



RAJASTHAN HIGH COURT  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

S.B. Criminal Writ Petition No. 651/2017

S D/o A

----Petitioner

Versus

1. State of Rajasthan Through Secretary, Department of Home Affairs and Justice Secretariat, Rajasthan
2. Rajasthan State Legal Service Authority Through Member of Secretary, High Court Building Jaipur.
3. District Legal Service Authority, District Court Bharatpur, Through Permanent Secretary.

----Respondents

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For Petitioner(s) : Mr. Rambabu Sharma  
For Respondent(s) : Mr. Jitendra Singh Rathore-PP

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**JUSTICE ANOOP KUMAR DHAND**  
**Order**

**12/03/2026**

Reportable

1. The crime of rape can be regarded as the highest torture inflicted upon womanhood. It causes not only the physical torture to the body of the woman but it adversely affects her mental, psychological and emotional sensitivity. Therefore, rape is treated as the most heinous crime against the very basic human right and woman's most important fundamental right, namely 'the right of life'. It is less a sexual offence than an act of aggression aimed at degrading and humiliating women. Such cases are required to be handled by the Courts with utmost sensitivity and high responsibility.

2. An unfortunate incident occurred with a 14 years old minor petitioner on 11.11.2014, when rape was committed by the



accused and an FIR No.391/2014 was registered against the accused with the Police Station Sikari, Bharatpur for the offences under Sections 323, 341 and 376-D of the Indian Penal Code (for short 'IPC') and after investigation, the accused was charge-sheeted for the offence under Section 376-D and Section 3/4 of the POCSO Act and he is facing trial before the Court of Special Judge, POCSO Act Cases, Bharatpur.



3. By way of filing the instant petition, a challenge has been led to the impugned order dated 15.03.2017, passed by the Full Time Secretary, District Legal Services Authority, Bharatpur (for short, 'the DLSA') by which the application submitted by the petitioner seeking interim compensation for the incident of rape committed with her, pertaining to Sessions Case No. 128/2015 State Vs. Ayub has been rejected.

4. Aggrieved by the aforesaid order, the petitioner has approached this Court by way of filing the instant criminal writ petition seeking appropriate directions against the respondents for grant of interim compensation to the petitioner.

5. The contents of the petition indicate that the petitioner is a minor victim who was subjected to rape by the accused for which an FIR No. 391/2014 was registered with the Police Station Sikari, Bharatpur for the offences under Sections 323, 341 and 376-D of IPC.

6. After investigation of the matter, charge-sheet was submitted for the offences punishable under the POCSO Act and IPC, against the accused before the Court of Sessions Judge, POCSO Court,



Bharatpur in Sessions Case No. 128/2015 wherein the statement of the petitioner-prosecutrix victim, was recorded on 11.07.2016 and thereafter statements of other prosecution witnesses were also recorded on subsequent dates.



7. At this stage of trial, the petitioner approached the DLSA by way of filing an application for grant of interim compensation pursuant to the Rajasthan Victim Compensation Scheme, 2011. The said application submitted by the petitioner has been rejected on a technical count that no certificate with regard to grant of interim compensation has been issued by the concerned Station House Officer/Magistrate and in absence of the same, the application submitted by the petitioner has been rejected.

8. It is a quite shocking and surprising on the part of the DLSA to reject the application of the petitioner who is a minor rape victim. Instead of rejecting the petitioner's application seeking interim compensation, the DLSA could have ask the concerned SHO or Magistrate to send a certificate with regard to the petitioner's entitlement for interim compensation but instead of doing so, the application submitted by the petitioner has been erroneously rejected only on the technical count of absence of the aforesaid certificate.

9. The need for compensating rape survivors was recognized by the Supreme Court of Bangladesh in the case of **Al Amin Vs. State** reported in **(1999) 19 BLD (HCD) 307** where it was held that "Mere punishment of the offenders of sexual assault cannot give much solace to the victim and her family members. Adequate monetary compensation may redress the wrong and damage caused to the victims and the family members. This has to be



awarded independently having no nexus with the provision of imposition of fine embodied in the Penal Code. A permanent mode of compensation has to be worked out. The Government may consider the matters under observations....”

10. Modern approach of victimology acknowledges that a crime victim has a right to be adequately compensated, rehabilitated and repaired. From the humanitarian point of view, there has been no scope to disagree that victims of crime especially the victims of rape must have something like 'reparation' or 'compensation' that can reduce their continuing sufferings and trauma.

11. Previously, compensation to the victim was recognized under Section 357 of the Code of Criminal Procedure (for short 'Cr.P.C. '), where if the sentence involved levy of fine, the Court could award compensation to the victim out of the fine amount, as determined by the Court. Subsequently, on the basis of the 154<sup>th</sup> Law Commission Report, by an amendment on 31.12.2009, Section 357A was added to Cr.P.C. providing provision for compensation even in the case of acquittal of the accused. Under Section 357A of Cr.P.C., all States in coordination with the Central Government were required to formulate a Victim Compensation Scheme for the State and the discretion was left upon the State and District Legal Services Authorities to decide the quantum of compensation.

12. In exercise of the powers conferred by the Section 357A of Cr.P.C., the State Government framed a scheme for providing funds for the compensation to the victims or their dependents, who have suffered loss or injury, as a result of the crime and who require rehabilitation. The Scheme is known as "The Rajasthan





Victim Compensation Scheme, 2011” (for short “the Scheme of 2011”). Rule 5 of the Scheme of 2011 deals with the procedure for grant of compensation and following Schedule has been attached with this Scheme, which deals with particulars of loss of injury and maximum limit of compensation.



