

Section 465 CrPC.

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59. In *Purushottamdas Dalmia v. State of West Bengal*, AIR 1961 SC 1589, the conviction by the Sessions Court, Calcutta was challenged by the accused on the ground that Calcutta Court had no jurisdiction to try the offence committed outside Calcutta. The Supreme Court held that there are two types of jurisdiction; *first*, being the power of the Court to try particular kind of offences and *second*, being territorial jurisdiction attached to various Courts for the sake of convenience. The Supreme Court emphatically held that if a Court has no jurisdiction to try a particular offence, then it would amount to be a flagrant violation, which would render the entire trial void. However, similar importance is not attached to an irregularity arisen due to territorial jurisdiction of a Court.

60. In *Bhooraji*, (*supra*), the conviction was challenged on the ground that the Sessions Court took cognizance of the offences without the case being committed to it. The Supreme Court held that a mere irregularity, which is not in the nature of illegality, can be cured by aid of Section 465 CrPC unless there has been failure of justice. Relevant portion of the judgment is reproduced as under:-

"12. Section 465 of the Code falls within Chapter XXXV under the caption "Irregular Proceedings". The chapter consists of seven sections starting with Section 460 containing a catalogue or irregularities which the legislature thought were not enough to axe down concluded proceedings in trials or enquiries. Section 461 of the Code contains another catalogue of irregularities which in the legislative perception would render the entire proceedings null and void. It is pertinent to point out that among the former catalogue constrains the instance of a Magistrate, who is not empowered to take cognizance of offence, taking cognizance erroneously and in good faith. the

provision says that the proceedings adopted in such a case, though based on such erroneous order, "shall not be set aside merely on the ground of his not being so empowered."

13. It is useful to refer to Section 462 of the Code which says that even proceedings conducted in a wrong sessions divisions are not liable to be set at naught merely on that ground. However, an exception is provided in that section that if the court is satisfied that proceedings conducted erroneously in a wrong sessions division "has in fact occasioned a failure of justice" it is open to the higher court to interfere. While it is provided that all the instances enumerated in Section 461 would render the proceedings void, no other proceedings would get vitiated ipso facto merely on the ground that the proceedings were erroneous. The court of appeal or revision has to examine specifically whether such erroneous steps had in fact occasioned failure of justice. Then alone the proceedings can be set aside. Thus the entire purport of the provisions subsumed in Chapter XXXV is to save the proceedings linked with such erroneous steps, unless the error is of such a nature that it had occasioned failure of justice.

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15. A reading of the section makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrences in criminal courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error, omission or irregularity has occasioned "a failure of justice" the superior court shall not quash the proceedings merely on the ground of such error, omission or irregularity.

16. What is meant by "a failure of justice" occasioned on account of such error, omission or irregularity? This Court has observed in *Shamnsaheb M. Multani vs :State of Karanataka (2001) 2 SCC 577* thus:

"23. We often hear about 'failure or justice' and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is

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*too pliable or facile an expression which could be fitted in any situation of a case. The expression 'failure of justice' would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in *Town Investments Ltd. v. Deptt. of the Environment*, 1977 (1) All E.R. 813. The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage."*

17. It is an uphill task for the accused in this case to show that failure of justice had in fact occasioned merely because the specified Sessions Court took cognizance of the offences without the case being committed to it. The normal and correct procedure, of course, is that the case should have been committed to the Special Court because that court being essentially a Court of Sessions can take cognizance of any offence only then. But if a specified Sessions Court, on the basis of the legal position then felt to be correct on account of a decision adopted by the High Court, had chosen to take cognizance without a committal order, what is the disadvantage of the accused in following the said court?"

*(Emphasis Supplied)*

61. In the present case there is no 'failure of justice' as the predecessor Judge presided over the trial, heard the final arguments, authored the judgment and finally pronounced the judgment in consonance with Section 353 CrPC. Even if it is presumed for the sake of arguments, that any irregularity has been caused due to the delay in pronouncement, it is curable under Section 465 CrPC. In *Jitender's case*, the defect was not an irregularity but rather an illegality which could not be cured. The Judgment was pronounced in violation of Section 353 CrPC, which was held to be no Judgment in the eyes of law. In the present case, the Judgment passed by the Ld. Predecessor Judge is valid and legal, and the case was referred to the

Successor Judge to pass the order on sentence in terms of Section 235(2) CrPC. The Successor Judge has the jurisdiction to pass the Order on Sentence in terms of Section 35 CrPC.

