

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POU SHA, 1942

WP(C) .No.7250 OF 2014(E)

PETITIONER:

DISTRICT COLLECTOR  
ALAPPUZHA.

BY SRI.B.VINOD, SR.GOVERNMENT PLEADER

RESPONDENTS:

- 1 DISTRICT LEGAL SERVICE AUTHORITY  
ALAPPUZHA,  
REPRESENTED BY THE SECRETARY OF THE  
LEGAL SERVICE AUTHORITY,  
ALAPPUZHA PIN 688 001.
- 2 VIJAYAKUMARI  
W/O.SIVADAS,  
VAZHITHALACKAL, NR.AYYANKALI JN,  
AVALOOKUNNU P.O,  
ALAPPUZHA PIN 688 006.
- 3 SIVAPRIYA V.S.  
D/O.SIVADAS,  
VAZHITHALACKAL, NR. AYYANKALI JN,  
AVALOOKUNNU P.O,  
ALAPPUZHA PIN 688 006.
- 4 SIVAPREETHA  
D/O.SIVADAS,  
VAZHITHALACKAL, NR. AYYANKALI JN,  
AVALOOKUNNU P.O,  
ALAPPUZHA PIN 688 006.

R1-2 BY ADV. SRI.K.S.ANEESH

LEAH RACHEL NINAN AND G.KEERTHIVAS, AMICUS  
CURIAE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 16-12-2020, THE COURT ON 22-12-2020 DELIVERED THE  
FOLLOWING:

**“C.R.”**

**JUDGMENT**

Dated this the 22<sup>nd</sup> day of December, 2020

A question of seminal importance has arisen in this case. The query raised relates to the victim compensation scheme under Section 357A(4) of Cr.P.C. and its applicability. Is the provision retrospective or prospective in its application? To paraphrase the query: Would the victim, of a crime that occurred prior to 31.12.2009, be entitled to claim compensation under Section 357A(4) of the Cr. P.C.

2. The facts, though not relevant to be narrated in detail, is in a nutshell as follows:

Respondents 2 to 4 are the legal heirs of one late Sri.Sivadas. In a motor vehicle accident that took place on 26-03-2008, Sri. Sivadas succumbed to his injuries. Though a crime was registered by the Alappuzha Traffic Police, the accused could not be identified or traced and the trial has not taken place. In 2013, the legal heirs of late Sivadas applied to the District Legal Services Authority, Alappuzha, seeking compensation from the State under Section 357A(4) of the Code of Criminal Procedure, 1973 (for brevity 'the Cr.P.C').

3. Pursuant to the application, an enquiry, as contemplated under Section 357A(5) Cr.P.C, was conducted through the Additional District Judge, Alappuzha, who was appointed as the Enquiry Officer. The enquiry report was submitted on 12-09-2013. The report revealed that the applicants are the legal heirs of late Sivadas and that at the time of death he was aged 52 years and a casual labourer. It further stated that considering the circumstances, an amount of Rs.3,03,000/- (Rupees Three lakhs three thousand only) was sufficient compensation that could be awarded to the dependents of late Sri.Sivadas. On the above basis, the 1<sup>st</sup> respondent by Ext.P1 order, directed the State of Kerala to pay an amount of Rs.3,03,000/- to the dependents of late Sivadas under Section 357A(5) of the Cr.P.C. Ext.P1 is under challenge.

4. On account of non-representation for the respondents, this Court had appointed Adv. Leah Rachel Ninan to assist the respondents and taking note of the important question involved and its far-reaching effect, this Court also appointed Adv. Keerthivas Giri as an *Amicus Curiae*. However, before completion of the hearing in the case, counsel for the respondents entered appearance.

5. Arguments were addressed by Adv.B.Vinod, the learned

Senior Government Pleader on behalf of the petitioner, Adv. Leah Rachel Ninan, as appointed by the Court, as well as Adv. K.S.Aneesh on behalf of respondents 2 to 4, and Adv. Keerthivas Giri, the learned Amicus Curiae.

