of Criminal Procedure, 1973, with effect from December 31, 2009. Such section provides for preparation of a scheme for providing funds for the purpose of compensation to the victims or their dependants who has suffered loss or injury as a result of the crime and who require rehabilitation. Parivartan Kendra (supra) has taken into consideration the orders passed in Laxmi (supra) and has issued directions for the purpose of making the compensation receivable by victims from different states uniform.

Section 357A of the Code of Criminal Procedure, 1973 is as follows:- "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, by the victim is identified, and where no trial takes place, the victim or his dependants 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." The State Government had formulated and notified a Victim Compensation Scheme in 2012 by a notification dated November 1, 2012.

By a notification dated April 27, 2015, the State Government noticing the orders dated July 18, 2013 and February 6, 2013 of the Hon'ble Supreme Court passed in the writ petition of Laxmi, fixed the

quantum of compensation at a minimum of Rs.3 Lakhs for victims of acid attack. The notification does not prescribe that date prior to which, an acid attack victim would not come within its purview in the event of the incident happening prior to a specified date.

By a notification dated February 15, 2017, the State Government exercising powers conferred under Section 357A of the Code of Criminal Procedure, 1973, formulated a scheme, by the name of West Bengal Victim Compensation Scheme, 2017 clauses 2(1)(i), (4) and (9) are relevant in the context. They are as follows:- "2(1)(i). "Victim" means a person who has suffered loss or injury as a result of crime and require rehabilitation."

"(4). Eligibility for Compensation.- where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his/her dependents may make an application to the State or the District Legal Services Authority for award of compensation if,-

(a) he/she has not been compensated for the loss or injury under any other Scheme of the Central or State Government, insurance company or any other institution.

(b) the loss or injury sustained by the victim has caused substantial loss of income to his/her family making it difficult to meet their both ends without any compensation."

"(9). Limitation. - An application for compensation under sub- section (4) of Section 357A of the Act shall be made within one hundred and eighty days from the date of commission of the Crime: Provided that the State or District Legal Services Authority may entertain the application received after the expiry of said period of one hundred and eighty days if it is satisfied that the applicant was prevented by sufficient cause from filing the application in time." Victim is defined in clause (2)(1)(i) of the Scheme of 2017 as a person, who has suffered loss or injury as a result of crime and require rehabilitation. Clause (4) prescribes the eligibility of compensation. It contemplates, grant of compensation to a victim, where the offender is not traced or identified but the victim is identified and where no trial takes place. Clause (9) of the scheme prescribes a time limit for making an application for compensation. It contemplates that, an application for compensation under Section 357A(4) of the Code of Criminal Procedure, 1973, should be made within 180 days from the date of commission of the crime. Such clause provides for an extension of time to the making of the application and its entertainability of the expiry of the stipulated period of 180 days if the applicant is in a position to satisfy that, the applicant had sufficient cause in not filing the application within the prescribed time. The scheme also provides for an appeal if a victim or a dependent of victim is aggrieved by the order of the adjudicating authority. The provision of appeal is in clause (10) of the scheme. The scheme provides a Schedule for the minimum amount of compensation to be paid in respect of injury and losses as described therein. So far as acid attack is concerned, the scheme provides for a minimum amount of Rs.3 Lakhs as compensation. The scheme through the Schedule goes on to say that, if the victim is less than 14 years of age, the amount of compensation shall stand increased by 50% over the amount specified. The Victim Compensation Scheme, 2012, stood cancelled by the Scheme of 2017.

