

XXX vs State of Kerala

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Court : Kerala

Decided On : Aug-16-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Crl.MC/3531/2022

Appellant : XXX

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
WEDNESDAY, THE 16TH DAY OF AUGUST 2023 / 25TH SRAVANA,
1945 CRL.MC NO. 3531 OF 2022 AGAINST THE ORDER IN SC
1232/2017 OF I ADDITIONAL DISTRICT & SESSIONS JUDGE,
KOLLAM PETITIONER/DEFACTO COMPLAINANT: XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX BY ADVS. RAMESH .P FATHIMA
NARGIS K.A. RESPONDENTS/STATE: 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM., PIN - 682031 *2 KERALA STATE LEGAL
SERVICES AUTHORITY REP. BY MEMBER SECRETARY, HIGH
COURT BUILDING (2ND FLOOR) ERNAKULAM-31(*IMPLEADED SUO

MOTU AS PER

ORDER DATED 18/1/23 IN CRL.M.C.NO.3531/2022

BY ADVS. ROSHEN D. ALEXANDER D TINA ALEX THOMAS HARIMOHAN KOCHURANI JAMES OTHER PRESENT: SRI.P NARAYANAN, ADDL PP. ADV KK DHEERENDRAKRISHNAN AMICUS CURIAE THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24.01.2023, ALONG WITH Crl.MC.8718/2022, THE COURT ON 16.08.2023 PASSED THE FOLLOWING: -
:2:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH WEDNESDAY, THE 16TH DAY OF AUGUST 2023 / 25TH SRAVANA, 1945 CRL.MC NO. 8718 OF 2022 AGAINST THE ORDER IN SC 428/2013 OF SPECIAL COURT FOR TRIAL OF OFFENCES UNDER POCSO ACT & CHILDRENS' COURT (ADDITIONAL SESSIONS COURT-1), ALAPPUZHA PETITIONER/DEFACTO COMPLAINANT: 1 XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX BY ADVS.RAMESH .P ROSHEN D. ALEXANDER D FATHIMA NARGIS K.A. SANGEERTHANA M. TINA ALEX THOMAS HARIMOHAN KOCHURANI JAMES RESPONDENT/STATE: 1 STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 *2 MEMBER SECRETARY KERALA LEGAL SERVICES AUTHORITY, NIYAMA SAHAYA BHAVAN,HIGH COURT COMPOUND,KOCHI,KERALA-682031. (*ADDL.R2 IMPEADED AS PER ORDER DATED 18/1/2023 IN CRL.M.C.NO.8718/2023) OTHER PRESENT: SRI.P NARAYANAN, ADDL PP. ADV K.K. DHEERENDRAKRISHNAN AMICUS CURIAE THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24.01.2023, ALONG WITH Crl.MC.3531/2022, THE COURT ON 16.08.2023 PASSED THE FOLLOWING: -
:3:- "C.R."

ORDER

Dated this the 16th day of August 2023 The power and jurisdiction of the Kerala State Legal Services

Authority (Ke LSA)/District Legal Services Authority (DLSA) to award compensation to the victims under the Kerala Victim Compensation Scheme, 2017(As amended in 2021), without the recommendation from the Court falls for consideration in these petitions filed under Section 482 of the Code of Criminal Procedure Code, 1973 (for short, Cr. P.C).

Facts briefly

2. Two sexual assault victims who suffered adverse orders at the hands of Ke LSA rejecting their applications for victim compensation are the petitioners.

3. The petitioner in CrI. M.C.No.3531/2022 was the victim

in SC No.1232/2017 on the file of the First Additional Sessions Court, Kollam. The accused was none other than her father. The offences alleged were under Sections 376 of IPC, Sections 3(b), 4, 5 (i) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, POCSO Act) and Section 75 of the Juvenile Justice

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(Care and Protection of Children) Act (for short, the JJ Act). The allegation was that the accused sexually assaulted the victim, aged 4 years, by inserting his finger and buds into her anus on many occasions prior to 11/7/2017 at their house. After a full- fledged trial, the learned Additional Sessions Judge convicted and sentenced the accused under Sections 3(b) r/w 4 and 5 (i) r/w 6 of the POCSO Act and Section 75 of the JJ Act. Apart from the substantive sentence, a total fine amount of `75,000/- was

imposed. However, there was no recommendation to pay compensation as contemplated under Section 357A (3) of Cr.P.C. or Rule 9(2) of the Protection of Children from Sexual Offences Rules, 2020 (for short, POCSO Rules) r/w Section 33(8) of the POCSO Act.