6. Adv. B Vinod, the learned Senior Government Pleader, passionately argued that the direction to the State to pay compensation to the dependents of a victim under Section 357A(4)&(5) of the Cr.P.C., for a crime that occurred on 26-03-2008, relying upon an amended provision, brought into effect only on 31.12.2009, and based on an application of the year 2013, is wholly unfair and contrary to the statutory prescription. He also contended that Section 357A(4) Cr.P.C cannot be given a retrospective operation as the financial implication of such an interpretation would be so enormous upon the Government, that it will crumble the economic planning of the State.

7. Adv. B Vinod argued with persuasive skill and pointed out that Section 357A Cr.P.C. is a substantive law and unless the statute by express or necessary intendment stipulates that it will have retrospective operation, it can only be interpreted as having a prospective operation. It was also argued that the enquiry, contemplated under Section 357A Cr.P.C. is in the nature of

evidence to be adduced which itself is indicative of its prospective application, apart from the words used which takes in only the immediate possibility of compensation payable and the future compensation, thereby clearly intending that the provision has no retrospective application.

8. According to the learned Senior Government Pleader, the express exclusion of words that cover past transactions is a clear indication that the provision has prospective operation only and referred to the provisions of Section 163 of the Motor Vehicles Act, 1988 now renumbered as Section 161. He also distinguished the decision in **Suresh and Another v. State of Haryana** [(2015) 2 SCC 227] relied upon by the respondents, as having no application, since that was a case where State's liability to pay compensation was determined on the basis of state action or inaction or when the constitutional machinery of the State failed. Adv.Vinod, argued that the necessity of rehabilitation of a victim cannot cause prejudice to the accused. He further submitted that the provisions of Section 357A Cr.P.C., is a complete code in itself and each sub clauses of the said section cannot have different periods of application. Referring to Article 38 of the Constitution of India, the learned Government Pleader also argued that it applies to secure social order and

since by becoming a victim of a crime, one does not become part of a social class, nor do the victim's answer a cohesive unit to become a class and that the constitutional provision has thus no application.

9. Adv. Leah Rachel Ninan, the learned counsel appointed to represent respondents 2 to 4, argued, obviously after an in-depth study of the entire gamut of Section 357A Cr.P.C., that, the provision applies to past occurrences of crime also. According to the learned counsel, the concept of Section 357A is akin to a joint tortfeasor under the civil law, and the legislative attempt by bringing in Section 357A Cr.P.C. was to make State also a joint tortfeasor, in a limited manner. It was also argued that the concept of rehabilitation of the victim is not a new right that was brought in by Section 357A Cr.P.C., but it is a right that was always inherent under Article 21 of the Constitution of India. As a right that was always inherent in a victim, Section 357A(4)&(5) Cr.P.C. only created a mode of providing compensation, and hence the same has retrospective application. Adv. Leah Rachel Ninan further submitted that, even otherwise, Section 357A(4)&(5) Cr.P.C., being a beneficial provision, benefiting the entire community of the State, it ought to be interpreted as having a retrospective effect, relying upon the decision in **Commissioner**

**of Income Tax(Central)-I New Delhi v. Vatika Township Private Limited** [(2015) 1 SCC 1]. Learned counsel also relied upon the decisions in **District Collector, Vellore District v. K.Govindaraj** [(2016) 4 SCC 763], **Suresh and Another v. State of Haryana** [(2015) 2 SCC 227], as well as **Sathya Prabha v. State of Kerala** (2017 (2) KLT 233).

