



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 7 of 2021 with
Crl. Petn. No. 57 of 2021

Date of Decision: 12.04.2022

State of Meghalaya	Vs.	Yoribha Shylla & Anr.
State of Meghalaya	Vs.	Smti. Theresa Pyrtuh

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. N.D. Chullai, AAG, with Ms. R. Colney, GA.
For the Respondent(s)	:	Ms. N.M. Kharshemlang, Adv. Ms. S.Nongrum, Adv. (R.1 & 2)

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

1 Challenged in this petition under section 482 Cr.PC is the order dated 16.09.2019 passed by the learned Special Judge (POCSO), East Khasi Hills District, Shillong in POCSO Case No. 51 of 2019 whereby the learned Special Judge on an application for grant of compensation on behalf of a victim of sexual assault, had granted compensation taking recourse to Rule 7(2) of the POCSO Rules, 2012, amounting to ₹ 2,00,000/- (rupees two lakhs) only.

2 Another similar matter relates to the order dated 11.11.2020 passed by the learned Special Judge (POCSO), Khliehriat, East Jaintia Hills District in Khliehriat Women PS Case No. 46(11)2019, under section 5 and 6 of the



POCSO Act, 2012 wherein the learned Special Court had directed for payment of compensation to the victim therein amounting to ₹ 4,00,000/- (rupees four lakhs) only.

3 Both matters being almost identical and similarly situated involving the issue of exercise of jurisdiction by the learned Special Court, it is deemed convenient and expedient to take up both the matters together and to pass a common order.

4 The factual background of the case in Crl. Petn. No. 7 of 2021 is that the victim who was a minor at the relevant time was sexually assaulted by one Yasin Warjri on 07.12.2017 resulting in an FIR being lodged and the victim being medically examined following due process, the matter culminated in a trial before the Special Court POCSO with POCSO Case No. 51 of 2019. During pendency of the trial, the accused expired on 01.08.2019 at NEIGRIHMS after prolonged illness, the death of which was confirmed by issuance of a Death Certificate dated 06.08.2019. The learned Special Judge on being informed of the said death of the accused, was pleased to deliver the final judgment in the matter, observing that the trial stands abated. The relevant date of the final order was 08.08.2019.

5 As pointed above, the learned Special Court on receipt of the said application for grant of compensation, has passed the impugned order dated 16.09.2019 exercising power under Rule 7(2) of the said POCSO Rules, 2012 and under Rule 7(5) has also directed the State Government to pay the award of compensation.

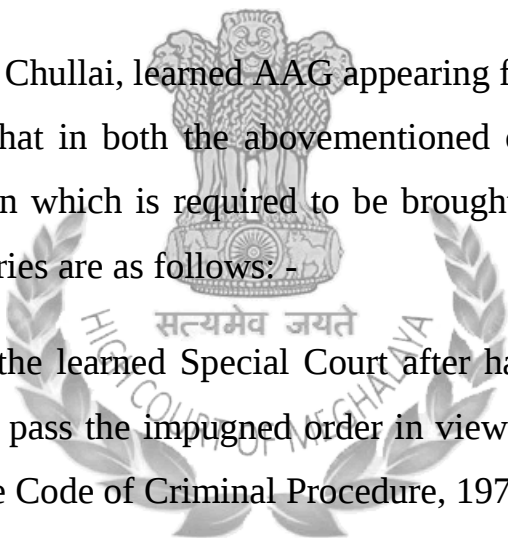
6 In the case of Theresa Pyrtuh, in Crl. Petn. No. 57 of 2021, the facts which emerged from the records would show that a minor victim girl was allegedly sexually assaulted by an unidentified accused person on 07.11.2019 for which an FIR dated 08.11.2019 was lodged leading to registration of Khliehriat Women PS Case No. 46(11) of 2019 under section 5 and 6 POCSO Act, 2012.



7 After investigation was launched, the Investigating Officer filed the final report vide FR No. 01/2020, dated 29.02.2020 stating that the accused person was untraceable despite the best efforts of the Investigating Authorities. The report was placed before the learned Special Court, who, vide order dated 11.11.2020, while acknowledging the said report, had disposed of the case. On the same day, after disposal of the said case, the learned Special Judge (POCSO) had directed the State Government to pay compensation of ₹ 4,00,000/- (four lakhs) only to the victim.

8 Being highly aggrieved and dissatisfied with the impugned orders dated 16.09.2019 and 11.11.2020 respectively, the petitioner/State has preferred this application with a prayer to quash the same.

