



2025:DHC:6667-DB



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**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Judgment reserved on: 30.05.2025*  
*Judgment pronounced on: 11.08.2025*

+ **CRL. REV. P. 248/2017**

COURT ON ITS OWN MOTION .....Petitioner

Through: Mr. Sumeet Verma, Senior  
Advocate (*Amicus Curiae*) with  
Mr. Mahinder Pratap Singh,  
Mr. Bikas Kumar Jha,  
Advocates.

versus

MAHENDER SINGH MANAN & ORS. ....Respondents

Through: Mr. Ashneet Singh, APP for the  
State.

Mr. H.S. Phoolka, Sr. Adv.  
with Mr. Gurbaksh Singh, Ms.  
Surpreet Kaur and Ms. Kmna  
Vohra, Advocates for  
Complainant.

Ms. Tarannum Cheema, Mr.  
Akash Singh and Mr. Akshay  
N., Advocates for CBI.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN**

**SHANKAR**

**J U D G M E N T**

**HARISH VAIDYANATHAN SHANKAR, J.**

1. The present Criminal Revision Petition was instituted in the *Suo Moto* exercise of powers under Section 401 of the **Code of Criminal**



**Procedure, 1973**<sup>1</sup>, pursuant to the Order dated 29.03.2017 passed by this Court. This Court, on *prima facie* assessment, found that the Judgment dated 04.08.1986 passed by the **learned Additional Sessions Judge, New Delhi**<sup>2</sup> in Sessions Case No. 33/86 titled as *State vs. Mahender Singh Manan & Ors*, was unsustainable. The Ld. ASJ, by the said judgement, acquitted the two accused persons in the case of the alleged killing of one Shri Avtar Singh, a Sikh, during the riots which ensued in Delhi in the year 1984, in the aftermath of the assassination of Mrs. Indira Gandhi, former Prime Minister of India.

**BRIEF FACTS:**

2. The assassination of Mrs. Indira Gandhi, former Prime Minister of India, in the year 1984, culminated in widespread riots in the entire city of Delhi. A devastating result of which, *inter alia*, was the death of several innocent *Sikhs* and the destruction of properties belonging to *Sikh* families and the *Gurudwaras* in the Raj Nagar Area.
3. The present Criminal Revision Petition arises out of the FIR No. 416/1984 dated 04.11.1984, registered at Police Station, Delhi Cantonment. The said FIR was registered at the instance of one **Mrs. Baljit Kaur**<sup>3</sup>, daughter of late Shri Avtar Singh. Late Shri Avtar Singh, was working as an Upper Division Clerk in the Accounts Office of the Air Force at Dhaula Kuan.
4. The Complainant, in her complaint, stated that, on 01.11.1984, around 3:30 PM, a mob consisting of approximately 400-500 people came to her residence and broke down and set fire to the house door. Thereafter, the mob proceeded to hit the parents of the Complainant

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<sup>1</sup> CrPC

<sup>2</sup> Ld. ASJ

<sup>3</sup> Complainant/Respondent No. 4



with bricks. She stated that the mob left only after her father lost consciousness, believing that her father had passed away. The mob continued to visit the Complainant's house approximately 5-6 times and assaulted the Complainant's parents. However, on the seventh visit, the mob spotted the father of the Complainant. It is stated that the father of the Complainant had become *mona sardar*, that is, his hair had been trimmed/shaved, and upon seeing the same, certain rioters left the instance, stating that "he had become a Hindu" and should be spared.

5. The Complainant alleged that one Mahender Singh Sharabi, who was their neighbour, identified her father and attacked him with an Axe (*phersa*). Pursuant to which, other rioters also attacked the father of the Complainant. The Complainant stated that as a result of the beating, her father's brain matter had come out of the skull; however, he was still breathing when the rioters poured petrol on him and set him on fire. The Complainant further stated that these persons had removed the handle of the hand-pump and taken it away with them, so that the fire could not be extinguished. As a result, the Complainant's father was completely burnt. Thereafter, the Complainant, with her brother, went to Subroto Park Air Force Camp to seek refuge.

6. An FIR No. 416/1984 was registered at the instance of the Complainant on 04.11.1984, which has led to Session Case No. 33/86, which gave rise to the present Criminal Revision Petition.

