HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 3753/2006

G.K. S/o N.K.

----Petitioner

Versus

1. State of Rajasthan through Chief Secretary, Govt. Secretariat, Jaipur.
2. Dy. Secretary (J), Chief Minister Relief Fund, Govt. of Rajasthan, Govt. Secretariat, Jaipur.
3. District Collector, Distt., Jaipur.
4. Rajendra alias Nenhe S/o Motilal, presently in Central Jail, Jaipur.

----Respondent

For Petitioner(s) : Ms. Naina Saraf, Advocate.
For Respondent(s) : None present.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

RESERVED ON : 11/12/2023
PRONOUNCED ON : 03/01/2024

Order

REPORTABLE

BY THE COURT

"Yatra naryastu pujyante ramante tatra Devata, yatraitaastu na pujyante sarvaastatrafalaah kriyaah"

is a famous shloka in ***Manusmruti*** which means ***"where women are honoured, divinity blossoms there and where women are dishonoured, all actions no matter how noble remain unfruitful"***.

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 two years old minor daughter of the petitioner on 19.07.2004, when rape was committed by the respondent No.4 and a FIR No.213/2004 was registered against the accused with the Police Station Sodala, Jaipur for the offences under Sections 365 & 376 of the Indian Penal Code (for short 'IPC') and after investigation, he was charge-sheeted and tried by the Court of Additional Sessions Judge (Fast Track) No.1, Jaipur City, who found him guilty and convicted him for the offences under Sections 365 and 376 IPC vide judgment dated 31.05.2005 and sentenced him to undergo ten years rigorous imprisonment with a fine of Rs.500/- for each offence, but no compensation has been awarded to her.

3. After passing of the aforesaid judgment, the petitioner submitted an application before the District Collector, Jaipur for grant of compensation of Rs.3,00,000/- to his daughter, a minor

rape victim, but the said application remained undecided for want of any such provision in law.

4. 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…."

5. 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.

6. 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 154th 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.

7. 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. The Schedule is reproduced as under:-

SCHEDULE

[See Rule 5(8)]

S.No.	Particulars of loss of injury	Maximum Limit of Compensation
1	**2**	**3**
1.	Loss of Life.	Rs.2,00,000/-
2.	Loss of any limb or part of body resulting 80% or above Handicap.	Rs.1,00,000/-
3.	Loss of any limb or part of body resulting 40% & below 80% Handicap.	Rs.50,000/-
4.	Rape of minor.	Rs.3,00,000/-
5.	Rape.	Rs.2,00,000/-
6.	Rehabilitation.	Rs.1,00,000/-
7.	Loss of any limb or part of body resulting 40% Handicap.	Rs.25,000/-

8.	Loss of any injury causing sever mental agony to women and child victims in case like Human Trafficking.	Rs.25,000/-
9.	Simple loss or injury to child victim.	Rs.20,000/-
10.	Permanent disfiguration of the head or fact by acid	Rs.2,00,000/-

8. 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.

9. As per the Scheme of 2011, a minor victim of Rape is entitled to get compensation of Rs.3,00,000/- while the minor daughter of the petitioner has received a sum of Rs.10,000/- only from the Chief Minister's Relief Fund. The petitioner submitted an application before the District Collector, Jaipur District to grant compensation of Rs.3,00,000/- on 19.09.2005 but till date no amount has been awarded to the minor daughter of the petitioner. Hence, under these compelling circumstances, the petitioner has knocked the doors of this Court by way of filing the present writ petition and has invoked the extraordinary jurisdiction of this Court, contained under Article 226 of the Constitution of India.

10. Now the question which arises before this Court is "Whether the minor daughter of the petitioner is entitled to get the benefit of the Victim Compensation Scheme under Section 357A of Cr.P.C. and "Whether the provisions, contained under the Victim

Compensation Scheme, 2011 are applicable with its retrospective effect or prospective effect?"

11. Prior to amendment in Section 357A of Cr.P.C. and prior to the 154th 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.

12. 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 not of these principles of Indian Constitution and legislate on the subject suitably."

13. Thereafter, the Hon'ble Apex Court in the case of **Chairman, Railway Board Vs. Chandrima Das** reported in **(2000) 2 SCC 465** upheld the judgment passed by the Calcutta High Court and compensation of Rs.10,00,000/- was granted to a Bangladeshi Foreign Tourist with whom gang rape was committed at Howrah Railway Station.

14. 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 154th report submitted by the Law Commission of India.

15. 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.