4. The petitioner in Crl. M.C No.8718/2022 was the

mother of the victim in SC No.428/2013 on the file of the Special Court for Trial of Offences under POCSO Act and Children's Court (Additional Sessions Court -I), Alappuzha. The accused was the neighbor of the victim girl, aged 13 years. The offences alleged were under Sections 363 and 376 of IPC, Section 5(k) r/w 6 of the POCSO Act and Section 23 of the JJ Act. The allegation was that

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on 24/1/2013 at 02.30 p.m, the accused committed rape on the victim without her consent at his house. During the pendency of the case, the accused expired. Therefore, the learned Sessions Judge closed the case as the charge against the accused was abated. Here also, there was no recommendation to pay compensation as contemplated under Section 357A (3) of Cr.P.C. or Rule 9(1) of the PCOSO Rules r/w Section 33(8) of the POCSO Act.

5. After the disposal of the Sessions Cases mentioned

above, the victims in both cases preferred applications seeking compensation under the Kerala Victim Compensation Scheme, 2017 (As amended in 2021) at the jurisdictional DLSA. The DLSA allowed the applications and awarded a compensation of `6,00,000/- to the petitioner in Crl. M.C No.8718/2022 and `10,50,000/- to the petitioner in Crl. M.C.No.3531/2022. The DLSA thereafter forwarded the orders to Ke LSA with a request for allotment of the compensation awarded to the victims. The Ke LSA, however, returned the orders to DLSA, holding that, without a recommendation from the Court, DLSA cannot award

compensation. Those orders are under challenge in these -:6:- Crl.M.Cs.

6. This court suo moto impleaded Ke LSA as the 2nd respondent. This court also appointed Adv.K.K.Dheerendrakrishnan as Amicus Curiae to assist the court.

7. I have heard Sri. P.Ramesh, the learned counsel for the petitioners; Sri. P. Narayanan, the learned Additional Public Prosecutor, Sri. Roshen D. Alexander, the learned counsel for Ke LSA and Sri.K.K.Dheerendrakrishnan, the learned

Amicus Curiae. Rival Contentions

8. The learned counsel for the petitioners submitted that

the Additional Sessions Court while disposing of both cases should have recommended compensation as provided under Section 357A (3) of Cr.P.C. and the petitioners who are otherwise entitled for compensation should not be denied the same for the sole reason that there was no recommendation from the Court. The learned Amicus Curiae submitted that Clause 14(b), Chapter II of the Kerala Victim Compensation Scheme, 2017 amended in 2021 enables the victim to move an application for the award of interim/final compensation before Ke LSA/DLSA in respect of the

-:7:- offences covered by the said Chapter. Since the offences involved in both cases include the offences covered by Chapter II of the Amended Scheme and the recommendations in both cases made by the DLSAs were after the introduction of Clause (14) mentioned above, they were well within their power to award

compensation based on the applications moved by the petitioners, submitted the counsel. The learned Amicus Curiae further submitted that Section 357A of Cr.P.C is a beneficial provision and the Kerala Victim Compensation Scheme framed thereunder is a beneficial scheme requiring liberal interpretation in the victim's favour if any ambiguity prevails. The learned Public Prosecutor as well as the learned counsel for the 2 nd respondent supported the findings in the impugned orders. Victim Compensation: Statutory Interventions