9 Heard Mr. N.D. Chullai, learned AAG appearing for the petitioner/State who has submitted that in both the abovementioned cases, some pertinent legal query has arisen which is required to be brought to the notice of this Court and which queries are as follows: -

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- (i) Whether the learned Special Court after having disposed of the cases can pass the impugned order in view of the bar on section 362 of the Code of Criminal Procedure, 1973?
 - (ii) Whether Rule 7(2) and (3) read with section 357A of the Code of Criminal Procedure, 1973 are mandatory to be followed? and
 - (iii) Whether the Special Court in awarding compensation under POCSO Act, 2012 can fix the quantum of compensation?

10 Mr. Chullai at the outset has however submitted that the State is not aggrieved by the award of compensation as mandated by law and even in the cases under consideration herein, the State is willing to pay the compensation awarded to the victims herein. However, the procedure followed by the learned Special Court under the POCSO Act in this regard has been questioned in these proceedings.



11 It may be mentioned that the Protection of Children from Sexual Offences Act, 2012 is a special act which is self-contained. However, as to the procedure to be followed in dealing with the prosecution of cases under the Act, sub-section 9 of section 33 provides for exercise of power by the Special Judge which shall be as that of a Session Judge. sub-Section 9 is reproduced below as:

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session.

12 The provision mentioned above would mean that the Special Judge while conducting a trial under the POCSO Act is guided by the provisions of the Code of Criminal Procedure, for example, in the manner of recording of evidence, and taking down of statement etc as well as in the manner in which the case is disposed.

13 The fact that the learned Special Judge vide the relevant orders has disposed of the respective cases, the matter stands disposed of under such terms. Any subsequent order passed in the same proceeding which would be in the nature of alteration or review of the same after the final judgment is passed, except to correct a clerical or arithmetical error would attract the provision of section 362 Cr.PC and is not permissible in law. That the learned Special Judge after disposing of the matter has thereafter passed the order directing for payment of compensation, the said direction is a nullity in law and cannot be enforced since the learned court has become '*functus-officio*' submits Mr. Chullai. Section 362 reads as under:

“ 362. Court not to alter judgment. - Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”



14 In the clear and unambiguous language of section 362 Cr.PC, applied to the case in hand, it is apparent that the learned Special Judge has disposed of the case finally; in the case of Yoribha Shylla, when the death of the accused therein was acknowledged and order for disposing of the case was passed and in the case of Theresa Pyrtuh, when the final report was filed by the Investigating Officer and the matter was disposed of accordingly. Indeed, the subsequent order directing for payment of compensation could not have been passed legally.

15 Sub-section 8 of section 33 of the POCSO Act has empowered the Special Court to direct for payment of compensation to the child. However, Mr. Chullai has submitted that this power is to be exercised only on two conditions, that is, at the time of infliction of punishment and secondly, only in appropriate cases. This provision read as follows:

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

16 Again, the attention of this Court is drawn to Rule 7 of the Protection of Children from Sexual Offences Rules 2012 which is produced hereunder as:-

“7. Compensation. - (1) *The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.*

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court, under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, makes a direction for the award of compensation



to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following: -

- (i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;*
 - (ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and or mental health;*
 - (iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;*
 - (iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;*
 - (v) the relationship of the child to the offender, if any;*
 - (vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;*
 - (vii) whether the child became pregnant as a result of the offence;*
 - (viii) whether the child contracted a sexually transmitted disease (SID) as a result of the offence;*
 - (ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;*
 - (x) any disability suffered by the child as a result of the offence;*
 - (xi) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;*
 - (xii) any other factor that the Special Court may consider to be relevant.*
- (4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.*
- (5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.*
- (6) Nothing in these rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government.”*

17 It is seen that Rule 7 (1) deals with the award of interim compensation and Rule 7(2) with recommendation of the final compensation. While determining the compensation payable to the victim, the guidelines available under Rule 7(3) has to be followed. This, according to Mr. Chullai, has not been followed by the learned Special Court while passing the impugned orders



inasmuch as the same does not disclosed consideration of any of the guidelines found in Rule 7(3).

18 It is further submitted that Rule 7(3) also refers to section 357A of the Code of Criminal Procedure and Sub-section 2 and 3 of section 357A specifies the stage of passing an order of compensation to be ‘*when passing judgment*’ and not after the judgment has been passed as was done vide the impugned orders.