The Victim Compensation Scheme, 2012 and the West Bengal Victim Compensation Scheme, 2017 have come into being pursuant to and by virtue of Section 357A of the Code of Criminal Procedure, 1973. Section 357A does not introduce any criminal liability to the accused. It requires and enforces the directive principles enshrined in the Constitution of India under Article 38 which obligates the State to render social justice to its citizens. Right to receive just compensation as a victim of a crime, notwithstanding the result of the criminal proceedings emanating out of the incident of crime can be read into Article 21 of the Constitution of India guaranteeing Right to life. Right to life, encompasses within its fold, the Right to live with dignity. A citizen cannot be asked to forfeit the right to live with dignity just because such citizen has become a victim of an act of crime. The state is obliged to protect the life and property of its citizen. The victim may or may not receive compensation in the criminal proceedings. The criminal proceedings may result in acquittal of the accused. Disposal of such criminal proceedings with a particular result does not mean that, the incident of crime did not happen or that, the victim is not entitled to or require compensation. In an acquittal, the Court does not find the accused guilty of the crime. Acquittal of the accused, ipso facto, does not mean that, the incident of crime did not take place. The victim of the crime, may require support, monetary and otherwise to mitigate the loss and injury suffered as a result of the crime. The victim may require rehabilitation. Acid attack victims require reconstruction of personal self by reason of the very nature of the crime. The victim will require medical attention. The victim may require counseling. The victim must be assisted in rehabilitating and integrating herself/ himself into the society. All of these processes are time and money consuming. The victim and his/ her family members may not be economically or financially favorably placed to undertake discharge of such onerous responsibilities. The victim may come from less favourable economic and financial strata of the society. It is the state's duty to come in aid to the victim of a crime to ameliorate the suffering to the extent possible. Section 357A of the Code of Criminal Procedure, 1973 and the Scheme of 2017 of the State formulated in exercise of such powers, seek to address such issues and put in ameliorative measures for the victims of the crime. Noticeably, section 357 B stipulates that, the compensation payable by the state government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code, 1860.

Section 357A is a beneficial piece of legislation introduced for the benefit of the victims of a crime. It does not prescribe a time limit. It does not say that, a crime occurring prior to a specified date is not covered thereunder. As noted above, it is not introducing a criminal liability. It is time neutral, that is to say that, it does not distinguish between victims of a crime happening prior to the introduction of the section to the statute with those incidents of crime happening post its introduction in the statute book. The section itself not making any distinction between victims on the basis of the time of occurrence of the crime, the same cannot be read into it. The plain reading of the section does not permit one to interpret the same to mean that, it contemplates differential treatment of victims of the specified crimes on the basis of time of occurrence of such crime. Such a difference if sought to be read into Section 357A of the Code of Criminal Procedure, 1973 it would do violence to it. It would not be an intelligible or a reasonable differentia to distinguish between victims of crime on the basis of time of occurrence, more so when the section itself is silent on time. The requirement on the State to extend compensation for loss and injury suffered by reason of the crime and rehabilitation of the victims of the specified crimes are universal to all victims irrespective of the time of occurrence of the crime. Victims have not been segregated on the basis of time of occurrence

of the crime. Segregation on such basis is unacceptable. It would militate against the right to equality and equal treatment by the State guaranteed under the Constitution of India. In such perspective, the victims of the specified crimes are similarly situated and circumstanced. Therefore, to segregate them on the basis of time of occurrence of crime, would be unjust, improper and militate against the very object of the Section 357A of the Code of Criminal Procedure, 1973, and the fundamental rights of the victims to be treated equally, fairly and justly. Section 357A, requires every State Government in coalition with the Central Government to prepare schemes for the purpose of compensation to the victims or their dependents who has suffered loss and injury and who require rehabilitation. Sub-section (3) allows the Trial Court, at the conclusion of the trial, to make recommendation for compensation, if the Court is satisfied that, the compensation awarded under Section 357A is not adequate and the victim has to be rehabilitated. It allows the Trial Court to undertake such exercise in cases where there is an acquittal or discharge of the accused. Victim is defined in Section 2(wa) of the Code of Criminal Procedure, 1973. It means a person who has suffered a loss or injury caused by an act or omission for which an accused person has been charged. Such expression includes his/her guardian/legal heir. The petitioner relies upon four unreported decisions of the Bombay High Court in support of the contention that, acid attack victims of crimes committed prior to the introduction of Section 357A were granted compensation. Three orders of the Bombay High Court in W.P. No. 4267 of 2015 (Aarti Thakur v. State of Maharashtra) dated March 11, 2015, March 19, 2015 and March 27, 2015 are relied upon. These three orders notices the date of occurrence of the crime, the Scheme of Maharashtra prevailing and directs grant of interim compensation. The issue of a cut-off date for receipt of compensation has not yet been decided. The fourth order of the Bombay High Court Criminal is a Public Interest Litigation No. 35 of 2013 (Forum Against Oppression of Women & Anr. v. Union of India & Ors.) dated March 17, 2015. The issue of time limit has not been finally decided therein also.

