



GAHC010112912022

Page No.# 1/14



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3909/2022

EAR ALI @ IYER ALI SHEIKH
S/O. LATE MOKRAM ALI SHEIK, VILLAGE- BORAIKANDI, P.O.
KANAIMARA, P.S. SOUTH SALMARA, DISTRICT- SOUTH SALMARA
MANKACHAR, ASSAM, PIN- 783135.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, HOME AND POLITICAL DEPARTMENTS, ASSAM, DISPUR,
GUWAHATI-6.

2:THE ASSAM STATE LEGAL SERVICE AUTHORITY
REPRESENTED BY ITS MEMBER SECRETARY
GUWAHATI-1.

3:THE DISTRICT LEGAL SERVICE AUTHORITY
REPRESENTED BY ITS MEMBER SECRETARY
SOUTH SALMARA MANKACHAR
ASSAM AT HATSINGIMARI
P.O. FEKAMARI
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM. PIN- 783135.

4:THE CHAIRMAN
DISTRICT LEGAL SERVICE AUTHORITY
SOUTH SALMARA MANKACHAR
HATSINGIMARI
P.O. FEKAMARI
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM. PIN- 783135



Advocate for the Petitioner : MR. M ISLAM

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

Date : 13-12-2022

JUDGMENT & ORDER (ORAL)

Heard Mr. M Islam, learned counsel for the petitioner. Also heard Mr. D Nath, learned Senior Government Advocate for the respondents No.1, 3 and 4 respectively being the authorities under the Home and Political Department, Government of Assam as well as the District Legal Services Authorities South Salmara, Mankachar district and Ms. R S Chowdhury, learned counsel for the respondent No.3 being the Assam State Legal Services Authority. We also requested Mr. Ashok Saraf, learned Senior counsel to act as Amicus Curiae in the matter and have also heard the learned Amicus Curiae and appreciate that the submissions of the learned Senior Counsel have immensely contributed in arriving at the judgment.

2. The daughter of the petitioner namely Nilima Khatun was killed by slitting her throat by the accused on 31.03.2009 and in this respect South Salmara P.S. Case No.58/2009 had been registered amongst others, under Section 302 of the IPC. It is stated that the South Salmara P.S. Case No.58/2009 resulted in Sessions Case No.170/2010 in the Court of the learned Sessions Judge Dhubri which resulted in the judgment dated 11.11.2014 wherein the accused person

was convicted under Section 302 of the IPC and sentenced to life imprisonment.

3. In the circumstance, the petitioner made an application under Sections 357(A) of the Cr.P.C., seeking for compensation being a victim. By the order impugned dated 03.02.2022 of the Chairman, District Legal Services Authority, South Salmara Mankachar compensation as a victim was rejected by taking recourse to Clause 4(1) of the Notification dated 18.10.2012 of the Assam Victim Compensation Scheme 2012 (for short, the Scheme of 2012) by arriving at a conclusion that the petitioner failed to produce any relevant material to show that the incident of causing death to his daughter Nilima Khatun had not resulted in the petitioner being unable to meet his both ends without any financial aid or that he had spent beyond his means on medical treatment of the victim.

4. Being aggrieved by the order dated 03.02.2022 of the Chairman DLSA, this writ petition is instituted. The question for determination which arises is whether a victim would be disentitled to compensation under the Scheme of 2012 if such person fails to bring on record any material to show that he is unable to make his both ends meet or that he had spent beyond his financial means on the treatment of the person affected by the crime. The basis for arriving at such conclusion by the Chairman DLSA in its impugned order dated 03.02.2022 is by referring to Clause 4(1) of the Notification dated 18.10.2012 of the Scheme of 2012 which is extracted as below:

“4.(1) Loss or injury sustained by the victim or his dependents should have caused substantial loss to the income of the family making it difficult

to meet their both ends without the financial aid or has to spend beyond his means on medical treatment of mental/physical injury and a recommendation is made by the Court for compensation.”

5. A reading of Clause 4(1) of the Notification dated 18.10.2012 makes it discernible that in order to be eligible for compensation the victim or his dependant should satisfy that the loss or injury sustained by the victim or his dependents should have caused substantial loss to the income of the family making it difficult to meet his both ends without the financial aid or has to spend beyond his means on medical treatment of mental or physical injury that may have been caused and that a recommendation is made by the Court for compensation.