7. Several other complaints were received regarding the murders of innocent *Sikhs* and the destruction of properties in the Raj Nagar area after the registration of the said FIR. A composite *challan* had



been filed *inter alia* in all the aforesaid complaints, ultimately giving rise to various Sessions Cases, including the said Session Case No. 33/86. It is pertinent to mention that all the Sessions Cases were tried separately, and the accused person in the present case was acquitted by the Ld. Additional Sessions Judge, New Delhi, *vide* Judgment dated 04.10.1986 in Session Case No. 33/86, titled as ***State vs. Mahender Singh Manan & Ors.***

8. Material on record also indicates that concerned with the lack of proper investigation and the causes of large scale violence, several Commissions were appointed including Marwah Commission, 1984; Justice Ranganath Misra Commission of Enquiry, 1985; Dhillon Committee, 1985; Ahuja Committee, 1985; Kapur Mittal Committee, 1987; Jain Banerjee Committee, 1987; Potti Rosha Committee, 1990; Jain Aggarwal Committee, 1990 and Narula Committee, 1993 to examine the various aspects of the matter, and which Committees furnished various reports.

9. On 08.05.2000, the Government of India appointed a Commission of Inquiry under the Chairmanship of Justice G. T. Nanavati, former Judge of the Supreme Court of India, to inquire into the causes and the course of criminal violence targeting members of the Sikh community which took place in the National Capital Territory of Delhi and other parts of the Country, on 31.10.1984 and thereafter; the sequence of events leading to and all such facts relating to such violence and riots. The Commission also covered questions as to whether the crimes which were committed against the Sikh community could have been averted and whether there were any lapses or dereliction of duty on the part of the Police Officials and



other authorities. The Commission was also to inquire and report on the adequacy of administrative measures taken to prevent and deal with the said violence and riots, and certain other matters as may be found relevant in the course of the inquiry.

10. The Nanavati Commission of Inquiry gave its Report on 09.02.2005, which was placed before both the Houses of Parliament. Before the Parliament, an assurance was given by the then Prime Minister and the then Home Minister that, wherever the Commission has named any specific individuals who would require further examination or re-opening of the case, steps will be taken to do so within the ambit of law.

11. Thereafter, this Court, *vide* Order dated 29.03.2017, initiated proceedings under Section 401 of the CrPC, in the present Criminal Revision Petition, along with connected matters, which have been dealt with *vide* separate orders.

12. Taking note of the critical question involved in the case, this Court, *vide* Order dated 29.03.2017, appointed **Mr. Sumeet Verma, Senior Advocate, as *Amicus Curiae***<sup>4</sup> to assist the Court in this matter. Several other directions were also issued by this Court in the same order, which have been reproduced hereinbelow for ready reference:

**“Directions:**

*111. We accordingly direct as follows:*

*(i) Let this order be registered as a petition under Section 401 of the Cr.P.C.*

*(ii) Issue notice without process fee to private respondent nos.1 and 2 as well as the State – Respondent no.3 to show cause as to why the judgement dated 4<sup>th</sup> October, 1986 in SC No.33/86 premised on the composite chargesheet dated 25 March, 1985 based inter alia on the complaint dated 4 November, 1984 of Smt.*

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<sup>4</sup> Learned Amicus Curiae



*Baljit Kaur (FIR No.416/84, P.S. Delhi Cantt.), be not set aside and a retrial/fresh trial be directed by this court in exercise of its revisional powers under Section 401 of the Cr.P.C.*

*(iii) Issue notice without process fee to private respondent nos. 1 and 2 as well as the State – Respondent no.3 to show cause as to why this court not direct fresh/further investigation agency as the Central Bureau of Investigation.*

*(iv) The address of the complainant-respondent no.4 shall be ascertained by the State and the same shall be filled in the Registry within two weeks from today.*

*(v) Subject to the compliance with the above directions, court notice without process fee shall be issued for the service of complainant- respondent no. 4.*

*(vi) Compliance with the above directions shall be got ensured by the Commissioner, Delhi Police.*

*(vii) A copy of the composite final report dated 25 March, 1985 filed by the Delhi Police in SC Nos. 10/86, 11/86, 31/86, 32/86 and 33/86 (placed by CBI on the record of Crl.A.No. 1099/2013) and a copy of the judgment dated 4<sup>th</sup> October, 1986 in SC No.33/86 shall be placed in the file along with the present order.*

*(viii) For the reasons set out above, we appoint Mr. Sumeet Verma, Advocate as Amicus Curiae in this matter.*

*(ix) The Registry shall ensure that a complete paper book is made available to the Amicus Curiae.*

*(x) It shall be the responsibility of the Delhi High Court Legal Services Committee to pay the fees of the Amicus Curiae which are quantified at Rs. 50,000/-.*

*(xi) All notices shall be returnable on 20<sup>th</sup> April, 2017.”*

13. The Court, *vide* a Status Report dated 01.05.2017, was informed about the factum of the death of both accused persons in the present petition, which was consequently verified and recorded in the Order dated 29.11.2017. Resultantly, this Court took the view that, pursuant to the demise of Respondent no. 1, namely, Mahender Singh Manan @ Mahender Sharabi and Respondent no. 2, namely, Ram Kumar, this petition *qua* them cannot proceed.