10. Adv. K.S.Aneesh, relied upon the observations in the decision of a learned Single Judge of this court in **Ramesh K.R and Others v. Central Bureau of Investigation and Another** (2020 (4) KLT 351), and canvassed that a reading of paragraph 11 and 14 of 154th Law Commission Report will reveal that the amendment brought in as Section 357A to Cr.P.C. was to supply an obvious omission and that in such cases, the rule against retrospectivity of the enactment will not have any application. In the counter affidavit filed by the 2<sup>nd</sup> respondent, it was pleaded that, in another instance, for an accident that occurred in 2006, the State had, in fact, paid compensation to the victim after 357A(4) Cr.P.C. was brought in, which shows the double standards being adopted by the State.

11. Adv. Keerthivas Giri, the learned Amicus Curiae submitted that the intention behind the introduction of Section



357A Cr.P.C. was to enable the Government to prepare a scheme for establishing a fund for disbursing compensation to victims. Relying upon the definition of the word 'victim' as appearing in Section 2(wa), Adv. Keerthivas Giri submitted that a wider ambit is to be accorded to the said term to include victims of crimes, where the offender is not traced or identified. The learned Amicus Curiae further submitted that there was nothing, either in the Amendment Act of 2008 or in the Cr.P.C., which even remotely indicated that Section 357A(4)&(5) Cr. P.C must operate prospectively and on the other hand, all that the provision did was to institutionalize the concept of victim compensation, providing a platform for considering applications. It was further pointed out that the first scheme, contemplated under Section 357A Cr.P.C., was prepared in Kerala in the year 2014 known as the Kerala Victim Compensation Scheme, 2014, which has now been replaced by the Kerala Victim Compensation Scheme, 2017.

12. Adv. Keerthivas Giri also submitted that the Amendment Act of 2008 was a recognition of the concept of victimology and the compensation payable under Section 357 Cr.P.C. is punitive in nature, while the compensation awarded under Section 357A is

rehabilitative, the source of which is traceable to Article 21 of the Constitution of India. He bolstered his submissions by relying upon the decisions in **Ankush Shivaji Gaikwad v. State of Maharashtra** [(2013) 6 SCC 770], **Mohammed Haroon and Others v. Union of India and Another** [(2014) 5 SCC 252], and **Abdul Majeed C.M. and Others v. Mohammad Shafeque @ Shafeque and Others** (2016 (1) KHC 613). The decision in **Piyali Dutta v. State of West Bengal and Others** (2017 Cr.L.J 4041) was also pointed out as a case in which a similar question was considered.

13. The illuminating arguments of all counsel, provided an interesting experience. Adv. Leah Rachel Ninan and Adv. Keerthivas Giri augmented their oral submissions with written notes also.

14. Criminal justice system has undergone a paradigm shift in its approach to the dispensation of criminal justice, in the last two decades. Criminal jurisprudence was always accused centric, with the victim, a forgotten entity. Victim had no role in the criminal justice system. However, with the advent of the philosophy of victim compensation, with its avowed purpose not to award damages analogous to those in cases of tortious

liability, but to give solace, by way of compensation out of the public purse, for the injury sustained, whether the offender had been brought to trial or not, a new stakeholder, in the criminal law, was ushered in.

15. The Law Commission of India, in its 152nd and 154th report, recommended for the inclusion of a new provision in the Cr.P.C., providing for victim compensation, over and apart from Section 357 Cr.P.C. While recommending the inclusion of a scheme for victim compensation, the Commission, reported that the said scheme is justified from out of the State funds on the principle that the State has a humanitarian responsibility to assist crime victims and also that the assistance is provided because of the social conscience of its citizens and as a symbolic act of compassion. Victimology was thus proposed as a facet of criminal jurisprudence.

16. The principles of victimology have their foundations in Indian constitutional jurisprudence. The fundamental rights under Part III and the directive principles of state policy in Part IV of the Constitution of India form the bulwark for a new social order. The social and economic justice provided in Article 38 and Article 41, which mandates the State to secure the right to public assistance in case of disablement and undeserved want, Article 51A which

makes it a fundamental duty to have compassion for living creatures and to develop humanism. According to the Law Commission of India, if the above Constitutional provisions are expanded and interpreted imaginatively, they could form the constitutional underpinnings for victimology in India.