6. Admittedly, the Scheme of 2012 has been framed in exercise of the power under Section 357 A of the Cr.P.C of 1973. Section 357 A of the Cr.P.C is extracted as below:

357A. Victim Compensation Scheme (1) Every State Government in coordination 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.

7. Section 357 A provides that every State Government in consultation with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependant who have suffered loss or injury as a result of the crime and who require a rehabilitation.

8. Section 357 A of the Cr.P.C. empowers the State Government to prepare a

scheme for providing funds and the funds are for the purpose of compensation to the victim or his dependant who may have suffered loss or injury as a result of crime and who requires rehabilitation.

9. Mr. D Nath, learned Senior Government Advocate seeks to justify the provisions of Clause 4(1) of the Notification dated 18.10.2012 by taking recourse to the expression 'rehabilitation' appearing in Section 357 A of the Cr.P.C., to substantiate that every victim must show that there is a requirement of rehabilitation because of the crime and therefore, if the victim intends to be compensated there is also a requirement to show that the victim is unable to make his both ends meet. An understanding of the said contention would mean that the word 'rehabilitation' is understood by the State authorities to be a rehabilitation only of economic nature so that the situation of making both ends meet is also a requirement for the purpose of arriving at a conclusion that rehabilitation is required. When we raised a query before the learned Government Advocate as to why it is to be understood that rehabilitation means only an economic rehabilitation and not rehabilitation in a general sense, meaning thereby that whatever loss or injury may have been caused by the crime and the victim or the dependant would also have to come out of such loss or injury which again may be economic, physical or mental in nature requiring medical attention. Specific answer to that effect is not forthcoming in order to understand the sustainability of Clause 4(1) of the Notification dated 18.10.2012 that there is also a requirement to establish that the victim or his dependant is unable to meet the two square ends.

10. We also examined the purpose of bringing in to the statute book the

provision of Section 357 A of the Cr.PC of 1973. Prior to enactment of Section 357 A of the Cr.PC of 1973, the compensation that may be payable was governed only under Section 357 of the Cr.P.C., which provided for a compensation to be paid from the fines that may be imposed upon an accused in a given criminal proceeding. But, at the same time, the law also recognized that the effects of a crime upon the victim or its dependant may be far more deep-rooted than which can be met only from the fines that may be imposed upon the accused under Section 357 of the Cr.P.C.

11. In this respect, we also take note of the report of the 154th Law Commission Report on the Code of Criminal Procedure, where an entire chapter has been devoted to 'Victimology'. The 154th Law Commission Report takes note of the concept of Victimology and that the consequent needs and rights of victims of crime should receive priority attention in the total response to crime and one recognized method of protection of victims is paying compensation to victims of crime. If we go by the analogy of the 154th Law Commission Report in furtherance whereof, also, the Section 357 A of the Cr.P.C., had been brought to the statute book, the concept of payment of compensation to the victim or his dependant who have suffered loss or injury as a result of the crime and who requires rehabilitation would also have to be understood from the point of view that it is in furtherance of one of the recognized method of protection of victims by means of compensation. From such point of view, a narrow interpretation given to the expression 'rehabilitation' by the respondents in seeking to justify the provisions of Clause 4(1) of the Notification dated 18.10.2012 that the word 'rehabilitation' refers only to the economic loss that may have been caused to the victim or his dependant and therefore the claimant would have to produce

materials to show that they are unable meet the both ends meet, would have to be concluded to be unacceptable.

12. If we go by the meaning given to the provision of Section 357 A by accepting the concept of Victimology which provides as a means of protection of the victims through compensation, we are of the view that the provision of Clause 4(1) of the Notification dated 18.10.2012, requiring the victim to prove that he is unable to make two ends meet because of the crime committed cannot be accepted in the present form and be allowed to give a strict meaning to it that the victim mandatorily have to prove that he is unable to meet both ends meet because of the crime committed. The compensation that would be payable would have to be accepted to be a far larger concept rather than to compensate the victim so as to enable him to make both ends meet which may have been taken away because of the crime that was committed.