14. This Court, further, *vide* aforementioned order dated 29.11.2017, took note of the fact that the only aspect surviving in the present petition is that of compensation.

15. It is pertinent to mention herein that in furtherance of our Order



dated 03.10.2024, the Complainant, namely, Baljeet Kaur, has filed an affidavit stating that her family has received a total of Rs. 11,90,000/- as compensation for the death of her father, late Shri Avtar Singh from the **Government of the NCT of Delhi**<sup>5</sup> for 1984 Sikh riots.

16. Heard Mr. Sumeet Verma, learned Senior Counsel, who has been appointed as *Amicus Curiae* in the matters on the aspect of compensation to the Complainant.

**SUBMISSIONS OF AMICUS CURIAE:**

17. At the outset, Mr. Verma, Id. *Amicus Curiae* would submit that the amounts paid were in the nature of *ex gratia* payments and the same would not bar or impede the powers of the Court or the operation of the statues/ schemes for payment of compensation. He would submit that, in any event, *ex gratia* payment made by the State to the Complainant would not be deductible/adjustable from the amount of compensation to be awarded by this Court. Reliance has been placed on the judgment of the Gujarat High Court in *United India Insurance Co. Ltd. v. Jyotsnaben*<sup>6</sup>; the judgment of the Himachal High Court in *State of Himachal Pradesh v. Dole Ram*<sup>7</sup>; and the judgment of the Punjab and Haryana High Court in *Raj Chopra v. S. Sangara Singh*<sup>8</sup>.

18. Learned *Amicus Curiae* would submit that the Complainant/Victim would be entitled to be compensated under the **Delhi Victim Compensation Scheme, 2018**<sup>9</sup>. He would submit that the Scheme, which was introduced under Section 357A of the CrPC,

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<sup>5</sup> GNCTD

<sup>6</sup> 1998 SCC OnLine Guj 340

<sup>7</sup> 1981 SCC OnLine HP 3

<sup>8</sup> 1984 SCC OnLine P&H 190

<sup>9</sup> DVCS



would have to be applied retrospectively. In support of the said proposition, he would canvass that, the Section, by itself, does not mention whether the scheme is prospective or retrospective.

19. He would thereafter seek to draw sustenance from the Judgment of the Kerala High Court in *District Collector, Alappuzha v. District Legal Service Authority, Alappuzha*<sup>10</sup>, which held that the victims under Section 357A of the CrPC are entitled to get compensation for the incidents that occurred even before the coming into force of the said provision. He would argue that the ratio of the said judgment was later followed by the Karnataka High Court in *Vakalpudi Venkanna v. State of Karnataka*<sup>11</sup>, and by the High Court of Rajasthan in *Gafoor Khan v. State of Rajasthan*<sup>12</sup>. Placing reliance on these judgements, the learned *Amicus Curiae* submitted that, given the beneficial nature of the Delhi Victim Compensation Scheme and provision of victim compensation, it ought to be applied even to incidents that occurred prior to the enactment of these provisions.

20. He further submitted that it is a settled principle of law that beneficial legislation has a retrospective effect. For this, reliance has been placed on judgments of the Hon'ble Supreme Court in *Dahiben v. Vasanji Kevalbhai*<sup>13</sup>, *Bharat Singh v. Management of New Delhi Tuberculosis Centre, New Delhi and Ors.*<sup>14</sup> and *Inhuman Conditions in 1382 Prisons, In re*<sup>15</sup>.

21. Learned *Amicus Curiae* concluded by submitting that the Court is not bound by the monetary limits prescribed under the Victim

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<sup>10</sup> 2020 SCC OnLine Ker 8292

<sup>11</sup> 2022 SCC OnLine Kar 1828

<sup>12</sup> 2024 SCC OnLine Raj 3207

<sup>13</sup> 1995 Supp (2) SCC 295

<sup>14</sup> (1986) 2 SCC 614

<sup>15</sup> 2024 SCC OnLine SC 3596



Compensation Scheme while determining the amount of compensation to be awarded, and has the discretion to award compensation beyond the limits stipulated, while quoting the judgment of the learned Single Bench of this Court in *X v. State*<sup>16</sup>.

### **ANALYSIS:**

22. As aforementioned, the sole remaining issue for consideration in this petition is the award of compensation to the Complainant, as both the Accused, i.e., Respondent Nos. 1 and 2, have passed away and the revision petition *qua* both of them stands abated.