When Section 357A of the Code of Criminal Procedure, 1973 is found not to impose any time restriction, can a scheme formulated in exercise of powers conferred by such section introduce a time limit or can it be read to have done so? The West Bengal Victim Compensation Scheme, 2017 does not specify that, a victim of a crime committed prior to a particular date will not be considered for the grant of compensation under such scheme. State, however, specifies that the application for compensation should be made within 180 days from the date of occurrence. It also allows condonation of delay in making the application within the stipulated time, if sufficient cause is shown. Clause (9) of the Scheme of 2017 cannot be read to be in derogation of Section 357A or introducing anything not contemplated by Section 357A. Section 357A not specifying a time prior to which an acid attack victim cannot receive compensation, the Scheme of 2017 and clause (9) thereunder should be read accordingly. Scheme of 2017 therefor does not prevent a victim of a crime specified therein to apply for compensation provided such applicant satisfies the adjudicating authority that he/she was prevented by sufficient cause beyond the prescribed period of 180 days from the date of occurrence of crime in applying.

In view of the discussions above, the first issue is answered in the affirmative and in favour of the petitioner. A person suffering an acid attack prior to December 31, 2009 is entitled to compensation under Section 357A of the Code of Criminal Procedure, 1973. The second issue is answered in the affirmative and in favour of the petitioner. The West Bengal Victim Compensation Scheme, 2017,

allows a victim to apply for a compensation. It is for the adjudicating authority to decide on the sufficiency of the reasons shown for the delay in making such application, if it is made beyond 180 days from the occurrence of crime. The third issue is answered in the negative and in favour of the petitioner. Neither Section 357A of the Code of Criminal Procedure, 1973, nor the West Bengal Victim Compensation Scheme, 2017, prescribe a date prior to which a victim cannot be granted compensation or rehabilitation. So far as the fourth issue is concerned, the petitioner is a victim of an acid attack occurring in 2005. On the basis of a written complaint in respect of such crime, a session proceeding was initiated and the accused was convicted on August 18, 2008. The petitioner had submitted an application for compensation to the respondent no. 2 on July 14, 2014, after becoming aware of the Supreme Court Order dated April 10, 2015 passed in Laxmi (supra). Such application has not been decided yet. On the date of such application, the Victim Compensation Scheme, 2012, issued by the notification dated November 1, 2012, was in vogue. Such scheme cannot be read to negate a right conferred under Section 357A of the Code of Criminal Procedure, 1973. Now the West Bengal Victim Compensation Scheme, 2017, is in operation. Under the Scheme of 2017, the State or the District Legal Services Authority is empowered to decide an application for grant of compensation under Section 357A(4). In such circumstances, the respondent no. 2 will forward the application made by the petitioner dated July 15, 2014, to the appropriate authority under the West Bengal Victim Compensation Scheme, 2017 for decision. Such transmission should be made by the respondent no. 2 within a week from the date of communication of this order to him. The appropriate authority, thereafter, will decide such application, in accordance with law, after affording reasonable opportunity of hearing to the petitioner. It will pass such orders, as deemed necessary by it, as expeditiously as possible and preferably within two weeks from the date of receipt of the application for grant of compensation. The fourth issue is decided accordingly. W.P. No. 26174 (W) of 2014 is disposed of. No order as to costs. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

[DEBANGSU BASAK,J.]