**Judgment passed by Division Bench in Jitender's case is per incuriam and thus, should be overruled**

62. Section 326 (1) CrPC relied upon by the Division Bench while deciding the above mentioned case states that whenever a Judge or a Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself. Provided that if the succeeding Judge or Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

63. Section 326 (1) CrPC while enabling the Successor Judge or Magistrate to proceed in the manner indicated above, does not specifically empower the Succeeding Judge or Magistrate to pronounce a Judgment written by the predecessor Judge or Magistrate without application of mind. This section only applies when the criminal trial is pending and not terminated, while the matter is fixed for the pronouncement of judgment. The Division Bench has wrongly relied upon Section 326 CrPC, which had no application on the facts and circumstances of that case.

64. While deciding the legality of *Note 2* in the transfer/posting order, the

Division Bench ought to have heard the Delhi High Court. However, the Division Bench did not issue notice to High Court and hence, the High Court was not given an opportunity to defend its order. The principle of *audi alteram partem* is of paramount importance and the same cannot be overlooked. Thus, the order passed by the Division Bench is improper on this count.

65. Note 2 of the transfer/posting order was issued by the High Court while exercising powers under Article 227 of the Constitution. If given an opportunity, the Delhi High Court could have defended Note 2, being an administrative order passed by this High Court in exercise of the power of superintendence under Article 227, which is the basic structure of the Constitution. The Division Bench thus did not take into consideration the power of superintendence of the High Court under Article 227 of the Constitution.

66. The Division Bench overlooked the mandate of Section 462 CrPC, which categorically states that no finding, sentence or order can be challenged on the ground of jurisdiction of any Sessions division.

67. The Division Bench failed to take into consideration the mandate of Section 465 CrPC, which categorically states that unless there has been a failure of justice, convictions cannot be set aside merely on the ground of procedural irregularity.

68. Since the relevant provisions of CrPC, Article 227 of the Constitution and various judgments of the Supreme Court in this regard were overlooked by the Division Bench while passing the Judgment in the case *Jitender's case*, the same deserves to be overruled.

69. The judgment passed by the Division Bench in *Jitender's case* is bad

in the eyes of law as the Division Bench did not consider the *de facto* doctrine discussed in *Gokaraju Rangaraju (supra)*.

**Submissions relating to the sentencing policy**

70. Section 357 CrPC was introduced on the basis of recommendations made by the Law Commission in the 41<sup>st</sup> Report submitted in 1969, which discussed section 545 (now section 357) of the erstwhile Criminal Code of 1898 extensively. The Report recognized that Criminal Courts had the discretion to order or not to order payment of compensation. On the basis of 41<sup>st</sup> Report, the Government of India introduced the Code of Criminal Procedure Bill, 1970 which aimed at revising section 545 and introducing it as Section 357. The Statement of Objects and Reasons underlying the Bill was that Section 545 only provided compensation when the Court imposed a fine and the amount of compensation was limited to the fine whereas under the new provision (Section 357), compensation can be awarded irrespective of whether the offence is punishable with fine and if fine is actually imposed.

71. Section 357 empowers the Court to award compensation to the victim having due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors. The Code of Criminal Procedure, 1973 incorporated Section 357 which states in its Objects that the provision was inserted as it "*intended to provide relief to the proper sections of the community*".

72. The amendments to the Code of Criminal Procedure, 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 Amendment left Section 357 CrPC unchanged, it introduced Section 357A CrPC under which the Court is

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empowered to direct the State to pay compensation to the victim in cases where Section 357 is not adequate for rehabilitation or where cases end in acquittal or discharge. The insertion of Sections 357A and 357B in CrPC has triggered a new compensatory regime. Reference is made to *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770.