23. Upon perusal of the submissions on behalf of the learned *Amicus Curiae*, this Court is of the opinion that the aspect of the compensation as claimed by the victims shall be decided in two parts, being the following:

- a. Nature of the Section 357A of the CrPC and the DVCS; retrospective or prospective;
- b. On Demurrer; Applicability of the Scheme.

### **A. NATURE OF THE DELHI VICTIMS COMPENSATION SCHEME; RETROSPECTIVE OR PROSPECTIVE**

24. Learned *Amicus Curiae* has drawn our attention to DVCS and submitted that the Complainant, along with other similarly situated persons, is entitled to compensation thereunder. The submission stems from the argument that the DVCS is to be applied retrospectively, being a beneficial legislation, notwithstanding the date of the incident.

25. Before adverting to whether or not the victims would be awarded compensation under the DVCS, it is of import to trace the

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<sup>16</sup> 2021 SCC OnLine Del 2061



history behind the introduction of the said scheme.

26. The DVCS is the progeny of Section 357A of the CrPC (now section 396 of the Bharatiya Nagrik Suraksha Sanhita, 2023). Section 357A of the CrPC was set out hereinbelow:

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

*(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.*

*(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.*

*(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.*

*(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”*

27. Section 357A came to be introduced on 31.12.2009 by way of an amendment, based on the recommendations of the **154th Law Commission Report**<sup>17</sup>. The Commission, in the said Report, and in particular, in Chapter XV of the same, dwelt in-depth on the concept

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<sup>17</sup> Law Commission Report



of “Victimology” and the same formed the foundational basis and the philosophy behind the amendment. The relevant extracts of the Law Commission Report are reproduced herein below:

“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 realised. The State should accept the principle of providing assistance to victims out of its own funds. (i) in cases of acquittals, or (ii) or where the offender is not traceable but the victim is identified, or (iii) also in cases when the offence is proved.

xxxx xxxx xxxxx

13. In view of the weakness of the existing provisions for compensation to crime victims in the criminal law, we are of the view that it is necessary to incorporate a new Section 357-A in the Code to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the courts. Heads of the compensation are for (i) for injury, (ii) for any loss or damage to the property of the claimant which occurred in the course of his/her sustaining the injury and (iii) in case of death from injury resulting in loss of support to dependents.”

(Emphasis supplied)

28. Further, discussing the concept of victim compensation in Chapter XV, the Law Commission Report traces back to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power made by the General Assembly of the United Nations in its 96<sup>th</sup> plenary meeting. The Declaration has been prescribed as “a Magna Carta of the Rights of the Victims” worldwide, and this Court is also guided by the same. It would be apposite to refer, albeit briefly, to the relevant parts of the said Declaration in the Law Commission Report, which are as follows:

*“6.2 The Declaration defines victims as “persons who, individually to collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative with-in Member States, including those laws prescribing criminal abuse of power”*

*6.3 The Declaration states:*



**“12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:**

- (a) *Victims who have sustained bodily injury or impairment of physical or mental health as a result of serious crimes;*
- (b) *The family in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimisation”*

29. A perusal of the said Declaration would show that the genesis of Section 357A of the CrPC as well as the DVCS comes from the suggestive need for the State to compensate victims when no other compensation is fully or partly available.

30. The law commission report identified the lack of a necessary mechanism to address the vacuum that existed in the Indian legal regime to compensate victims. This report ultimately came to be accepted by the Legislature and, pursuant thereto, culminated in the amendment of the Cr.PC by the addition of various contemporaneous provisions, inter alia, defining “Victim” and their rights thereof. By the said amendment, what was sought to be done was the creation of a wider class of persons under the definition of ‘Victim’ and also, *inter alia*, a right in their favour, to be compensated, which hitherto did not exist in the Statute books.

31. The Statement of Objects and Reasons specifically records the intent of the Legislature to creation of such rights and compensation in the following terms:

*“At present, the victims are the worst sufferers in a crime and they don’t have much role in criminal proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system.”*

32. The Legislature, recognising the lack of an existing system,



governing the rights of a “Victim”, thought it appropriate to introduce the same, bringing about the amendments in Statute books.

33. Section 357A of CrPC, of itself, does not expressly provide for the amendment being prospective or retrospective. However, as per the established principles of interpretation of Statutes, it is trite that procedural laws typically apply retrospectively, whereas substantive laws are generally prospective unless explicitly stated otherwise or implied by necessity.

34. Substantive law defines, creates, and governs legal rights, duties, and powers, while procedural law outlines the methods and processes to enforce those rights and obligations. In simpler terms, substantive law grants rights, and procedural law provides the mechanism to enforce them.