9. One of the essential components of restorative justice

is Victim Compensation Schemes, which provide a means of redress to victims and empower them in the process of repairing the harm. Until 2009, there was no comprehensive legislation or a well-designed statutory scheme in India that allowed a victim to seek compensation from either the perpetrator or the State. The -:8:-

criminal law in the country provided for compensation to victims and their dependents only in a limited manner under Section 357 of Cr.P.C. The

amendment to the Cr. PC, introduced in 2009, addressed the victims right to compensation. Now there is a statutory duty upon the State, under Section 357A of Cr.P.C, to award compensation to victims of crime. While sub-section (1) of Section 357A makes it mandatory for the State Government to frame a Scheme in co-ordination with Central Government for

providing funds for compensation to victims or his/her dependents, sub-section (2) casts a duty on DLSA or State Legal Services Authority (for short, 'SLSA') to decide the quantum of compensation to be awarded to the victim under the Scheme referred to in sub-section (1). By incorporating Section 357A, the legislature gave statutory acknowledgement to the constitutional duty of the State to compensate and rehabilitate victims of crime or their dependents in addition to compensation payable by a convict under S.357 Cr.P.C. For reference, Section 357A of Cr.P.C. is extracted below: 357A. Victim compensation scheme.

(1) Every State Government, in co-ordination with the

Central Government, shall prepare a scheme for providing -:-9:- funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court

for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is

satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but

the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for

award of compensation.

(5) On receipt of such recommendations or on the

application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority,

as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit. -:10:-

A reading of the above provision makes it clear that the compensation under Section 357A of Cr.P.C. is to be paid in two ways: one is on the recommendation of a Court under Section 357A(2) or Section 357A(3) of the Cr.P.C, and two is on an application made by a victim under Section 357A(4) Cr.P.C. to the SLSA or DLSA for the award of compensation. Sub-section (3) of Section 357A empowers the Court to recommend compensation at the conclusion of the trial, whether the case ends in conviction, acquittal, or discharge of the accused. When the accused is not traced out or identified, and no trial takes place, sub-section (4) of Section 357A allows the victim or his dependents to make an application to the SLSA or DLSA seeking compensation and sub- section (5) empowers the SLSA or DLSA to award compensation after due enquiry. Thus, going by Section 357A of Cr.P.C., the SLSA or DLSA is empowered to award compensation to the victim without a recommendation from the Court only in a case where no trial took place for the reason that the accused could not be traced out or identified. In a case where the trial took place, and the case ended up in conviction, acquittal, or discharge, SLSA or

DLSA gets jurisdiction to determine and award adequate -:11:- compensation only on the recommendation of the Court.

10. When the POCSO Act was enacted in the year 2012

with the primary objective of protecting children from various kinds of sexual abuses and offences, a specific provision was incorporated therein empowering the Special Courts to direct payment of compensation to the child victim, in addition to punishment. The procedure and powers of the Special Court

under the POCSO Act for payment of compensation are enumerated under Section 33(8) of the POCSO Act and Rule 9 of the POCSO Rules, 2020. Section 33(8) empowers the Special Courts to direct payment of such compensation as may be prescribed to the child, for physical or mental trauma caused or for immediate rehabilitation, in addition to punishment. Rule 9(1) of the POCSO Rules, 2020 empowers the Special Court to award interim compensation in appropriate cases, on its own or on an application filed by a victim, to meet the immediate needs or for relief or rehabilitation at any stage after registration of the FIR. Under Rule 9(2), the Special Court, on its own or on an application filed by the victim, is also empowered to recommend the award of compensation, whether the accused is convicted or even

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acquitted or discharged or remains untraced or unidentified if, in the opinion of the court, the victim has suffered loss or injury as a result of the offence. Rule 9(3) authorises the Special Court to make a direction for the award of compensation to the victims. The provisions regarding the compensation under the POCSO Act and Rules are based on Section 357A of Cr. P.C., with suitable changes, to ensure immediate and speedy relief to the child.

11. On a reading of Section 33(8) of the POCSO Act and

Rule 9 (1), (2) of the POCSO Rules 2020, it becomes clear that only the Special Court is competent to award either interim compensation or final compensation or both for meeting the immediate relief and rehabilitation needs of the child either on

its own or on an application filed by or on behalf of the child. The said compensation shall be payable by the State Government through Schemes or Funds established for such purpose [Rule 9(4) of the POCSO Rules]. Thus, as per the POCSO Act and POCSO

Rules, the SLSA or DLSA is not empowered to award compensation, either interim or final, to the child victim without a recommendation or direction from the Special Court. -:13:- An Overview of the Kerala Victim Compensation Scheme