73. Section 357A was introduced in CrPC on recommendation of the 154<sup>th</sup> Law Commission Report to protect victims. The 154<sup>th</sup> Law Commission Report on the CrPC devoted an entire chapter to 'Victimology' in which the growing emphasis on victim's rights in criminal trials was discussed extensively as under:

*"1. Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied.*

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*9.1 The principles of victimology has foundations in Indian constitutional jurisprudence. The provision on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates inter alia that the State shall make effective provisions for "securing the right to public assistance in cases of disablement and in other cases of undeserved want." So, Article 51A makes it a fundamental duty of every Indian citizen, inter alia 'to have compassion for living creatures and humanism. If interpreted and to 'develop emphatically imaginatively expanded these provisions can form the constitutional underpinnings for victimology.*

9.2 However, in India the criminal law provides compensation to the victims and their dependants only in a limited manner. Section 357 of the Code of Criminal Procedure incorporates this concept to an extent and empowers the Criminal Courts to grant compensation to the victims.

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11. In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds.....

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48. The question then is whether the plenitude of the power vested in the Courts Under Section 357 & 357-A, notwithstanding, the Courts can simply ignore the provisions or neglect the exercise of a power that is primarily meant to be exercised for the benefit of the victims of crimes that are so often committed though less frequently punished by the Courts. In other words, whether Courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?

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66. To sum up: 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. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order Under Section 357 Code of Criminal Procedure would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to



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do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

In *Malimath Committee Report* (March 2003), it was observed:

"6.7.1 Historically speaking, Criminal Justice System seems to exist to protect the power, the privilege and the values of the elite sections in society. The way crimes are defined and the system is administered demonstrate that there is an element of truth in the above perception even in modern times. However, over the years the dominant function of criminal justice is projected to be protecting all citizens from harm to either their person or property, the assumption being that it is the primary duty of a State under rule of law. The State does this by depriving individuals of the power to take law into their own hands and using its power to satisfy the sense of revenge through appropriate sanctions. The State (and society), it was argued, is itself the victim when a citizen commits a crime and thereby questions its norms and authority. In the process of this transformation of torts to crimes, the focus of attention of the system shifted from the real victim who suffered the injury (as a result of the failure of the state) to the offender and how he is dealt with by the State.

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6.8.1 The principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy. When the sentence of fine is imposed as the sole punishment or an additional punishment, the whole or part of it may be directed to be paid to the person having suffered loss or injury as per the discretion of the Court (Section 357 Cr.PC). Compensation can be awarded only if the offender has been convicted of the offence with which he is charged.

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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 of 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 Nilabati Behera v. State of Orissa (1993 2 SCC 746) and in Chairman, Railway Board v. Chandrima Das are illustrative of this 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. These decisions have clearly acknowledged the need for compensating victims of violent crimes irrespective of the fact whether offenders are apprehended or punished. The principle invoked is the obligation of the state to protect basic rights and to deliver justice to victims of crimes fairly and quickly. It is time that the Criminal Justice System takes note of these principles of Indian Constitution and legislate on the subject suitably."

(Emphasis Supplied)

74. On perusal of Section 357 CrPC it is clear that rights under Section 357 are not foreclosed but continued in Section 357A CrPC. The Courts are empowered to travel beyond Section 357 CrPC and award compensation where relief under Section 357 CrPC is inadequate or where the cases end in acquittal or discharge. This amendment has brought forth rehabilitation of victims to the forefront and it is the Court's duty to make such provisions operative and meaningful.

75. Pursuant to the directions of the Division Bench of this Court in judgment dated 07<sup>th</sup> July 2008 in Criminal Appeal No. 5/2000 titled **Khem Chand v. State of Delhi**, Delhi State Legal Services Authority is granting

interim compensation to the victims under the Delhi Victims Compensation Scheme, 2011 at initial stage for their rehabilitation on the recommendations of SHO of the case concerned and also by the Court concerned while disposing the matter. The nature of extent of victimisation has to be adequately understood considering the social and stark financial disparity amongst our citizens. The rights and rehabilitation needs of each victim have to be minutely gauged, recognized and redressed. Keeping this in consideration, The Delhi Victim Compensation Scheme, 2011 was promulgated which was replaced by the Delhi Victims Compensation Scheme, 2015 which has been in turn replaced by Delhi Victims Compensation Scheme, 2018 notified on 27<sup>th</sup> June, 2019 by notification no. F.11/35/2010/HP-II/2677-2693.