17. Based on the aforesaid recommendations, the Code of Criminal Procedure Amendment Act, 2008 (No.5/2009) was brought into effect. Apart from introducing a definition for the term 'victim' in Section 2(wa), the amendment, inter-alia inserted a new provision as Section 357A to the Cr.P.C. For reference 'Section 2(wa)' and Section 357A Cr.P.C. are extracted as below:

**"2. Definitions**

*In this Code, unless the context otherwise requires,-*

*xxx xxx xxx xxx xxx xxx xxx xxx*

*xxx xxx xxx xxx xxx xxx xxx xxx*

*(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir."*

**"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 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 Services Authority or the State Legal Services 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."*

18. The definition of the word 'victim' as extracted above will indicate that it would apply only when the accused has been charged. This strict interpretation of the definition will create an apparent contradiction when juxtaposed against Section 357A(4) Cr.P.C. Under the aforesaid sub-clause of Section 357A, an application can be made only if the offender is not traced or

identified and the trial does not take place. This anomaly in the construction of the definition of the word 'victim' is not of significance, since, like in every definition clause, Section 2 of the Cr.P.C also starts with the words "*In this code, unless the context otherwise requires*".

19. It is a settled proposition of law that when a strict application of the definition in a statute will frustrate the legislative intent of a particular provision or when the defined word is used and makes the provision unworkable, then recourse can be had to a different meaning. This recourse to a different meaning is intended by the legislature by using the legislative tool in the form of the words "*unless the context otherwise requires*". In the decision in **Youaraj Rai and Others v. Chander Bahadur Karki** [(2007) 1 SCC 770], the Supreme Court held that "*Moreover the opening words of Section 2 are 'unless the context otherwise requires'. Hence, while construing, interpreting, and applying the definition clause, the court has to keep in view the legislative mandate and intent and consider whether the context requires otherwise.*"

20. Adopting the aforesaid principle of interpretation, if the word "victim" in Section 357A(4) Cr.P.C., is given the same meaning as defined in Section 2(wa), then the accused must

have been charged. If the accused is charged, then the offender is already identified and the trial should also carry on. If the word victim in Section 357A(4) Cr.P.C, is interpreted based on the definition in Section 2(wa), it will render the provision in Section 357A(4) and 357A(5) nugatory and redundant. To add meaning and life to Section 357A(4) Cr.P.C., it is necessary that the offender under the said sub clause is not traced or identified and not charged. In that perspective, the word 'victim' as appearing in Section 357A(4) Cr.P.C., ought to be given a different meaning. The context of Section 357A(4) Cr.P.C., requires a different meaning to be adopted for the word 'victim'. To add meaning and life to Section 357A(4) Cr.P.C, it is necessary that the word 'victim' in Section 357A(4) is meant as a person who suffers any loss or injury by reason of the act or omission of another in which the offender has not been traced or identified and against whom a trial has not taken place. Such an interpretation alone would make Section 357A(4) Cr.P.C., workable, and have meaning.

21. While considering the main question about the applicability of Section 357A(4) Cr.P.C., to crimes that occurred prior to the coming into force of the said provision, it is necessary to appreciate the objects and reasons for bringing in the amendment. Prior to the Amendment Act 5 of 2009, criminal law

in the country provided for compensation to victims and their dependents only in a limited manner under Section 357 Cr.P.C. Under the old Code of 1898, no compensation was payable, unless a substantive sentence of fine was imposed and the amount of compensation was limited to the extent of fine realised, that too, when compensation was, in the opinion of the court, recoverable by the victim in a civil court. The 1973 Code made an improvement and it recognised the principle of compensating the victim, even when no sentence of fine was imposed.