12. As per Section 357A of Cr.P.C., the Kerala Victim Compensation Scheme was introduced in the State of Kerala in

2014. It was later superseded and repealed by another Scheme

by the name Kerala Victim Compensation Scheme, 2017. The 2017 Scheme was further amended by the Kerala Victim Compensation (Amendment) Scheme, 2021, published as GO(Ms)

No.59/2021/Home dated 20/2/2021. By virtue of the Amended Scheme, Chapter II, with the title Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, and Schedule II, with the title Applicable to Women Victim of Crimes was added. But, unlike Chapter I, Chapter II is not a gender- neutral one. It applies to women victims only. In Chapter II, the term offence under Clause 11(f) has been defined as an offence committed against women punishable under the IPC or any other law. By virtue of Clause 12 of the said Scheme, a separate fund is constituted by the name Women Victims Compensation Fund, which has to be paid to a woman victim or her dependents.

13. In the Amended Scheme, for the first time, a separate provision (Clause 14) was introduced enabling the victim or the -:14:-

Station House Officer of the area to file an application for compensation, interim as well as final, at the DLSA or Ke LSA physically or through online portal of Ke LSA. The DLSA or Ke LSA is also authorised to initiate suo moto action to grant interim compensation on receipt of the copy of the FIR shared by the police authorities. Clauses (14) and (15) of Chapter II of the Amended Scheme are extracted below

for reference:

14. Procedure For Making Application Before The State Legal Services Authority or District Legal Service Authority.

(a) Mandatory Reporting of First Information Report:-Station

House Officer/Superintendent of Police/Deputy Commissioner of Police shall mandatorily share soft/hard copy of First Information Report immediately after its registration with State Legal Services Authority/District Legal Services Authority so far as the offences committed are covered by this chapter which include sections 326A, 354A, 354B, 354C, 354D, 376A, 376B, 376C, 376D, 376E, 304B and 498A (in case of physical injury covered in Schedule I), so that the State Legal Services Authority/District Legal Services Authority can, in deserving cases, may suo-moto initiate preliminary verification of

facts for the purpose of grant of interim compensation.

(b) An application for the award of interim/final

compensation may be filed by the victim and/or her dependents or the Station House Officer of the area before State Legal Services Authority./District Legal Services Authority concerned in the form appended to these Schemes along with a copy of the First Information Report -:15:-

(FIR) or Criminal complaint of which cognizance is taken by the Court and Medical Report, Death Certificate, wherever applicable, copy of judgment/recommendation of court if the trial is over.

15. Place of Filing of Application:- The

application/recommendation for compensation can be moved either before the State Legal Services Authority or the District Legal Services Authority concerned or it can be filed online on a portal created by all

State Legal Services Authorities. The Secretary of the respective District Legal Services Authority shall decide the application/ recommendation moved before him as per Chapter II of the Scheme. Explanation: In case of victim of acid attack the authority to decide compensation shall be Criminal Injury Compensation Board.

14. Thus, even though till 20/2/2021, DLSA/Ke LSA did not

have the jurisdiction to grant compensation to the victim suo moto or on application made by or on behalf of the victim except for the claim under sub-section (4) of Section 357A of Cr.P.C., after the introduction of Chapter II in the Scheme, the compensation, interim as well as final, as the case may be, can be awarded by the DLSA/Ke LSA either suo moto or on application by the victim or the jurisdictional Station House Officer in respect of the offences covered by the said Chapter. However, Explanation to Clause 27 states that the provisions of this -:16:- Chapter (Chapter II) do not apply to minor victims for the offences under the Protection of Children from Sexual Offences Act, 2012 (Central Act 32 of 2012). By this exclusion, minor

victims under the POCSO Act are excluded from the accountability of the provisions of Chapter II, including Clause (14). Thus, the minor victims under POCSO Act cannot file an application directly to the DLSA or Ke LSA seeking compensation. They can claim compensation only on the recommendation or direction from the Special Court, even after the amendment of the Kerala Victim Compensation Scheme in 2021. Merit Analysis