13. We again take note of the two expressions 'victims' and 'dependants' as appearing in Section 357 A of the Cr.P.C. The expression 'victim' is defined under Section 2(wa) of the Cr.P.C., to also include the guardian or legal heir of a person who had suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged. From the definition of victim as appearing in Section 2(wa) of the Cr.P.C., which has also been adopted in the Scheme of 2012 wherein also the expression 'victim' includes the guardian or legal heir of the person who may have suffered loss or injury by reason of the act or omission for which the accused person has been charged, it can also be concluded that the requirement of placing materials to show that the person is unable to meet both ends may not have any relevance to a person

who is a victim of a crime. Going by the expression 'victim' as appearing in Section 2(wa) of the Cr.P.C., as well as in Clause 2(f) of the Scheme of 2012, the petitioner in the present case, where death was caused to the minor daughter of 14 years by slitting her throat, is also a victim and it is not to be understood that only the daughter of the petitioner is a victim and the petitioner is a dependant on the income of his minor daughter which had left him to a situation that he is unable to make the two ends meet.

14. By taking note of the legislative history of the Act of 2009 by which Section 357A was introduced in the Cr.P.C., it would be explicit and unambiguous that Section 357A of the Cr.P.C., is a benevolent legislation which are brought in for the benefit of the victims and dependents of a crime.

15. The laws of interpretation of a socially beneficial legislation provides that the provisions of the Act has to be construed as broadly as possible in favour of the person for whose benefit the statutory provisions have been brought in, but without doing violence to the language of the statutes itself. The laws of interpretation also provides that equitable consideration may find an important place in the construction of beneficial provisions in the field of criminal law and procedural provisions in civil law and whenever two constructions are possible, without doubt, the construction in favour of the person for whose benefit such statutory provision had been brought in should be accepted. Only in case of an exception, which curtails the operation of a beneficial legislation, the Court in case of doubt would construe it in a narrow manner so as not to unduly expand the area of scope of exception.

16. The aforesaid propositions of law can be found in the following judgments of the Supreme Court as extracted below:

(i). Paragraph 48 of *State Of Karnataka Vs. Vishwabharathi House Building Cooperative Society and Ors.*, reported in (2003) 2 SCC 412 wherein it is held that the provisions of the Consumer Protection Act, 1986 which is a social benefit oriented legislation, are required to be interpreted as broadly as possible.

(ii). Paragraph 15 of *Bhagirath & Ors. Vs. Delhi Administration* reported in (1985) 2 SCC 580 wherein it is held thatequitable considerations must have an important place in the construction of beneficent provisions, particularly in the field of criminal law. To exclude such considerations is to denude law's benevolence of its true and lasting content.

(iii). Paragraph 2 of *Lucknow Development Authority Vs. M.K. Gupta* reported in 1994 SCC (1) 243 wherein it is held that the primary duty of the court while construing the provisions of Consumer Protection Act, 1986, which is a social benefit oriented legislation, is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to the attempted objective of the enactment.

(iv). Paragraph 6 of *Jivabhai Purshottam Vs. Chhagan Karson* reported in *AIR 1961 SC 1491* wherein it is held.... that doubt should be resolved in favour of the tenant, for whose benefit the amending Act was passed.

17. Taking note of the aforesaid propositions of the principles of interpretation of beneficial legislation, we first take note that Section 357 A has been brought in to the statute books for the benefit of the victims or the dependants against whom a crime had been committed and it has to be construed that Section 357 A is a beneficial legislation. Section 357 A of the Cr.P.C., itself do not provide for any restriction on the entitlement of compensation either of a victim or a

dependent, except for providing that every State Government in consultation 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.

18. The expression 'rehabilitation' would have to be related to be rehabilitation from the loss and injury as a result of the crime. As the statutory provisions under Section 357 A itself do not provide for any restrictive meaning, whether while framing the scheme under the said section the State Government can provide for a restrictive entitlement that the victim or the dependent would also have to show that they are unable to make the both ends meet, would have to be looked from the point of view whether a restrictive meaning can be given to a statutory provision, which itself is a piece of beneficial legislation, in exercise of the delegated power to the State Government under the said statutory provision to frame a scheme.

19. When the principle of interpretation is that a provision of beneficial legislation has to be given a liberal interpretation in favour of those persons for whose benefit the provisions have been enacted, we are of the view that in exercise of a delegated power under the same statutory provision to frame a scheme for providing the fund for the purpose of compensation to the victims and the dependants, a restrictive meaning cannot be introduced to the statutory provision itself.