22. With the observations of the Supreme Court relating to compensatory justice in criminal law in **Hari Singh v. Sukhbir Singh and Others** [(1988) 4 SCC 551], it was felt that the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. It was also felt that the compensation should not be limited only to fines or penalty if realised, but the State should accept the principle of providing assistance to victims out of its funds, even in case of acquittals or where the offender is not traceable or identifiable. It is in this background and after noticing that the existing provisions for compensation to crime victims had its own weaknesses that the Law Commission of India in its 154th report, recommended for



incorporating a provision like Section 357A, to the Cr.P.C., so that opportunities for securing justice are not denied to any citizen on grounds of economic or other disabilities.

23. Section 357A Cr.P.C., was brought in with effect from 31.12.2009 through the Code of Criminal Procedure Amendment Act, 2008, (Act 5 of 2009). The amended provisions do not mention anywhere that the amendment is prospective or even retrospective in character.

24. There is no dispute that procedural statutes are generally retrospective in operation, while statutes that are substantive are prospective in their application unless by express stipulation or by necessary intendment, the provisions provide for otherwise. In the quest to ascertain whether Section 357A(4) Cr.P.C applies to offences that occurred prior to 31.12.2009, it is necessary to identify whether the provision is substantive or procedural.

25. Substantive law is that part of the law, which creates, defines, and regulate the rights, duties and powers of parties, while procedural law, as the name itself indicates, relates to that part of the law, which prescribes procedures and methods for enforcing rights and duties and for obtaining redress. In simpler terms, when substantive law creates, defines or regulate rights,

the procedural law creates the method for enforcing or having redressal for the rights so created. In the celebrated work by Salmond on 'Jurisprudence' (12th Edition, South Asian Edition, 2016), it is stated as follows: *"the law of procedure may be defined as that branch of the law which governs the process of litigation. It is the law of actions - using the term action in a wide sense to include all legal proceedings civil or criminal. All the residue is substantive law, and relates, not to the process of litigation, but to its purposes and subject matter. Substantive law is concerned with the ends which the administration of justice seeks; procedural law deals with the means and instruments by which those ends are to be attained. The latter regulate the conduct and relations of courts and litigants in respect of the litigation itself; the former determines the conduct and relations in respect of the matters litigated."* In Ramanatha Aiyer's Advanced Law Lexicon 4th Edition (2013), substantive law is stated to be that part of a law that creates, defines, and regulates the rights, duties, and powers of parties. The Supreme Court has approved the aforesaid propositions on substantive law, as can be seen from the decision in **Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Others v. N.C Budharaj and Others** [(2001) 2 SCC 721] wherein it was

held that *“substantive law is that part of law, which creates, defines and regulates rights in contrast to what is called adjective or remedial law which provides a method of enforcing rights”*.

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

the rehabilitation of the victim. It has created and defined rights for a victim, and a duty upon the State Government to pay compensation. Thus Section 357A(1)(4)&(5) Cr.P.C., is a substantive law and not procedural law.

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

28. While interpreting a provision brought in as a remedial measure, that too, as a means of welfare for the victims of crimes, in which the perpetrators or offenders have not been identified and in which trial has not taken place, the Court must

always be wary and vigilant of not defeating the welfare intended by the legislature. In remedial provisions, as well as in welfare legislation, the words of the statute must be construed in such a manner that it provides the most complete remedy which the phraseology permits. The Court must, always, in such circumstances, interpret the words in such a manner, that the relief contemplated by the provision, is secured and not denied to the class intended to be benefited.

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

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

its operation. On the other hand, it only caters to the intention of the legislature.

31. In other words, when an application is made by a victim of a crime that occurred prior to the coming into force of Section 357A(4) Cr.P.C., a prospective benefit is given, taking into reckoning an antecedent fact. Adopting such an interpretation does not make the statute or the provision retrospective in operation. It only confers prospective benefits, in certain cases, to even antecedent facts. The statute will remain prospective in application but will draw life from a past event also. The rule against retrospectivity of substantive law is not violated or affected, merely because part of the requisites for action under the provision is drawn from a time antecedent to its passing. Merely because a prospective benefit under a remedial statutory provision is measured by or dependent on antecedent facts, it does not necessarily make the provision retrospective in operation.