15. Coming to the merits of the petitions, offences

charged against the accused in both cases include Section 376 of IPC, an offence covered by Chapter II of the Amended Scheme. The DLSA passed orders recommending compensations in both cases after the amendment was brought to the Kerala Victim Compensation Scheme, 2017 in 2021, enabling DLSA to entertain applications for compensation directly from the victim or his/her

dependents and to award compensation based on that application after conducting the necessary enquiry. Hence DLSA, -:17:-

in both cases, was well within its power to award compensation to the petitioners. The Ke LSA absolutely went wrong in rejecting the claims holding that, without a recommendation from the Court, DLSA cannot award compensation. Hence, the impugned orders are not sustainable and liable to be set aside. Duties of the Courts and Other Stakeholders

16. Section 357A of Cr.P.C. and the Kerala Victim

Compensation Scheme, 2017 framed as per the said provision is a laudable legislative initiative to compensate and rehabilitate victims of crime or their dependents in addition to compensation payable by a convict under Section 357. Similar is Section 33(8) of the POCSO Act r/w Rule 9 of the POCSO Rules, which empower the Special Courts to direct payment of compensation, in addition to punishment, for physical or mental trauma caused to the child victim, or for immediate rehabilitation. Both these provisions (Section 357A of Cr.P.C and Section 33(8) of the POCSO Act r/w Rule 9 of the POCSO Rules) confer a power coupled with a duty on the Courts to compensate and rehabilitate the victim in every criminal trial, particularly in trials relating to sexual offences, whether the case ends in conviction, acquittal, or discharge of the

-:18:- accused.

17. In Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551], the

Apex Court lamented the failure of the Courts to award compensation to the victims in terms of S.357(1) Cr.P.C. The Court recommended that all Courts exercise the power available

under S.357 Cr.P.C liberally to meet the ends of justice. In Ankush Shivaji Gaikwad v. State of Maharashtra [(2013) 6 SCC 770], the Apex Court, after reviewing the entire case law relating to the payment of compensation, held that consideration of the grant of compensation to the victim of a crime under Sections 357 and 357A of Cr. P.C is mandatory in the following words:

"66. ... While the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation."

Relying on the decision rendered in Ankush (supra), the Apex Court, in Suresh and Another v. State of Haryana and Another [(2015) 2 SCC 227], held that it is the Court's duty to ensure that the victims of the crime are entitled to interim compensation and rehabilitation. In paragraph 16 of the judgment, it was observed

-:19:- thus:

"It is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case."

18. Despite the binding precedents in Ankush (supra),

Suresh (supra) and the mandate of Section 357A of Cr.P.C. and Section 33(8) of the POCSO Act, it is unfortunate to notice that the Courts in the State often fail to award compensation to the victims as in the instant two cases. The obligation cast

upon the Criminal Courts under Section 357A of Cr.P.C. and upon the Special Courts under Section 33(8) of the POCSO Act r/w Rule 9 of

-:20:- the POCSO Rules is a statutory obligation, and its objects and meaning can be achieved only when the Criminal Courts/Special Courts award requisite compensation to the victims in deserving cases as per the Kerala Victim Compensation Scheme, 2017 (As amended in 2021) without fail. Hence, it is incumbent on the

Criminal Courts/Special Courts to scrupulously follow the mandate of Section 357A of Cr.P.C., Section 33(8) of the POCSO Act r/w Rule 9 of the POCSO Rules. Similarly, the Public Prosecutors representing the State also have the responsibility to appraise the Court regarding the mandate of Section 357A of Cr. P.C. and Section 33(8) of the POCSO Act. The statutory duty is cast on DLSA/SLSA as well to ensure payment of compensation and to disburse it. The Ke LSA/DLSA will be able to disburse the compensation to the victims only if necessary funds are allocated to the Victim Compensation Fund by the State Government. The

Member Secretary, Ke LSA informed this Court that the disbursement of compensation to the tune of more than Rupees Six Crores is pending due to the non-allocation of fund by the Government. This Court in Abhishekh (supra) had already given direction to the State Government to take urgent steps to enable -

:21:- the Ke LSA to draw and disburse the compensation payable to the victims in terms of the Kerala Victim Compensation Scheme, 2017.