76. In *State of Gujarat v. Hon'ble High Court of Gujarat*, 1998) 7 SCC 392, the issue arose whether the Government should be permitted to deduct the expenses incurred for food and clothes from prisoner's wages. The Court allowed the same and observed that it is a constructive thinking for the State to make appropriate law for diverting some portion of the income earned by the prisoners when they are in jail to be paid to deserving victims. A victim of crime suffers the most and even though retribution is the primary function of law, reparation is the ultimate goal of the Law. The Supreme Court succinctly noted:

*"99.....A victim of crime cannot be a "forgotten man" in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc. An honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace."*

77. In *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551, seven persons were convicted under Sections 307/149, 325/149, 323/149 and 148 IPC and sentenced to undergo rigorous imprisonment from one year to three years. The High Court acquitted two of the accused of all charges, and five of the accused of the offence under Sections 307/149 IPC while maintaining their conviction and sentence under Sections 325/149, 323/149 IPC and Section 148 IPC. They were however released on probation of good conduct. Each one of accused was ordered to pay compensation of Rs. 2,500/- to Joginder who was seriously injured and whose power of speech was permanently impaired. The Supreme Court deplored the failure of Courts in awarding compensation under 357 CrPC. The Court recommended all the courts to exercise the power available under Section 357 CrPC liberally to meet ends of justice. The court observed:

*“10. Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with sub-section (1). We are concerned only with sub-section (3). It is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to*

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*exercise this power liberally so as to meet the ends of justice in a better way."*

The same position was reiterated by courts in *Manish Jalan v. State of Karnataka*, (2008) 8 SCC 225; *K.A. Abbas H.S.A. v. Sabu Joseph*, (2010) 6 SCC 230 and *Roy Fernandes v. State of Goa*, (2012) 3 SCC 221.

78. In *Ankush Shivaji Gaikwad (supra)*, the Supreme Court reiterated the law laid down in *Hari Singh's* case and held that Section 357 confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. After noting number of cases, the Court observed that, "**Section 357 CrPC confers a duty on the Court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the Court must disclose that it has applied its mind to this question in every criminal case.**" The ignorant attitude of lower judiciary was intolerable to the Supreme Court when it apparently observed that:

*"67. We regret to say that the trial court and the High Court appear to have remained oblivious to the provisions of Section 357 CrPC. The judgments under appeal betray ignorance of the courts below about the statutory provisions and the duty cast upon the courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future."*

In para 68 of the said judgment the Supreme Court directed that the copy of the judgment be forwarded to the Registrars of all the High Courts for circulation among Judges handling criminal trials and hearing appeals.

79. In *Satya Prakash v. State*, 2013 (3) NWN (Cr.) 373 (Del.), this Court

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reiterated the same while deciding the scope of compensation under Sections 357 and 357A CrPC to victims of motor accidents. This Court laid down the guidelines for awarding compensation by Criminal Court to all victims of motor accident offences even if they are in receipt of compensation from Motor Accident Claims Tribunal. Further the Court directed a summary inquiry to be conducted by Criminal Court for ascertaining quantum of compensation by directing the SHO of Police station to submit '*Victim Impact Report*'.

80. In *Vikas Yadav v. State of U.P.*, 2015 SCC OnLine Del 7129, the Division Bench of this Court held that although theorizing is one thing and practically carrying out what the Section mandates in order to achieve its true objective requires aid of the judiciary to form guidelines on Scheme of Compensation under Section 357. There is huge cost of litigation even in criminal cases also though comparatively criminal cases run for a lesser duration. The contributing factors in the increase is the fact that the accused who is in the state custody is deemed to be innocent and therefore, all expenses of such person as long as he is in custody is borne by the State itself. At the end of the trial, Courts may ask the accused to pay for the expenses, which are surprisingly limited to the fine to be paid under Section 357. The litigants take advantage of such expenses borne by the State and the State ends up paying amount for trips to the hospital and other places of the accused. This fact has been predominantly deprecated by the Division Bench in *Vikas Yadav (supra)*, where the Court went to miniscule minutes of each penny spent on the accused during the entire trial and ordered for the recovery of the same. The Division Bench imposed a fine of Rupees fifty lakhs on the accused and ordered it to be disbursed. The Supreme Court in

appeal *Vikas Yadav v. State of Uttar Pradesh*, (2016) 9 SCC 541 upheld the compensation Scheme under Section 357 CrPC and modified it by enhancing the fine and determining the compensation as per facts of the case, thereby reaffirming the compensation Scheme.