13. After enactment of the Scheme of 2011, the responsibility of its implementation has been shouldered on the Rajasthan State Legal Services Authority (for short ‘RSLSA’) and District Legal Services Authority (for short ‘DLSA’). In order to maintain uniformity in implementation of the Scheme of 2011, the RSLSA issued general guidelines on 25.07.2012.

14. Prior to amendment in Section 357A of Cr.P.C. and prior to the 154<sup>th</sup> report of Law Commission and enactment of the Scheme of 2011, the Union of India constituted “Malimath Committee”, which was headed by Justice V.S.Malimath, former Chief Justice of the Karnataka and Kerala High Courts. The task assigned to this Committee was to examine the fundamental principles of criminal law to restore the confidence in the criminal justice system.

15. The Malimath Committee has made recommendations as to the compensation for victim. In paragraphs 6.8.7 and 6.8.8, the Committee has recommended as follows:-

“6.8.7 Sympathizing with the plight of victims under Criminal Justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defense of human rights, the Supreme Court and High Courts In India have a late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the



communal violence victims and compensatory justice to the Union Carbide victims are examples of this liberal package of reliefs and remedies forged by the apex Court. The recent decisions in Nilahati Behera v. State of Orissa [(1993) 2 SCC 746] and in Chairman, Railway Board v. Chandrima Das are illustrative of his new trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the State for failure to protect the rights of the victim.

6.8.8 These decisions have clearly acknowledged the need for compensating victims of violent crimes irrespective of the fact whether offenders are apprehended or punished. The principle Invoked Is the obligation of the State to protect basic rights and to deliver justice to victims of crimes fairly and quickly. It is time that the Criminal Justice System takes note of these principles of Indian Constitution and legislate on the subject suitably."

16. Hence, it is clear that the concept of grant of compensation to the victims was not a new concept and it was recognized by the Courts and that is why the Courts have granted compensation to several rape victims in exercise of its inherent powers. Even in the case of **Hari Singh Vs. Sukhbir Singh & Ors.** reported in **(1988) 4 SCC 551**, the Hon'ble Apex Court felt that the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. It was also realized that the compensation should not be limited only to fines or penalties but the State should grant adequate amount of compensation to the victims of the crime from its funds, even in the cases of acquittal of the accused or where the offender is not traceable or identifiable. It is in this background, the amended provisions of Section 357A of Cr.P.C. came into picture as the basis of 154<sup>th</sup> report submitted by the Law Commission of India.





17. Thereafter, the new provision of grant of Victim Compensation Scheme was brought into picture by way of introducing Section 357A in Cr.P.C. in the year 2009 but this amended provision nowhere mentions that the benefits of this Section are prospective or retrospective in nature.

18. The Hon'ble Supreme Court in the case of **Mohd. Haroon & Ors. Vs. Union of India & Ors. [Writ Petition (Criminal) No.155/2013]** has held that no compensation can be adequate but since the State has failed in protecting such serious violation of fundamental rights, the State is duty bound to provide compensation, which may help victim's rehabilitation. The Hon'ble Supreme Court also noted that "the obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to commission of such heinous crime, rehabilitation becomes a must in each and every case."

19. The Rajasthan Victim Compensation Scheme, 2011 (for short, 'the Scheme of 2011') has been enacted by the State Government in exercise of its power contained under Section 357A of Code of Criminal Procedure for providing funds for the compensation to the victims who have suffered loss or injury as a result of a crime. Clause 5 of the said scheme deals with the procedure for grant of compensation. Sub Clause (8) of Clause 5 deals with the quantum of compensation to be awarded to the victim of POCSO cases.





20. Similarly, in pursuance of the aforesaid scheme, a circular has been issued by the Rajasthan State Legal Services Authority, Jaipur (for short, "the RLSA") on 27.02.2015 which deals with the procedure for grant of interim compensation. A complete mechanism has been provided for grant of interim compensation to the victims such as the petitioner and appropriate directions have been issued by the RLSA to all the DLSAs, however, the aforesaid circular issued by the RLSA has not been complied with by the DLSA in its letter and spirit. It is not expected from the DLSA to reject the application submitted by a minor rape victim, such as the petitioner in a casual manner. The grant of compensation, as envisaged in the Scheme of 2011 and Circular issued by the RLSA is required to be followed in such like matters.

21. In view of the discussions made herein-above, the impugned order dated 15.03.2017 passed by the DLSA, Bharatpur stands quashed and set aside and a direction is issued to the DLSA, Bharatpur to pass appropriate orders on the application submitted by the petitioner seeking interim compensation and final compensation, if the trial against the accused has been concluded and judgment has been pronounced by the trial Court against him as per the law, after receiving the certificate from the concerned SHO or from the concerned Court instead of insisting the petitioner to get the same on her own.





22. Accordingly, the present criminal writ petition stands disposed of. Stay application and all pending application(s), if any, also stand disposed of.

23. Let a copy of this order be sent to the Member Secretary, RLSA, along with Full Time Secretary DLSA, Bharatpur for necessary compliance. It is expected from these authorities to do the needful expeditiously as early as possible, preferably within a period of eight weeks from the date of receipt of the certified copy of this order.

24. Before parting with the order, a general direction is issued to the RLSA and all the DLSAs of the State of Rajasthan to adopt a "uniform policy for distribution of the amount" as interim and final compensation to the Rape Victims without insisting them to get the certificate from the SHO of the concerned Police Station or certificate from any Court in this regard. The details of the cases of such rape victims can be called upon by these authorities, at their appropriate level, instead of compelling the rape victim to run from pillar to post to get the certificate. It is expected from Member Secretary, RLSA to issue necessary directions to all the Full Time Secretaries of all DLSAs of all Districts of the State of Rajasthan to comply with the directions issued by this Court mentioned in this para 24.

**(ANOOP KUMAR DHAND),J**

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