35. Sections 357A(1), (4), and (5) of the CrPC clearly establish a right for victims to receive compensation upon fulfilling certain conditions. Previously, no similar statutory provision existed. Victims had no legal remedy to claim compensation from the State, nor was the State obliged to compensate victims, particularly in cases where the offender was unknown or the trial did not occur. Since Section 357A(4) of the CrPC introduces a new right, it is a substantive provision and, therefore, applies only prospectively.

36. We consider it appropriate to extract herein the relevant paragraphs of the Judgment of the Hon’ble Supreme Court in the case of *Mahabir & Ors. Vs. State of Haryana*<sup>18</sup>, which dealt with an argument relating to the proviso to Section 372 of CrPC, which was introduced contemporaneously with Section 357A of CrPC and in

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<sup>18</sup> (2025) SCC Online 184



which Judgment, the argument that the same was to be applied retrospectively, came to be expressly repelled, as follows:

“ ...

**IS THE PROVISO TO SECTION 372 CrPC RETROSPECTIVE IN OPERATION?**

*48. A very fabulous argument was canvassed on behalf of the State that the proviso to Section 372 of the CrPC is retrospective in operation. Therefore, although the revision was filed in 2006, yet as it came to be decided in 2014, the proviso to Section 372 CrPC was applicable. The High Court could have treated the revision application as an appeal under Section 372 at the instance of the complainant. If the High Court would have treated it as an appeal, then it would have been within its jurisdiction to reverse the acquittal and passed an order of conviction.*

*49. It seems one and all are under a serious misconception of law.*

*50. Insofar as the statutes regulating appeal are concerned, the law is well settled that the right to file an appeal is a statutory right and it can be circumscribed by the conditions of the statute granting it. As was observed by this Court in *Government of Andhra Pradesh v. P. Laxmi Devi* reported in (2008) 4 SCC 720 and *Super Cassettes Industries Ltd. v. State of Uttar Pradesh* reported in (2009) 10 SCC 531, it is not a natural or inherent right and cannot be assumed to exist, unless provided by a statute.*

*51. Therefore, the scheme of right of appeal under Chapter XXXIX of the CrPC, which provides the right to file appeals including abatement of appeals, should be understood on the basis of the above golden rules of statutory interpretation.*

*52. Comparing Section 404 of CrPC 1898 with Section 372 of CrPC, would indicate that the main provision is intact, insofar it provides that no appeal shall lie from any judgment or order of a criminal court, except as provided by this Code or by any other law for the time being in force. The significant development that has taken place in this provision is that a 'proviso' was added by the Amending Act No. 5 of 2009, which provides that 'the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction passed by such Court'.*

*53. Therefore, by the aforesaid provision a right has been created in favour of the victim, which was not existing earlier in the Code,*



*i.e., that a victim shall have a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. The plain reading of the statement of objects and reasons for introducing the proviso to Section 372 CrPC makes it clear that it wanted to confer certain rights on the victims. It has been noted therein that the victims are the worst sufferers in a crime, and they don't have much role in the court proceedings. They need to be given certain "rights" and compensation, so that there is no distortion of the criminal justice system. This, by itself, is clear that the object of adding this proviso is to create a right in favour of the victim to prefer an appeal as a matter of right. It not only extends to challenge the order of acquittal, but such appeal can also be filed by the victim if the accused is convicted for a lesser offence or if the inadequate compensation has been imposed.*

*54. Thus, it is clear as per the golden rule of interpretation, that the 'proviso' is a substantive enactment, and is not merely excepting something out of or qualifying what was excepting or goes before. Therefore, by adding the 'proviso' in Section 372 of CrPC by this amendment, a right has been created in favour of the victim.*

*55. The relevant statutory provisions are excerpted for convenience. First, Section 2(wa) of the CrPC defines "victim" as: "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."*

*56. The second provision is Section 372 of the CrPC, which stipulates that:*

*"No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or any other law for the time being in force."*

*57. The third statutory provision is the proviso to Section 372 CrPC, which was introduced in 2008, conferring upon victims, the right of appeal in these terms:*

*"Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."*

#### LEGISLATIVE HISTORY

*58. A victim-oriented approach to certain aspects of criminal procedure was advocated in the Law Commission of India's 154<sup>th</sup> Report, 1996, which noted that "increasingly, the attention of*



*criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of the victims of crimes.” (Chapter XV, Paragraph 1) While focused on issues of compensation, the Law Commission Report cited the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power for its definition of “victim”:*

*“persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws.” (Chapter XV, Paragraph 6.2).*

**59.** *The said report prompted the Code of Criminal Procedure (Amendment) Bill of 2006. Its Statement of Objects and Reasons noted that:*