81. The law in many jurisdictions particularly in continental countries recognizes two types of rights of victims of crime, *firstly*, the victim's right to participate in criminal proceedings and *secondly*, the right to seek and receive compensation from the criminal court for injuries suffered as well as appropriate interim reliefs in the course of proceedings.

82. In *Suresh v. State of Haryana*, (2015) 2 SCC 227, the Supreme Court interpreted Section 357 CrPC to include interim compensation also. In a case where State failed to protect the life of two, the Court observed:

*"16. We are of the view that 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 on 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. 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.*

*17. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are*

directed to notify their schemes within one month from receipt of a copy of this order.

18. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.

19. We determine the interim compensation payable for the two deaths to be rupees ten lakhs, without prejudice to any other rights or remedies of the victim family in any other proceedings.

20. Accordingly, while dismissing the appeal, we direct that ...the victim be paid interim compensation of rupees ten lakhs. It will be payable by the Haryana State Legal Services authority within one month from receipt of a copy of this order. If the funds are not available for the purpose with the said authority, the State of Haryana will make such funds available within one month from the date of receipt of a copy of this judgment and the Legal Services Authority will disburse the compensation within one month thereafter".

83. In *Ankush Shivaji Gaikwad (supra)* the Supreme Court developed on its position taken in *Hari Singh (supra)* and held that Section 357 CrPC confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. The Supreme Court laid down the proposition that: - "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". The Court made application of Sections 357 and 357A CrPC mandatory while sentencing the accused by directing the Courts to state the reasons for application or non- application of Sections 357 or 357A CrPC before delivering the order on sentence. The Supreme Court, in *Suresh (supra)*,



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categorically observed that Section 357A CrPC was introduced on the recommendation of the 154<sup>th</sup> Law Commission Report with the sole purpose of ensuring protection to victims.

**Submissions of Prof. G.S. Bajpai, Professor of Criminology & Criminal Justice, National Law University, Delhi**

84. Prof. G.S. Bajpai has submitted the research paper on Victim Restitution Scheme. Prof. G.S. Bajpai has also made oral submissions to assist this Court. Prof. G.S. Bajpai referred to the resolution passed by General Assembly of United Nations titled *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* on 11<sup>th</sup> November, 1985. Clause 8 of the U.N. Declaration deals with the restitution to the victims of the crime. It is submitted that the crime has numerous impacts on the victim including physical, financial, social and sociological impact. Prof. G.S. Bajpai has suggested the Victim Restitution Scheme, according to which the Investigating Officer should prepare a report relating to the loss or injury suffered by the victim and the financial capacity of the accused during the course of investigation.

85. After conviction of an accused, the Court should constitute an Inquiry Committee to determine the injury suffered by the victim; cost incurred by the State in prosecution and financial capacity of the accused to pay the restitution amount; the Inquiry Committee should comprise of a panel of two members from DSLSA, Police, Advocates, eminent persons in the field of law and social workers; the Inquiry Committee should call for an affidavit from the accused with respect to his financial capacity and an affidavit from the victim with respect to the impact of crime and data from the Investigating Officer and prosecution with respect to the cost of prosecution;

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Inquiry Committee should thereafter inquire into the matter and submit the report to the Court within 30 days; the Court should determine the restitution amount after considering the report and hearing the parties. Prof. G.S. Bajpai has also given suggestions for protection and disbursement of the restitution amount to the victims. Prof. G.S. Bajpai has also submitted the formats of report of the Investigating Officer; and formats of the affidavit of the victim and format of the affidavit of the accused.

**Submissions of Mr. Rahul Mehra, Ld. Standing Counsel, Govt. of NCT of Delhi**

86. On 29<sup>th</sup> November, 1985, The General Assembly of United Nations adopted the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* which emphasized the need to set norms and minimum standards for protection of victims of crime. The said declaration recognized four major components of rights of victims of crime, *namely*, access to justice and fair treatment; restitution; compensation and assistance. Section 357A CrPC was incorporated to give effect to the UN Declaration.