19 Yet another anomaly in the impugned order was pointed out by Mr. Chullai, who has submitted that, the learned Special Court vide the impugned orders has directed for payment of compensation to the victim and has also quantified the same. However, a reading of Rule 7 of the POCSO Rule, read conjointly with the provisions of section 357A Cr.PC would show that the learned Special Court has power only to recommend award of the compensation but has no jurisdiction to quantify the same as the abovementioned provision has employed the word ‘*recommend*’ which recommendation has to be forwarded to the District Legal Services Authority as envisaged under the Meghalaya Victim Compensation Scheme, 2019. In this regard, the case of “***Karnataka State Legal Services Authority v. State of Karnataka and Anr.***” being order dated 02.01.2020, passed by the Hon’ble Karnataka High Court in Criminal Revision Petition No. 306 of 2018 was referred to by Mr. Chullai in support of his contention.

20 It is finally submitted that the learned Special Court having passed the impugned orders without jurisdiction, the same are likely to be set aside and quashed.

21 The respondent No.2 in response to the averments made in this petition, has filed the affidavit in opposition, asserting that inherent power to grant compensation lies with the learned Special Court to alleviate the loss or physical injury sustained by the victim in cases of sexual assault.



22 Ms. S. Nongrum, learned counsel for the respondent No.1 and 2 respectively, at the outset, has submitted that the statement of the State petitioner that the order of the learned Special Court for payment of the said compensation has already been complied with inasmuch as, the payment stands disbursed to the victim is factually incorrect as till date the amount of compensation awarded has not yet been received by the respondent No.1.

23 To this effect, it is stated that on enquiry, the District Legal Services Authority, East Khasi Hills, Shillong vide letter No. DSJ.IV/VCS Meeting/2020/724, dated 16th March 2021, has clearly indicated that the compensation to the victim in these proceedings have not yet been disbursed.

24 It is further submitted that under Rule 7(2)(3) of the POCSO Rule, 2012, the learned Special Court has the power to recommend the award of compensation. Again, under section 33(8) of the POCSO Act, 2012, it is said that the Special Court has the power to direct payment of compensation to the child for any physical or mental trauma caused to her or for immediate rehabilitation of such child. This has been fortified by the ruling of the Hon'ble Supreme Court in the case of "*Nipun Saxena v. Union of India*" (2019) 13 SCC 715. Another case cited in this regard, is the case of "*Mother Minor Victim No.1 & 2 v. State & Ors*", order dated 15.06.2020 passed by the Hon'ble Delhi High Court in W.P(Crl) 3244/2019.

25 It is therefore submitted that this petition may be dismissed as devoid of merits.

26 This Court has given due consideration to the submission made and the issues proposed to be answered. Before answering the query on issue No.1, issue No.2 as to whether Rule 7(2)(3) of the POCSO Rule, 2012, read with Section 357A Cr.PC are mandatory to be followed, may be taken up first for consideration.

27 Section 357A of the Code of Criminal Procedure, 1973 was inserted by



an Amendment Act of 2008 being effective from 31.12.2009. This section provides for preparation of the Victim Compensation Scheme by the State Government in co-ordination with the Central Government for the purpose of compensation to the victim. As mandated by this provision, the State Government has brought out a scheme called '*Victim Compensation Scheme*'. The implementation of the said scheme was vested on the District Legal Services Authority or the State Legal Services Authority. At present, in the State of Meghalaya, we have the '*Meghalaya Victim Compensation Scheme, 2019*'.

28 Coming back to Rule 7 of the POCSO Rules, 2012, Rule 7(2) has empowered the Special Court to recommend the award of compensation on its own, or on an application filed by or on behalf of the victim on the culmination of the proceedings where, in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

29 Rule 7(3) speaks of the exercise of power by the Special Court under sub-section 8 of section 33 of the Act, read with sub-sections (2)&(3) of section 357A Cr.PC.

30 In both the rules indicated above, what is apparent is that the power of the Special Court is confined only to the extent of recommendation of the award of compensation and not to direct award of the same since, sub-section 2 of section 357A Cr.PC clearly provides that on a recommendation made by the court for compensation, the District Legal Services Authority or the State Legal Services Authority as the case may be, shall decide the quantum of compensation to be awarded.

31 It has to be made clear that the power of the Special Court to grant interim compensation under Rule 7(1) of the said Rules of 2012 is not to be confused with the power of the Special Court to grant the final compensation inasmuch as under Rule 7(1), there is no bar for the Special Court to award interim compensation in appropriate case looking into the need of the child for relief



or rehabilitation, however, when it come to the final award of compensation, on consideration of the relevant factors as found under Rule 7(3), relating to the loss and injury of the child, the Special Court can direct for award of compensation. On conjoint reading of Rule 7(2) and Rule 7(3), what can be understood is that the Special Court will finally recommend the award of compensation to be satisfied by the State Government in terms of Rule 7(5).