16. There is no second opinion that the procedural beneficial statutes are generally retrospective in nature and the statutes which are substantive are prospective in their application, unless any express stipulation is made thereunder. Dealing with the similar situation, the Kerala High Court in the case of **District Collector Vs. District Legal Service Authority & Ors.** reported in **2020 SCC OnLine Ker 8292** has held in para 24 to 34 as under:-

> "24. Section 357A Cr.P.C., was brought in with effect from 31.12.2009 through the Code of Criminal Procedure Amendment Act, 2008, (Act 5 of 2009). The amended provisions do not mention anywhere that the amendment is prospective or even retrospective in character.
>
> 25. There is no dispute that procedural statutes are generally retrospective in operation, while statutes that are substantive are prospective in their application unless by express stipulation or by necessary intendment, the provisions provide for otherwise. In the quest to ascertain whether Section 357A(4) Cr.P.C applies to offences that occurred prior to 31.12.2009, it is necessary to identify whether the provision is substantive or procedural.
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> 26. Substantive law is that part of the law, which creates, defines, and regulate the rights, duties and powers of parties, while procedural law, as the name itself indicates, relates to that part of the law, which prescribes procedures and methods for enforcing rights and duties and for obtaining redress. In simpler terms, when substantive law creates, defines or regulate rights, the procedural law creates the method for enforcing or having redressal for the rights so created. In the celebrated work by Salmond on 'Jurisprudence' (12th Edition, South Asian Edition, 2016), it is stated as follows: "*the law of procedure may be defined as that branch of the law which governs the process of*

litigation. It is the law of actions - using the term action in a wide sense to include all legal proceedings civil or criminal. All the residue is substantive law, and relates, not to the process of litigation, but to its purposes and subject matter. Substantive law is concerned with the ends which the administration of justice seeks; procedural law deals with the means and instruments by which those ends are to be attained. The latter regulate the conduct and relations of courts and litigants in respect of the litigation itself; the former determines the conduct and relations in respect of the matters litigated." In Ramanatha Aiyer's Advanced Law Lexicon 4th Edition (2013), substantive law is stated to be that part of a law that creates, defines, and regulates the rights, duties, and powers of parties. The Supreme Court has approved the aforesaid propositions on substantive law, as can be seen from the decision in Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Others v. N.C.Badharaj [(2001) 2 SCC 721] wherein it was held that "*substantive law is that part of law, which creates, defines and regulates rights in contrast to what is called adjective or remedial law which provides a method of enforcing rights*".

27. A reading of Sections 357A(1)(4)&(5) Cr.P.C., will make it explicit that the said sub-clauses create a right upon the victim to obtain an award of compensation on satisfying the conditions stipulated therein. There was no statutory provision akin to Section 357A(4) Cr.P.C., earlier. There was neither any remedy available to a victim to claim compensation against the State nor was there any obligation for the State to pay compensation towards a victim, especially when the accused had not been identified or traced and the trial had not taken place. This court is mindful of the occasions when the High Courts and Supreme Court have ordered payment of compensation to victims. As rightly pointed out by Adv. Vinod, the learned Government Pleader, those were all instances in which the facts warranted such a grant of compensation since the crimes were either on account of State action or inaction. Section 357A(1)(4)&(5) Cr.P.C., has thus created a right upon a victim in cases where the offender is not traced or identified and the trial has not taken place, to obtain compensation, from the State Government for the rehabilitation of the victim. It has created and defined rights for a victim, and a duty upon the State Government to pay compensation. Thus Section 357A(1)(4)&(5) Cr.P.C., is a substantive law and not procedural law.

28. As a substantive law, the aforesaid statutory provision will have only prospective application.

However, in the case of Section 357A(1)(4)&(5) Cr.P.C., there is a difference. Rehabilitation of the victim is the scope, purport and import of Section 357A(4) Cr.P.C., when read along with Section 357A(1) Cr.P.C. This is more explicit when understood in the background of the recommendation of the 154th report of the Law Commission of India. Rehabilitation of the victim was a remedial measure. It remedied the weakness in the then existing provisions for compensating the crime victims, especially to those victims, whose perpetrators had not been traced. The provision is remedial. Remedial statutes or provisions are also known as welfare, beneficent or social justice oriented legislation.

29. While interpreting a provision brought in as a remedial measure, that too, as a means of welfare for the victims of crimes, in which the perpetrators or offenders have not been identified and in which trial has not taken place, the Court must always be wary and vigilant of not defeating the welfare intended by the legislature. In remedial provisions, as well as in welfare legislation, the words of the statute must be construed in such a manner that it provides the most complete remedy which the phraseology permits. The Court must, always, in such circumstances, interpret the words in such a manner, that the relief contemplated by the provision, is secured and not denied to the class intended to be benefited.