19. Clause (14)(a) of Chapter II of the Kerala Victim Compensation Scheme, 2017, as amended in 2021, provides that

Station House Officer/Superintendent of Police/Deputy Commissioner of Police shall mandatorily share soft/hard copy of FIR immediately after its registration with Ke LSA/DLSA in respect of the offences covered by Chapter II which include Sections 326A, 354A, 354B, 354C, 354D, 376A, 376B, 376C, 376D, 376E, 304B and 498A so that Ke LSA/DLSA can, in deserving cases, may suo moto initiate preliminary verification of facts for the purpose of interim compensation. However,

it is submitted on behalf of Ke LSA that this practice is not being followed in the State. It is incumbent on the police authorities of the State to take steps to send a copy of the FIR in respect of the offences covered by the Chapter immediately after its registration to Ke LSA/ DLSA to enable the latter to award necessary interim compensation to the victim as provided under Clause 14. This can easily be achieved by integrating the Kerala State Police IT system with Ke LSA.

-:22:- Concluding Remarks

20. The Apex Court in *Nipun Saxena and Another v. Union*

of India and Others (2017 SCC OnLine SC 1776), while making observations with respect to the implementation of Victim Compensation Schemes by different State Governments, directed the National Legal Service Authority (NALSA) to prepare model rules for victim compensation for sexual offences and acid attacks. Pursuant to the said direction, though a Chapter was inserted in the Central Victim Compensation Scheme, the same excluded victim compensation under the POCSO Act since the Act and Rules envisage its own unique procedure for compensating

victims of sexual abuse. Recognising the absence of Victim Compensation Scheme with regard to the victims of sexual abuse under the provisions of the POCSO Act, the Apex Court in *Nipun Saxena and Another v. Union of India and Others* [(2019) 13 SCC 715] by order dated 5/9/2018 directed that till a compensation scheme specifically for child victims in POCSO cases is framed, the NALSA Compensation Scheme shall act as a guideline to special Courts to award compensation to child victims of sexual abuse. In *Abhishek v. State of Kerala* (2020 (5) KLT 276), after

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finding that implementation of the provisions of the POCSO Act needs to be improved radically, this Court, in the exercise of its power under Articles 226 and 227 of the Constitution of India, with a view to protect the children involved in the cases from the risk of secondary victimisation and to make the justice delivery

under the statute effective and meaningful had issued 26 general

directions. As per direction No.24, the State Government was directed to take immediate necessary steps to enable the Ke LSA to draw and disburse the compensation payable to the victims in cases arising under the POCSO Act, in terms of the provisions of the Kerala Victim Compensation Scheme.

21. Despite the directions of the Apex Court in *Nipun*

Saxena (supra) and of this court in *Abhishek* (supra), no compensation scheme specifically for child victims in POCSO cases has been framed in the State of Kerala. It is pertinent to note that the 2017 Scheme was amended by the Kerala Victim Compensation (Amendment) Scheme, 2021, after the above directions of the Apex Court and this court. By virtue of the Amended Scheme Chapter II, with the title Compensation Scheme for Women Victims/Survivors of Sexual Assault/other -:24:-

Crimes, and Schedule II, with the title Applicable to Women Victim of Crimes, was added. But, going by the Explanation to Clause 27 of the Amended Scheme, Chapter II and Schedule II are not applicable to the victims of POCSO offences. It only applies to women victims of other crimes except under the POCSO Act. To make it worse, by virtue of the Amendment in Sl. No.12 of Schedule I, women victims of sexual assault were excluded from claiming compensation. Further, sexual offences under the POCSO Act, such as penetrative sexual assault, aggravated sexual assault, aggravated penetrative sexual assault, sexual harassment, and using a child for pornography, are not explicitly covered under either Schedule. Thus, the existing Scheme, even after the amendment in 2021, is inadequate for compensating victims of sexual abuse under the POCSO Act. In these circumstances, this Court, recently in *Kerala State Legal Services Authority v. State of Kerala* (2023 (4) KLT 734), directed the State Government to formulate a comprehensive Victim Compensation Scheme specifically for the victims of sexual offences under the POCSO Act or to make necessary amendments in the existing Kerala Victim Compensation Scheme, 2017 (As amended in 2021)