*“... The Law Commission has undertaken a comprehensive review of the Code of Criminal Procedure in its 154th report and its recommendations have been found very appropriate, particularly those relating to provisions concerning arrest, custody and remand, procedure for summons and warrant-cases, compounding of offences, victimology, special protection in respect of women and inquiry and trial of persons of unsound mind...”*

**60.** *It also noted that:*

*“At present, the victims are the worst sufferers in a crime and they don't have much role in the court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system.”*

**61.** *The definition of “victim”, as well as the proviso to Section 372 was eventually inserted into the Code of Criminal Procedure through the Code of Criminal Procedure (Amendment) Act, 2008 (Act No. 5 of 2009). The Amendment inserts victim-oriented provisions at a number of places in the CrPC. For instance, a proviso to Section 157(1) is added, stipulating that:*

*“Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.”*

**62.** *Through a new Section, 357A(1), it is provided that:*

*“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.”*

**IS PROVISO TO SECTION 372 AN EXCEPTION?**

**63.** *The victims’ right to appeal has been framed in the language of a proviso to Section 372 of the CrPC. As held in A.N. Sehgal v. Raje Ram Sheoran reported in 1992 Supp (1) SCC 304 : AIR 1991 SC 1406, it is well-accepted that normally, a proviso “carves out an exception to the main provision to which it has been enacted as a proviso and to no other.” This, however, is subject to context. This Court, in S. Sundaram Pillai v. V.R. Pattabiraman reported in (1985) 1 SCC 591 : AIR 1985 SC 582, held that a proviso may be of four different types : in one set of circumstances,*

*“it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself;”*

**64.** *Emphasizing that undue importance should not be given on the appellation (explanation, proviso, saving clause, etc) and rather, the intent of the law maker should be given effect, this Court, in State of Bombay v. United Motors (India) Limited reported in (1953) 1 SCC 514 ruled that:*

*“... It may be that the description of a provision cannot be decisive of its true meaning or interpretation which must depend on the words used therein but, when two interpretations are sought to be put upon a provision, that which fits the description which the Legislature has chosen to apply to it, is, according to sound canons of constructions, to be adopted, provided of course, it is consistent with the language employed in preference to the one which attributes to the provision a different effect from what it should have according to its description by the Legislature.”*

**65.** *The aforesaid thought was brought home in State of Kerala v. B. Six Holiday Resorts Private Ltd. reported in (2010) 5 SCC 186, where this Court held as follows:*

*“32. A proviso may either qualify or except certain provisions from the main provision; or it can change the very concept of the intendment of the main provision by incorporating certain mandatory conditions to be fulfilled; or it can temporarily suspend the operation of the main provision. Ultimately the proviso has to be construed upon its terms”.*

**66.** *It is the intention of the legislature, therefore, which is paramount.*

**67.** *In the present context, given the text of Section 372 and the scheme of the Act, it is clear that the proviso establishes an*



*independent right, and must be interpreted within that framework. Section 372 forbids appeals unless otherwise authorized by the Code, or by another law. The proviso, however, states that the victim shall have the right to appeal under certain circumstances. Given the rule enacted in Section 372, it cannot be said that the proviso to that provision carves out an exception to the rule. According to the rule in Section 372, appeals must be in accordance with the Code; according to the proviso - which is itself part of the Code - victims have the right to appeal under certain circumstances. At various other places in the CrPC, appeal procedures are specified. For instance, Section 378 stipulates the procedure in case of appeals from acquittal, and Section 378(3) specifies that “no appeal under sub-section (1) or sub-section (2) shall be entertained except with leave of the High Court.” The proviso to Section 372 dispenses with the requirement of leave in case it is the victim who is appealing. From the scheme of the Act, therefore, it seems clear that the proviso is better understood to be one of the many provisions governing appeals under Chapter 29 of the CrPC. While Section 372 enacts that no appeal shall lie except as provided for by the Code, it refers to the various provisions of Chapter 29, including the proviso, each of which prescribe the requirements and procedures for appeals under different circumstances. The proviso, therefore, is not an exception to Section 372, but a stand-alone legal provision.*

**68.** *This Court in the case of Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka reported in (2019) 2 SCC 752, after discussing various judgments of different High Courts, observed in para 72, as under:*

*“72. What is significant is that several High Courts have taken a consistent view to the effect that the victim of an offence has a right of appeal under the proviso to Section 372 CrPC. This view is in consonance with the plain language of the proviso. But what is more important is that several High Courts have also taken the view that the date of the alleged offence has no relevance to the right of appeal. It has been held, and we have referred to those decisions above, that the significant date is the date of the order of acquittal passed by the trial Court. In a sense, the cause of action arises in favour of the victim of an offence only when an order of acquittal is passed and if that happens after 31.12.2009 the victim has a right to challenge the acquittal, through an appeal. Indeed, the right not only extends to challenging the order of acquittal but also challenging the conviction of the accused for a lesser offence or imposing inadequate compensation. The language of the proviso is quite explicit, and we should not read nuances that do not exist in the proviso.”*