30. While interpreting Section 357A(4) Cr.P.C., this Court cannot be oblivious of the agony stricken face of the victim and the trauma and travails such victims have undergone, especially when their offenders have not even been identified or traced out or a trial conducted. The agonizing face of the victims looms large upon this Court while considering the question raised for decision.

31. With the aforesaid principles hovering over Section 357A(1)(4)&(5) Cr.P.C., the provision ought to be interpreted in such a manner that it benefits victims. If the said benefit could be conferred without violating the principles of law, then courts must adopt that approach. A substantive law that is remedial, can reckon a past event for applying the law prospectively. Such an approach does not make the substantive law retrospective in its operation. On the other hand, it only caters to the intention of the legislature.

32. In other words, when an application is made by a victim of a crime that occurred prior to the coming into force of Section 357A(4) Cr.P.C., a prospective benefit is given, taking into reckoning an antecedent fact. Adopting such an interpretation does not make the statute or the provision retrospective in operation. It

only confers prospective benefits, in certain cases, to even antecedent facts. The statute will remain prospective in application but will draw life from a past event also. The rule against retrospectivity of substantive law is not violated or affected, merely because part of the requisites for action under the provision is drawn from a time antecedent to its passing. Merely because a prospective benefit under a remedial statutory provision is measured by or dependent on antecedent facts, it does not necessarily make the provision retrospective in operation.

33. The above view is fortified by the decision in *The Queen v. The Inhabitants of St. Mary, Whitechapel* (1848 12 QB 120) at 127, where Lord, Denman CJ stated that "*a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing*". The observations in the decision in Master Ladies Tailors Organisation v. Minister of Labour and National Service (1950 (2) All ER 525) are also relevant. It was held at page 527 that "*the fact that a prospective benefit is in certain cases to be measured by or depends on antecedent facts does not necessarily make the provision retrospective*". The above referred, two English decisions, were relied upon by the Supreme Court, in Sree Bank Ltd. (in liquidation) v. Sarkar Dutt Roy & Co. (AIR 1966 SC 1953), while it was considering the retrospective application of Section 450 of the Banking Companies Act, 1949, (brought in by an amendment of 30-12- 1953, as per which the period spent on presenting and pursuing a winding up petition can be excluded for determining the period of limitation to revive a time barred debt).

33. In the judgment in Piyali Dutta v. State of West Bengal and Others (2017 Cr.LJ 4041), the Calcutta High Court held that Section 357A is time neutral, i.e, it does not distinguish between victims of a crime happening before the introduction of the section in the statute with those incidents of crime happening post its introduction in the statute book. It was also held that the section does not make any distinction between victims on the basis of the time of occurrence of the crime and also that, segregation on the basis of time, is unacceptable and would militate against the right to equality and equal treatment by the State guaranteed under the Constitution of India."

And finally, it was held in paragraph 37 that the victims under Section 357A of Cr.P.C. are entitled to get compensation for

the incidents occurred even prior to the coming into force of the said provision. Paragraph 37 of the judgment reads as under:-

> "37. In view of the above deliberations, the following conclusions are arrived at:
>
> (i) The provisions in Section 357A(1)(4)&(5) Cr.P.C.are substantive in character.
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> (ii) The victims under Section 357A(4) of the Cr.P.C. are entitled to claim compensation for incidents that occurred even prior to the coming into force of the said provision.
>
> (iii) By giving the benefit to victims under Section 357A(4) Cr.P.C., for crimes that occurred prior to 31.12.2009, the statutory provision is not given retrospective effect, and instead a prospective benefit is given based on an antecedent fact."

17. Dealing with the similar situation, the Calcutta High Court in the case of **Achiya Bibi Vs. State of West Bengal & Ors.** reported in **2019 SCC OnLine Cal 1950** has held in paragraphs 19 to 24 as under:-