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incorporating a separate Schedule applicable to sexual offence victims under the POCSO Act. Till the framing of such a comprehensive scheme or making amendments to the existing scheme as stated above, it was held that the NALSA Scheme, 2018 should act as a guideline to the Special Court to award compensation to child victims of sexual offences under the POCSO Act as directed in Nipun Saxena (supra). NALSA Scheme, 2018 contains a similar provision as that of Clause (14) of Chapter II of the Kerala Victim Compensation Scheme, 2017, as amended in 2021. Hence, till the framing of such a Scheme, DLSA can suo moto initiate preliminary verification to grant interim

compensation and entertain applications for compensation directly from the victim or his/her dependents and award compensation based on that application after conducting necessary enquiry as contemplated under Clause (14) of Chapter II.

22. It is true, strictly speaking, that the impugned orders

passed by Ke LSA are not amenable to the jurisdiction vested with this Court under Section 482 of Cr.P.C. However, this Court can very well exercise its power and jurisdiction under Articles 226 :-26:-

and 227 of the Constitution to quash the impugned orders, which are found to be legally unsustainable. It is settled law that the nomenclature under which the petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction, which otherwise it possesses (See Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others [(1998) 5 SCC 749]. Reliefs and Directions

23. Based on the above findings, the following orders are passed:-

(i) The impugned orders are set aside.

(ii) The Ke LSA/DLSAs concerned are directed to grant the awarded compensation to the petitioners forthwith.

(iii) All the Criminal Courts in the State are directed to scrupulously follow the mandate of Section 357A of Cr.P.C.

(iv) All the Special Courts in the State dealing with the

cases under the POCSO Act are directed to scrupulously follow the mandate of Section 33(8) of the POCSO Act r/w Rule 9 of the POCSO Rules and :-27:- 357A of Cr.P.C.

(v) The State Police Chief shall ensure that the mandatory

reporting of the FIR immediately after its registration to the Ke LSA/DLSA in respect of the offences covered by Chapter II of the Kerala Victim Compensation Scheme, 2017, as amended in 2021 including the offences under the POCSO Act is strictly complied with.

(vi) The State Police Chief shall take steps to integrate the

Kerala State Police IT system with Ke LSA so that the soft copy of the FIR can be shared online with Ke LSA or DLSA concerned immediately on its registration. The Registrar (Computerization) - Director (IT), High Court of Kerala and the Member Secretary, Ke LSA shall oversee its implementation.

(vii) The Member Secretary, Ke LSA and the Chairman,

DLSAs are directed to strictly follow the mandate of Section 357 A of Cr. P.C, Rule 9 of POCSO Rules as well as the provisions of the Kerala Victim Compensation Scheme, 2017, as amended in 2021 to ensure the payment and disbursement of compensation. :-28:- (viii) The State Government shall allocate necessary amount to the Victim Compensation Fund to enable the Ke LSA to clear off pending claims without further delay. The State Government shall also ensure that sufficient money is allocated to the Victim Compensation Fund from time to time to enable the Ke LSA to draw and disburse the compensation payable to the victims in terms of the Kerala Victim Compensation Scheme, 2017 (As amended in 2021).

(ix) Till the State Government frames a comprehensive

Victim Compensation Scheme specifically for the victims of sexual offences under the POCSO Act or makes necessary amendments in the existing Kerala Victim Compensation Scheme, 2017 (As amended in 2021), DLSAs can suo moto initiate preliminary verification to grant interim compensation and entertain applications for compensation directly from the victim or his/her dependents and award compensation based on that application after conducting necessary enquiry as contemplated under :-29:- Clause (14) of Chapter II.

(x) The Registry shall forward a copy of this order to (i)

the Chief Secretary, the Government of Kerala, (ii) the Kerala State Police Chief, (iii) the Director General of Prosecution, Kerala, (iv), the Member Secretary, Ke LSA, and (v) the Registrar (Computerization) - Director (IT), High Court of Kerala
The Cr. M.Cs are disposed of as above Acknowledgement I place on record the appreciation for the able assistance rendered by the learned Amicus Curiae, Sri.K.K.Dheerendrakrishnan. Sd/- DR. KAUSER EDAPPAGATH JUDGE Rp

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