20. Accordingly, we are of the view that Section 357 A of the Cr.P.C., and

Clause 4(1) of the Notification dated 18.10.2012 would have to be read in a conjoint manner so as to give a meaning that it is not that the compensation would be paid to the victim or the dependant only when materials are produced before the authority sanctioning the compensation that because of the crime they are unable to make both ends meet.

21. Following the above, we are unable to accept the reasoning of the Chairman DLSA in the order dated 03.02.2022 that the petitioner failed to show that the incident had caused substantial loss to the income of the family making it difficult to make his both ends meet without financial aid or that he has spent beyond his means for the medical treatment of the victim. The very expression 'spend beyond his means for the medical treatment' goes to show that the Chairman DLSA has understood that the deceased daughter of the petitioner to be the victim and the petitioner to be a dependant which again would be in conflict with the concept of victim as appearing under Section 2(wa) of the Cr.P.C., and Section 2(f) of the Scheme of 2012.

22. Ms. RS Chowdhury, learned counsel appearing for the respondents in the Assam State Legal Services Authority has raised an issue that the crime upon the daughter of the petitioner was committed on 31.03.2009, whereas the Amendment Act 5 of 2009 by which Section 357 A was brought into the statute book was given effect from 31.12.2009 and, therefore, the provisions for victim compensation under Section 357 A of the Cr.P.C. would not be applicable in the facts of the present case. Ms. RS Chowdhury, learned counsel strenuously argued that the Amendment Act of 2009 has not been given any retrospective effect and therefore, the provisions thereof would not be applicable in respect of

a crime that took place prior to the date on which it came into effect. However, in support of such contention no proposition of law has been produced before the Court to enable the Court to examine the applicability of such argument in the facts of the present case. The argument raised is that the provisions of a criminal law are always prospective in nature unless specifically provided by the statute itself to have a retrospective effect and no such provision is available in the Amendment Act 5 of 2009 that the provisions thereof would have a retrospective effect.

23. The proposition of law that a provision of a criminal law is prospective, unless it is specifically provided to have a retrospective effect is otherwise a good and acceptable proposition, *inasmuch as*, any act to be declared to be a criminal act would have to be prospective as otherwise, such acts performed earlier to it being declared to be a criminal act would also have to be construed to be a criminal act. But, the provisions of Section 357 A of the Cr.P.C. is not a piece of legislation which declares any act to be a criminal act therefrom and from such point of view the aforesaid proposition of law would be inapplicable. As already held Section 357 A of the Cr.P.C., is a piece of benevolent legislation and not a law declaring any act to be a criminal act.

24. In this respect, we also take note of the judgment of the Supreme Court in *Suresh and Another Vs. State of Haryana* reported (2015) 2 SCC 227, wherein in paragraph 2, it has been taken note that the crime took place on 18.12.2000 i.e. prior to 31.12.2009 when the Amendment Act 5 of 2009 came into effect, but in paragraph 18, it has been held that the State of Haryana is liable to pay compensation to the deceased. It would mean that even the Supreme Court had

not expressed any view that for the purpose of compensation under Section 357 A of the Cr.P.C., the provision of Section 357 A would have to be given only a prospective effect and compensation be not applicable in respect of any crime that took place prior to giving effect to Section 357 A.

25. As a compensation is paid to a victim under Section 357 A of the Cr.P.C., as a means in the nature of protection of the person against a crime that may have been committed and admittedly in the present case, death was caused to the minor daughter of the petitioner by slitting her throat which resulted in South Salmara P.S. Case No.58/2009 leading to the conviction of the accused person under Section 302 of the IPC, we are of the view that the refusal to pay the compensation to the petitioner in the order dated 03.02.2022 by the Chairman, DLSA South Salmara Mankachar would be unacceptable in law and we declare that the petitioner would be entitled to compensation under the Scheme of 2012 on the basis that the petitioner himself is a victim in the instant case. Accordingly, the matter stands remanded back to the Chairman, DLSA, South Salmara, Mankachar for passing of the appropriate order as to the compensation that the petitioner may be entitled under the Scheme of 2012.

26. The DLSA to pass the reasoned order within a period of one month from the date of receipt of a certified copy of this order.

27. Writ petition stands allowed in the above terms.



JUDGE

Comparing Assistant