> "19. Section 357A has come into statute book in order to compensate and rehabilitate the victim. It is recognition of right of a victim to receive compensation and rehabilitation notwithstanding the result of a criminal proceeding. Right to receive rehabilitation and compensation is not dependent upon or must await a recommendation made by a Court under Section 357A(2) or an order on conclusion of trial under Section 357A(3). Rehabilitation and compensation cannot be denied to a victim on the ground that, the criminal proceeding is yet to attain finality or that the Court in seisin of the proceeding is yet to make a recommendation.
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> 20. West Bengal Victim Compensation Scheme, 2017 has come into effect on February 17, 2017. It has been promulgated by the State Government in coordination with the Central Government, in exercise of powers conferred by Section 357A of the Code of 1973. Victim is defined in Clause 2(i) of the Scheme of 2017 as a person who has suffered loss or injury as a result of crime and requires rehabilitation. Clause 4 of the Scheme of 2017 has prescribed 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. A person falling within the definition of the Victim under the Scheme of 2017 and being eligible for compensation in terms of Clause 4 of the Scheme of 2017 cannot be denied the compensation. Clause 4 of the Scheme of 2017 is essentially a scenario under Section 357A(4) of the Code of Criminal Procedure, 1973. Clause 4 of the Scheme of 2017 cannot be construed to mean that, the authority considering an application for grant of compensation under the Scheme of 2017, must await a decision of the Court in seisin of the criminal proceedings. It can however take into consideration the quantum of compensation the victim received pursuant to order of the Court in seisin of the criminal proceedings in awarding the compensation under the Scheme of 2017. It cannot deny consideration of an application for compensation simply on the ground that, the Court in seisin of the criminal proceeding is yet to decide whether, the applicant is entitled to compensation or not or that such Court did not pass an order directing compensation to be given. Operation, invocation and implementation of the Scheme of 2017 are not dependent upon any order of Court. The Scheme of 2017 is such that it operates notwithstanding the absence of any order of Court. The benefits of the Scheme of 2017 can neither be withheld nor its applicability or operation be suspended, pending a decision of a Court or a direction of a Court. The Scheme of 2017 is for the benefit of a victim and it must be implemented with the requisite urgency.

21. *Brajnandan Sinha* (supra) has considered "what constitutes a Court" within the meaning of Contempt of Courts Act, 1952. It has held that a commissioner appointed under The Public Servants (Inquiries) Act, 1850 is not a Court within the meaning of the Act of 1952. *Ankush Shivaji Gaikwad* (supra) has considered Section 357 of the Code of 1973. It has held that, award or refusal of compensation in a particular case may be within the discretion of the Court. However there exists a mandatory duty on the Court to apply its mind to the question of award of compensation in every criminal case. Court has to take into account the capacity of the accused to pay. It has observed that, power to award compensation was intended to reassure the victim that the victim is not forgotten in the criminal justice system.

22. *Piyali Dutta* (supra) has considered the West Bengal Victim Compensation Scheme, 2017 in the context of whether, the scheme was retrospective in nature or

not. It has held that, incidence of crime happening prior to the schemes coming into effect, cannot be denied compensation if such victim is otherwise entitled to compensation.

23. *Piyali Dutta* (supra) was considered in *Serina Mondal alias Piyada* (supra). *Serina Mondal alias Piyada* (supra) has considered a similar decision of the DLSA as impugned herein by which, DLSA rejected the claim of the victim. The Court is informed that, the writ petitioner herein is similarly situated and circumstanced as that of the writ petitioner in *Serina Mondal alias Piyada* (supra). It has held as follows:—

> "*The object and purpose of the Scheme of 2017 which itself replaced an earlier scheme of the year 2012 is inter alia that a victim of a serious crime specially a woman needs urgent and immediate attention and both physical and mental rehabilitation. Such rehabilitation from the nature of the scheme and Section 357A is not dependent on the pace on which either the investigation is conducted or the trial is carried on. If this be the object and purpose of the Scheme and Section 357A read as a whole, I cannot countenance the findings of the State Legal Services Authority in the impugned order that both the requirements i. e. accused not being traced or identified as well as the factum of trial not having commenced, need be satisfied.*
>
> *Compensation is awarded under the scheme as formulated pursuant to Section 357A (supra) as the fundamental rights of the victim under Article 21 have been in fact violated. Denial of compensation to such victim would continue such violation and perpetrate gross inhumanity on the victim in question. This cannot be the object of Section 357A and the 2017 Scheme referred to hereinabove. I therefore hold that both the requirements the accused not being identified or traced as also that the trial should not have commenced, need not be satisfied for entitlement of compensation under the 2017 scheme.*
>
> *There is yet another way to address the issue. If the accused have not been identified a trial cannot commence anyway. The Legislature could not have imposed an occurrence leading to the same result twice over, as a condition precedent. Any multiple preconditions must be independent occurrences. Two similar events cannot form two different conditions."*

> 24. In the facts of the present case therefore, the impugned decision of SLSA and DLSA cannot be sustained. SLSA is directed to disburse compensation to the petitioner under the Scheme of 2017 forthwith."