(Emphasis supplied)

69. In *Hitendra Vishnu Thakur v. State of Maharashtra* reported in (1994) 4 SCC 602, one of the questions which this Court was examining was whether clause (bb) of Section 20(4) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 introduced by an Amendment Act governing Section 167(2) CrPC in relation to TADA matters was in the realm of procedural law and if so, whether the same would be applicable to pending cases. Answering the question in the affirmative this Court speaking through A.S. Anand, J. (as His Lordship then was), held that Amendment Act 43 of 1993 was retrospective in operation and that clauses (b) and (bb) of sub section (4) of Section 20 of TADA apply to the cases which were pending investigation on the date when the amendment came into force. The Court summed up the legal position with regard to the procedural law being retrospective in its operation and the right of a litigant to claim that he be tried by a particular Court, in the following words:

“(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

(Emphasis supplied)

70. We may also refer to the decision of this Court in *Sudhir G. Angur v. M. Sanjeev* reported in (2006) 1 SCC 141, where a three-Judge Bench of this Court approved the decision of the Bombay High Court in *Shiv Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Dass* reported in AIR 1952 Bom 365 and observed:



“11. ... It has been held that a court is bound to take notice of the change in the law and is bound to administer the law as it was when the suit came up for hearing. It has been held that if a court has jurisdiction to try the suit, when it comes on for disposal, it then cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date when it was instituted. We are in complete agreement with these observations. ...”

(Emphasis supplied)

71. In *Ramesh Kumar Soni v. State of Madhya Pradesh* reported in (2013) 14 SCC 696, this Court reiterated the aforesaid principle with approval.

72. In view of the aforesaid, it is very much clear that the amendment so made in Section 372 CrPC by adding a proviso in the year 2009 creating a substantive right of appeal is not retrospective in nature. A statute which creates new rights shall be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication. It is, therefore, clear that in the year 2006 when the judgment of acquittal was passed, the de facto complainant had no right to challenge the impugned order passed in 2006 by way of filing the appeal. In such circumstances sub section (5) of Section 401 CrPC has no application in the present case.”

37. A perusal of the DVCS clearly shows that there is no provision clarifying whether the scheme shall be applicable prospectively or retrospectively. Keeping in mind that the DVCS itself owes its existence to Section 357A of the CrPC, we are of the view that the scheme would have to be applied prospectively.

38. In conclusion, keeping in mind the Statement of Objects and Reasons and the fact that the term “Victim” came to be expressly included in the statute books by the 2009 amendment, and the rights and remedies relating to them came to be introduced contemporaneously, the provisions relating to Victims and compensation thereof, would commend of the provisions being applied prospectively.



39. We are also of the opinion that retrospective application of either the provisions of Section 357A of the CrPC or the DVCS would open the floodgates for all and sundry to rake up old and stale claims seeking compensation, be it for an incident occurring just before the introduction of the scheme or three decades prior like in the present case.

### **B. ON DEMURRER; APPLICABILITY OF THE DVCS**

40. Assuming, on demurrer, that the DVCS is to be applied retrospectively, we are of the firm view that it would not entitle the victims to get compensation under it.

41. We take note of Clause 4 of the DVCS which lays down the eligibility criteria for compensation, which reads as follows:—

*“Eligibility for Compensation.- The victim or his/her dependent(s), as the case may be, shall be eligible for the grant of compensation after satisfying the criteria that he/she should not have been compensated for the loss or injury under any other scheme of the Central Government or the Government:*

*Provided that an affidavit of victim or his/her dependent(s), as the case may be, shall be sufficient unless the State or District Legal Services Authority, as the case may be, directs otherwise for the reasons to be recorded.*

*Provided also that the amount of compensation received under any other scheme shall be adjusted from the compensation payable hereunder and only the remainder shall be payable by the DSLSA.”*

*(Emphasis supplied)*

42. Clause 4 categorically restricts eligibility for grant of compensation only to victims or his/her dependents, who have not been compensated for the loss or injury under any other scheme of the Central Government or the State Government. This clarifies that the DVCS was formed as an umbrella scheme to provide relief to those victims who have been deprived of compensation through any other



schemes or Act.

43. Complainant/Respondent No. 4 has filed an affidavit showing the combined compensation that she has received. The relevant part of the said affidavit is reproduced hereinbelow:-

“ ...