32. The above view is fortified by the decision in **The Queen v. The Inhabitants of St. Mary, Whitechapel** (1848 12 QB 120) at 127, where Lord, Denman CJ stated that “*a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to*

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

33. In the judgment in **Piyali Dutta v. State of West Bengal and Others** (2017 Cr.LJ 4041), the Calcutta High Court held that Section 357A is time neutral, i.e, it does not distinguish between victims of a crime happening before the introduction of the section in the statute with those incidents of crime happening post its introduction in the statute book. It was also held that the section does not make any distinction between victims on the basis of the time of occurrence of the crime and

also that, segregation on the basis of time, is unacceptable and would militate against the right to equality and equal treatment by the State guaranteed under the Constitution of India.

34. The learned Amicus Curiae, brought to my attention the clause on limitation under the scheme framed by the Kerala Government. Clause 9 of the scheme is extracted as below;

*“9. Limitation - No claim made by the victim or his dependent under subsection 4 of section 357A of the court shall be entertained after a period of 180 days from the occurrence of the crime. The District Legal Services Authority, if satisfied, for reasons to be recorded in writing, may condone the delay in filing the said claim”.*

35. The above extracted clause on limitation prescribed under the scheme framed by the Kerala Government is not in tune with Section 357A(4) Cr.P.C. The said clause in the scheme, can practically render the statutory prescription unworkable and even defeat the provision itself. In practical parlance, there would be numerous occasions where the investigation itself is not completed within 180 days. Law does not stipulate a time limit for completion of an investigation. To regard an offender as not identified or traced, the investigation ought to be concluded. If a limit of time of 180 days from the occurrence of crime is stipulated for preferring an application under Section 357A(4), it will only defeat the provision. The restriction of 180 days since



the date of occurrence of the crime for preferring applications goes against the spirit of Section 357A(4) Cr.P.C. It is certainly not the intention of the legislature to deny claims for compensation from victims when the offender has not been identified or traced within a period of 180 days. However, the said clause does not apply in the instant case though the aforesaid is a matter for the State to contemplate and bring in appropriate modifications.

36. In view of the above deliberations, the following conclusions are arrived at:

(i) The provisions in Section 357A(1)(4)&(5) Cr.P.C are substantive in character.

(ii) The victims under Section 357A(4) of the Cr.P.C. are entitled to claim compensation for incidents that occurred even prior to the coming into force of the said provision.

(iii) By giving the benefit to victims under Section 357A(4) Cr.P.C., for crimes that occurred prior to 31.12.2009, the statutory provision is not given retrospective effect, and instead a prospective benefit is given based on an antecedent fact.

37. Before concluding, I wish to place on record my deep appreciation to the commendable efforts put in by Adv. Leah Rachel Ninan and the learned Amicus Curiae Adv. Keerthivas Giri.

Both of them performed to the fullest extent and justified the confidence reposed on them by the Court.

As a result, this writ petition is dismissed. However, in the circumstances of the case, there will be no order as to costs.

Sd/-

**BECHU KURIAN THOMAS  
JUDGE**

vps

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

EXHIBIT P1                      COPY OF THE ORDER PASSED BY THE  
DISTRICT LEGAL SERVICE AUTHORITY,  
ALAPPUZHA DATED 07.10.13.

**RESPONDENT'S/S EXHIBITS:**

EXHIBIT-R2 (a)                TRUE COPY OF THE XV CHAPTER OF THE  
154TH LAW COMMISSION REPORT OF INDIA  
DATED 22.8.1996

EXHIBIT-R2 (b)                TRUE COPY OF THE PAPER CUTTING OF THE  
NEWS PUBLISHED IN MALAYALA MANORMA  
DAILY DATED 14/12/2012