18. Following the judgment of the Kerala High Court in the case of **District Collector Vs. DLSA (supra)**, the Karnataka High Court held in the case of **Vakalpudi Venkanna Vs. The State of Karnataka & Ors.** reported in **MANU/KA/2277/2022** that the provisions contained under Section 357A of Cr.P.C. as well as the Karnataka Victim Compensation Scheme, 2011 are applicable to the incidents occurred prior to the said provision/scheme coming into force and it has been held in paragraph 10 as under:-

> "10. As can be seen from the aforesaid decisions of this Court and other High Courts, Section 357-A Cr.P.C. as well as the Karnataka Victim Compensation Scheme, 2011 are applicable even to the incidents that occurred prior to the said provision / said scheme coming into force. In the instant case, apart from the fact that Section 357-A Cr.P.C., and the scheme are applicable for the purpose of awarding compensation to the petitioner in relation to the demise of his son Narasimhulu expired on 08.10.2009, the undisputed fact that the VCC, Raichur, passed an order on 22.07.2015 after coming into force of both Section 357-A Cr.P.C. as well as the scheme, is sufficient to indicate that the petitioner and his family members are entitled to compensation under Section 357-A Cr.P.C. and the scheme as held and directed by the Victim Compensation Committee. Under these circumstances, I am of the considered opinion that the respondent No.2 clearly fell in error in issuing the impugned Endorsement/Communication dated 12.08.2015 refusing to pay compensation in favour of the petitioner and his family members and consequently, the same deserves to be quashed and the respondent no.2 be directed to pay compensation in favour of the petitioner in terms of the order dated 22.07.2015 passed in VCP No.12/2015 by the Victim Compensation Committee, Raichur."

19. Following the judgments passed by the Kerala High Court in the case of **District Collector Vs. DLSA (supra)**, Calcutta High Court in the case of **Achiya Bibi (supra)** and Karnataka High Court in the case of **Vakalpudi Venkanna (supra)**, this Court finds no valid reason to take a different view.

20. 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."

21. Hence, it would be safe to hold that the amended provisions contained under Section 357A of Cr.P.C. as well as the Rajasthan Victim Compensation Scheme, 2011 are applicable to the incidents occurred prior to enactment of the said provision and the Scheme, 2011 and the victim like the minor daughter of the petitioner is entitled to get compensation in terms of the Scheme of 2011.

22. Crime of rape committed with the minor victim is a dehumanizing one and an affront to human dignity. Hence, compensation should be awarded as a solace to the victim.

23. In view of the discussions made hereinabove, the instant writ petition is partly allowed with direction to the respondents to pay a compensation of Rs.3,00,000/- to the victim daughter of the petitioner, after adjusting the amount of compensation received by her earlier.

24. The respondents and Rajasthan State Legal Services Authority (RSLSA) as well as the District Legal Services Authority (DLSA), Jaipur are directed to make compliance of this order, in terms of the provisions contained under the Scheme of 2011 and the guidelines issued by the RSLSA within a period of three months from the date of receipt of this order.

25. Minor victims of rape are entitled to get compensation of Rs. 3,00,000/- with whom the incident has occurred prior to the year 2009 provided they submitted claim in this regard prior to the year 2009. A general mandamus is issued in favour of all minor victims of rape with whom the incident of rape was committed prior to year 2009 for award of compensation. This general mandamus would be applicable only in those cases where the applications were submitted prior to amendment of Section 357A Cr.P.C. The Chief Secretary of the Government of Rajasthan and the Member Secretary, RSLSA is directed to look into the matter and do the needful at earliest for disbursement of amount of compensation without any further delay to such minor victims of rape.

26. Before parting with this order, it is made clear that this order would not provide a new cause of action to any applicant and it would apply to the cases which are either pending before the competent authority and/or to the cases where litigation with regard to claim of victim compensation is pending on the date of this order only.

27. Office/Registry is directed to send a copy of this order to the respondents, Chief Secretary of the Government of Rajasthan, Member Secretary RSLSA and Secretary DLSA, Jaipur for necessary action and compliance of the order.

28. All applications (pending, if any) stand disposed of. The parties are left free to bear their own costs.

29. Keeping in view the fact that the identity of the victim and her parents should not be disclosed, the name of the petitioner and his father is dictated in alphabets. The Office is directed to issue cause title of this petition along with copy of this order to the respective parties of the litigation.

(ANOOP KUMAR DHAND),J

Solanki DS, PS