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PIL [Sub Motu] No.26 of 2013

B E F O R E

**HON'BLE MR. JUSTICE A. K. GOEL, THE CHIEF JUSTICE
THE HON'BLE MR. JUSTICE A. K. GOSWAMI**

For the petitioner : Mrs. R. S. Choudhury, SC, GHC.

For the respondents : Mr. A. K. Sarma, Addl. AG, Mizoram.
Mrs. B. S. Goyal, GA, Assam.
Mr. A. M. Buzarbaruah, GA, AP.
Ms. A. Aiyer, GA, Nagaland.

24.04.2013

(A.K.Goel, CJ)

Issue taken up in this PIL is to operationalise the welfare measure under Section 357A Cr.P.C. to compensate victims of crime.

In response to the notice issued, reply has been filed on behalf of the State of Assam stating that the State has already notified Assam Victim Compensation Scheme, 2012 on 18.10.2012. A sum of Rs.72 lakhs has been sanctioned and disbursed to the Secretary, State Legal Services Authority for releasing the amount to 21 District Legal Services Authorities at the rate of Rs.3 lakhs each and Rs.9 lakhs has been placed at the disposal of the State Legal Services Authority. A

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			<p>further sum of Rs.3.88 crores has been budgeted for the year 2013-14.</p> <p>Learned counsel for the States of Arunachal Pradesh, Mizoram and Nagaland seek further time to file response.</p> <p>As far as the State of Mizoram is concerned, a scheme has been framed but the amount of compensation may need to be revised.</p> <p>In respect of the State of Assam also it is pointed out by learned Amicus that the amount of compensation is not adequate and is not comparable to schemes of other States, particularly Delhi and Gujrat. Learned counsel for the State of Assam may take instructions in this regard.</p> <p>We have heard learned counsel for the parties on the issue whether in absence of any prohibition under the scheme, interim compensation ought to be paid at the earliest to the victim irrespective of stage of enquiry or trial, either on application of the victim or suo motu by the Court.</p>

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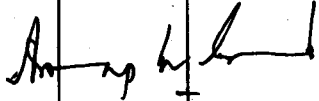

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			<p data-bbox="732 360 1404 403">in Savitri v. Govind Singh Rawat, (1985)4</p> <p data-bbox="630 441 1404 635">SCC 337, question of interim maintenance under Section 125 Cr.P.C. was considered and it was observed :</p> <p data-bbox="727 675 1404 2230">3. <i>It is true that there is no express provision in the Code which authorises a Magistrate to make an interim order directing payment of maintenance pending disposal of an application for maintenance. The Code does not also expressly prohibit the making of such an order. The question is whether such a power can be implied to be vested in a Magistrate having regard to the nature of the proceedings under Section 125 and other cognate provisions found in Chapter IX of the Code which is entitled "Order For Maintenance of Wives, Children and Parents". Section 125 of the Code confers power on a Magistrate of the first class to direct a person having sufficient means but who neglects or refuses to maintain (i) his wife, unable to maintain herself, or (ii) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (iii) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain</i></p>

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			<p><i>itself or (iv) his father or mother, unable to maintain himself or herself, upon proof of such neglect or refusal, to pay a monthly allowance for the maintenance of his wife or such child, father or mother, as the case may be, at such monthly rate not exceeding five hundred rupees in the whole as such Magistrate thinks fit. Such allowance shall be payable from the date of the order, or, if so ordered from the date of the application for maintenance. Section 126 of the Code prescribes the procedure for the disposal of an application made under Section 125. Section 127 of the Code provides for alteration of the rate of maintenance in the light of the changed circumstances or an order or decree of a competent civil court. Section 128 of the Code deals with the enforcement of the order of maintenance. It is not necessary to refer to the other details contained in the above-said provisions.</i></p> <p>6. <i>In view of the foregoing it is the duty of the court to interpret the provisions in Chapter IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the</i></p>

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			<p><i>Magistrate to direct the person against whom an application is made under Section 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is quite common that applications made under Section 125 of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under Section 125, the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the court. Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim "ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest" (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist). [Vide Earl Jowitt's Dictionary of English Law, 1959 Edn., p. 1797.] Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though</i></p>

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			<p><i>It may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The Magistrate may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. If a civil court can pass such interim orders on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of issuing</i></p>

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			<p><i>directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a Magistrate under Section 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the Magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to therein pending final disposal of the application. In taking this view we have also taken note of the provisions of Section 7(2)(a) of the Family Courts Act, 1984 (Act 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by Magistrates under Section 125 of the Code to the Family Courts constituted under the said Act."</i></p> <p>Above view has been reiterated, inter alia, in Shail Kumari Devi v. Krishan Bhagwan Pathak, (2008) 9 SCC 632.</p>

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			<p>We are of the view that above observations support the submission that interim compensation ought to be paid at the earliest so that immediate need of victim can be met. For determining the amount of interim compensation, the Court may have regard to the facts and circumstances of individual cases including the nature of offence, loss suffered and the requirement of the victim. On an interim order being passed by the Court, the funds available with the District/State Legal Services Authorities may be disbursed to the victims in the manner directed by the Court, to be adjusted later in appropriate proceedings. If the funds already allotted get exhausted, the State may place further funds at the disposal of the Legal Services Authorities.</p> <p>List for further consideration on 23.07.2013, as prayed.</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">  JUDGE </div> <div style="text-align: center;">  CHIEF JUSTICE </div> </div>

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