87. Every victim of crime undergoes immense physical, emotional and mental trauma apart from economic losses. State as a custodian of all Fundamental Constitutional Rights is not only legally but also morally and socially bound to come to the rescue of victims and provide them all help so that they can overcome their trauma, both emotionally as well as financially.

88. The nature and extent of victimisation has to be adequately understood considering the social and stark financial disparity amongst the citizens. The rights and rehabilitation needs of each victim have to be minutely gauged, recognized and redressed. They deserve attention and help.

89. In *Khem Chand v. State*, CrI.A.No.5/2000, this Court passed

directions for grant of interim compensation to the victims at the initial stage for rehabilitation whereupon DSLSA granted interim compensation to the victims and DSLSA established a cell to provide counseling to the victims of sexual assault.

90. Victim Compensation Scheme, 2011 was notified which was later replaced by Delhi Victim Compensation Scheme, 2015 and then again replaced by Delhi Victim Compensation Scheme, 2018 which is in force now.

91. In *Nipun Saxena v. Union of India*, (2019) 2 SCC 703 the Supreme Court passed various directions with respect to the compensation to the victims of crime in pursuance to which Delhi Victim Compensation Scheme, 2015 was replaced by Delhi Victim Compensation Scheme, 2018.

92. Delhi Victim Compensation Scheme, 2018 contains two parts – Part I deals with the victims of offences categorized in the schedule whereas Part II deals with women victims/survivors of sexual assault and other crimes. The salient features of Delhi Victim Compensation Scheme, 2018 are as under:

- (i) In every matter wherein the convict is not in position to compensate the victim, the Trial Court may consider the same and with reasons in writing, may recommend the matter to District Legal Services Authority.
- (ii) Except Special Courts designated as Children's Court/POCSO Court, Trial Court while making the recommendation cannot quantify the quantum of compensation. POCSO Court is authorized by law laid down under Section 33(8) of the Protection of Children from Sexual Offences Act, 2012 to

quantify the quantum.

- (iii) The recommendation may be made for grant of compensation according to the Delhi Victim Compensation Scheme, 2018. The Legal Services Authority is not authorized to grant the compensation beyond the limit provided in the Scheme.
- (i) In matters resulting into acquittal or discharge, similar recommendation may be made in case the Trial Court feels the need of rehabilitation of the victim provided the victim can be considered as a victim of an offence as defined in the scheme.
- (v) In cases of untraced matters or wherein the identity of the offender cannot be established, the victim/dependants may be referred to District Legal Services Authority to move an application for grant of compensation.
- (vi) At any stage of the trial, Trial Court may also recommend/refer the matter for grant of Interim Compensation. The interim compensation can only be quantified by the POCSO Court.
- (vii) The compensation can only be granted in the categories mentioned in the Schedule to the Scheme in Part-I and Part-II. The other matters cannot be considered. Legal Services Authorities are not authorized/ empowered to go beyond the Scheme.
- (viii) Compensation may be recommended in State Cases i.e. matter on which cognizance has been taken on basis of Police Report (for Interim, this may be considered as Institution on basis of FIR) or on complaint cases (only when the accused has been summoned).

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- (ix) In Part-I of the Scheme, it has been categorically provided that cases covered under the Motor Vehicles Act, 1988 wherein compensation is to be awarded by Motor Accidents Claims Tribunal, shall not be covered under the Scheme.
  - (x) In case the victim/dependents have already been granted compensation under any other governmental scheme, District Legal Services Authority does not have any authority to grant compensation under Part-I and under Part-II, the quantum so granted has to be considered/adjusted accordingly.
  - (xi) Under the purview of the Scheme as envisaged in Part-I, it is not the offence but the injury suffered by the victim which forms the basis of recommendation for grant of compensation.
  - (xii) The Scheme also provides for factors to be considered while awarding compensation in both Part-I and Part-II which have to be considered by the District Victim Compensation Committee for grant of compensation. In case, none of the factors are satisfied, the committee is not empowered to grant the compensation.
  - (xiii) The Scheme does not provide for compensation in case of loss of property rather it focuses on physical or mental injury sustained by victim and similarly by the dependents in case of loss of life. Therefore, the matter wherein the victim has suffered loss of only movable/immovable property may not be recommended/ referred for compensation.