32 Again, as far as fixation of the quantum of compensation is concerned, Rule 7(3) has mandated that the Special Court is empowered to make a direction for the award of compensation to the victim, 'award of compensation' could also mean and include the quantum of compensation which should be determined only on the basis of the factors indicated under Rule 7(3). The second aspect of the matter is that under the relevant State Victim Compensation Scheme, a schedule has been annexed thereto, which schedule has laid down the amount of compensation applicable to different cases, such as, in cases of death of the victim or injury caused to the victim and the extent of injury caused which would be determinative of the quantum entitled to. In this regard, there is no bar for the Special Court to fix the quantum of compensation and to recommend the same for payment.

33 In the case of Karnataka State Legal Services Authority (supra), referred to by the State/petitioner, the court has come to a conclusion that the Trial Court cannot decide on the quantum of compensation but the same on recommendation, is to be decided by the District Legal Services Authority/State Legal Services Authority.

34 In the case of Mother Minor Victim No.1 and 2 (supra) the Hon'ble Delhi High Court has to decide on the issue of the award of additional interim compensation after the initial interim compensation has been satisfied and under the facts and circumstances of the case has held that there is no bar for the victim to seek for grant of additional or further interim compensation. In the facts and circumstances of the case in hand, this Court finds that this



judgment is not relevant to the issues in question.

35 In view of the above, what can be determined herein is that the Special Court while considering recommendation for award of compensation, is bound by the said Rule 7(2)&(3) of the POCSO Rules, 2012 as well as other related provisions, particularly under section 357A Cr.PC.

36 As to the issue of whether the Special Court can quantify the compensation, in reiteration of what has been stated above, this Court finds that the Special Court after considering the factors present in Rule 7(3) can quantify the amount of compensation with direct reference to the schedule found in the relevant Victim Compensation Scheme of the State as well as that of the NALSA Scheme and can recommend the same to the DLSA/SLSA.

37 The next issue to be decided is on issue No.1. It is well settled that the court in a criminal proceeding after disposing a matter and after passing the final order cannot review or alter its own judgment, except to the extent of correcting any clerical or arithmetical error. In the case in hand, after finally disposing of the case, the learned Special Court has, in the case of Yoribha Shylla, on an application, directed the payment of compensation and in the case of Theresa Pyrtuh vide the impugned order had firstly disposed of the case on the accused not being found and after disposal of the said case had albeit on the same day passed a separate order directing the State Government to pay the compensation. This is a clear violation of section 362 Cr.PC and could not be sustained herein.

38 On an overall consideration of the issues in question, this Court has come to the conclusion that the learned Special Court after having passed the final order disposing of the case before it, the court has become '*functus officio*' and could not have passed the impugned order directing for payment of compensation in the same proceedings.

39 Again, as indicated above, the Special Court applying the provisions of



Rule 7(2)&(3) of the POCSO Rules, 2012 read with Section 357A Cr.PC, though having the power to grant or direct for payment of interim compensation, as regard the final compensation to be paid, could not have done so on its own except to refer the recommendation to the DLSA/SLSA.

40 As to the power to quantify the recommendation for compensation, the Special Court could do so, however, only after consideration of the schedule to the Victim Compensation Scheme as regard the exact amount to be recommended.

41 In the final analysis, the application of the State/petitioner has merits and the same is accordingly allowed. The impugned orders dated 16.09.2019 and 11.11.2020 respectively passed by the learned Special Court (POCSO) are hereby set aside and quashed.

42 Before parting with this case, notwithstanding the fact that the impugned orders have been set aside and quashed, however, considering the beneficial aspect of the matter where the victim could not be left without any relief, the concession of the State/petitioner that the award of compensation directed to be paid will be satisfied to the extent that if not already paid, the same is to be forthwith paid to the victim within 4(four) weeks from the date of this order. This will not be cited as a precedent in any similar proceedings.

43 Copy of this order shall also be circulated to all the courts of the learned Special Judge (POCSO) in the State of Meghalaya to serve as a ready reference on the following points: -

- (I) That the Special Court has the jurisdiction and power to pass an award for interim compensation.
- (II) That under the provision of Rule 7(2) of the POCSO Rules, 2012, which is *pari materia* with Rule 9(2) of the POCSO Rules, 2020, the Special Court after taking into consideration the factors as laid down under Rule 7(3) [now Rule 9(3)] may recommend the award for



compensation to the District Legal Services Authority or State Legal Services Authority for necessary action.

- (III) That the Special Court may quantify the amount of compensation subject to the respective slabs as could be found in the schedule to the relevant Victim Compensation Scheme and recommend that the same may be paid to the victim.

Judge

Meghalaya
12.04.2022
"N.Swer, Stenographer"