93. The inquiry should be conducted by the DSLSA with the assistance of Delhi Police and the Inquiry Report with respect to the impact of the crime

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on the victim as well as with respect to the financial capacity of the accused be filed by DSLSA before the Court. It is submitted that the format of the affidavit of the victim with respect to the impact of the crime and the affidavit of the accused with respect to the financial capacity be formulated. The Court, after holding the accused guilty of offence, should direct the aforesaid affidavits to be filed within 10 days and DSLSA be directed to conduct a preliminary inquiry into the matter and submit a report to the Court within 30 days.

**Submission of Mr. Kanhaiya Singhal, Advocate**

94. The affidavit of the victim relating to the impact of crime and the affidavit of the accused with respect to his financial capacity be formulated and the same be called for by the Trial Court after the conviction of the accused. Mr. Singhal, ld. counsel for the appellants has suggested the formats of the affidavits in his written submissions.

**Relevant Provisions of law**

95. **Constitution of India**

**Article 227 - Power of superintendence over all courts by the High Court**

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may:

- a. call for returns from such courts;
- b. make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
- c. prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

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(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein: Provided that any rules made, forms prescribed, or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

**Article 235 - Control over subordinate courts**

The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

96. **Code of Criminal Procedure**

**Section 194 - Additional and Assistant Sessions Judges to try cases made over to them**

An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try.

**Section 265 F - Judgment of the Court**

The Court shall deliver its judgment in terms of section 265E in the open Court and the same shall be signed by the presiding officer of the Court.

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**Section 326 - Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.**

(1) Whenever any Judge or Magistrate, after having heard and recorded the whole or any part of the evidence in any inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself: Provided that if the succeeding Judge or Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of Justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code from one judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under section 322 or in which proceedings have been submitted to a superior Magistrate under section 325.

**Section 353 - Judgment**

(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,—

- (a) by delivering the whole of the judgment; or
- (b) by reading out the whole of the judgment; or
- (c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.



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(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of Section 465.

**Section 354 - Language and contents of judgment.**

(1) Except as otherwise expressly provided by this Code, every judgment referred to in Section 353,—

(a) shall be written in the language of the Court;

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- (b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;*
- (c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced;*
- (d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.*

**Section 357 - Order to pay compensation:**

*(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-*

- a) in defraying the expenses properly incurred in the prosecution;*
- b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a civil court;*
- c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;*
- d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.*

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(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

**Section 357A - Victim Compensation Scheme**

(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependent who has 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.

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(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.

**Section 407 - Power of High Court to transfer cases and appeals**

(1) Whenever it is made to appear to the High Court:

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order—

(i) that any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) *The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:*

*Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.*

(3) *Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.*

(4) *When such an application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).*

(5) *Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.*

(6) *Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:*

(7) *Provided that such stay shall not affect the subordinate Court's power of remand under Section 309.*

(8) *Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.*

(9) *When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.*

(10) Nothing in this section shall be deemed to affect any order of Government under Section 197

**Section 460 - Irregularities which do not vitiate proceedings**

If any Magistrate not empowered by law to do any of the following things, namely:—

- (a) to issue a search-warrant under Section 94;
- (b) to order, under Section 155, the police to investigate an offence;
- (c) to hold an inquest under Section 176;
- (d) to issue process under Section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;
- (e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190;
- (f) to make over a case under sub-section (2) of Section 192;
- (g) to tender a pardon under Section 306;
- (h) to recall a case and try it himself under Section 410; or
- (i) to sell property under Section 458 or Section 459,

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

**Section 461 - Irregularities which vitiate proceedings**

If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:—

- (a) attaches and sells property under Section 83;
- (b) issues a search-warrant for a document, parcel or other thing in the custody of a postal or telegraph authority;
- (c) demands security to keep the peace;
- (d) demands security for good behaviour;
- (e) discharges a person lawfully bound to be of good behaviour;
- (f) cancels a bond to keep the peace;
- (g) makes an order for maintenance;
- (h) makes an order under Section 133 as to a local nuisance;
- (i) prohibits, under Section 143, the repetition or continuance of a public nuisance;
- (j) makes an order under Part C or Part D of Chapter X;