*That as per the knowledge of the deponent, the deponent's family received a total of Rs. 11,90,000/- as compensation for the death of the late Avtar Singh (father of the deponent) from the Government of the NCT of Delhi for the 1984 Sikh riots. The details of abovementioned Rs. 11,90,000/- is given below*

- a) *Rs. 10,000 /- vide cheque no. 241997 dated 17.11.1984*
- b) *Rs. 3,30,000/- vide cheque no. 685525 dated 03.03.1997*
- c) *Rs. 3,50,000/- through ECS dated 13.06.2006*
- d) *Rs. 5,00,000/- vide cheque no. 553737 dated 31.10.2015”*

44. As is evident, the Complainant herein has received compensation under various schemes and initiatives taken by the GNCTD. The combined amount of compensation received, without indexation, is more than Rs. 10 lakhs, which surpasses the upper limit prescribed in the Schedule of the DVCS. In this background, we are not inclined to award any compensation to the Complainant herein.

45. We would now advert to the issue of compensation given to similarly situated persons. The incident in question took place in the year 1984, and since then, multiple schemes have been introduced by the **Ministry of Home Affairs**<sup>19</sup>, **Government of India**<sup>20</sup>, which have been later inculcated and implemented by the State governments, including the GNCTD. The schemes, along with the relief provided, have been reproduced in a tabular form hereinbelow for the sake of convenience:-

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<sup>19</sup> MHA

<sup>20</sup> GOI



| NAME OF THE SCHEMES  | RELIEF   |
|--|--|
| Relief for riot victims in the Union Territory of Delhi by MHA, GOI <i>vide</i> circular dated 06.11.1984  | Rs. 10,000 for each person died in the riots to the Next of Kin<br>Rs. 10,000 for total destruction of house<br>Rs. 5,000 for substantial damage to house<br>Rs. 1,000 for minor damage to house   |
| Relief for riot victims in the Union Territory of Delhi by MHA, GOI <i>vide</i> circular dated 28.01.1986.   | relief of Rs. 10,000 was revised to Rs. 20,000 in a death case   |
| Revised Compensation by the Delhi High Court direction dated 05.07.1996.   | families and widows of the victims of the Anti-Sikh riots be paid a sum of Rs. 3,50,000 (Rs. 2 lakh with interest quantified at Rs. 1.50 lakh)   |
| Sanction of Rehabilitation package to the victims of 1984 riots by MHA, GOI <i>vide</i> circular dated 16.01.2006  | Ex-gratia amount @ Rs.3,50,000/- in each case of death in addition of already paid.  |
| Central Assistance to the Civilian Victims of Terrorist/Communal/Naxal Violence - Enhanced relief by MHA, GOI <i>vide</i> circular dated 17.12.2014          | Announced grant of enhanced relief of Rs.5.00 lakhs per deceased person, who died during 1984 Anti Sikh Riots  |
| Skills/Upgrading skills for families of victims of 1984 anti sikh riots by MHA, GOI dated 22.02.2017   | Pursuant to the recommendations made by the Justice G.P. Mathur Committee, the GOI sent a notification to states including Govt of NCT of Delhi that it lies within the discretion of the State Government to devise and implement a suitable scheme for <b>providing skills and upgradation of skills</b> for the benefit of Sikh families affected by the riots. |
| Notice by the Department of Revenue, Govt of Delhi for <b>Special verification camps for the application for employment to 1984 Anti Sikh Riots victims.</b> | As per the directions of the Hon'ble Lieutenant Governor of Delhi, the Revenue Department, Government of NCT of Delhi, organised special camps across all Revenue Districts of Delhi, for verification of applications for employment to the family members of the 1984 Anti-Sikh Riot victims during <b>28.11.2024 to</b>   |



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|--|-------------|
|  | 30.11.2024. |
|--|-------------|

46. A perusal of the schemes indicates that the combined monetary benefit, without indexation, of the above-mentioned schemes, would surpass the upper limit of compensation prescribed under the DVCS. The Government has taken additional initiatives to reimburse the victims for property damage and loss, and skills development as well.

47. A writ petition titled *Bhajan Kaur v. Delhi Administration Through the Lt. Governor*<sup>21</sup> was filed before the learned Single Judge by the widow of a 1984 riot victim (Petitioner therein), seeking enhancement of the compensation amount of Rs. 20,000, which had been awarded to her by the Delhi Administration as an *ex gratia* payment for the death of her husband, who was killed by a mob during the anti-Sikh riots. The main contention of the Petitioner therein was that the *ex gratia* payment was grossly inadequate for the loss of her husband, who was the sole breadwinner.

48. The learned Single judge *vide* the Judgement dated 05.07.1996 held that the *ex gratia* payment of Rs. 20,000 made to 1984 riot victims was unrealistic and inadequate, falling short of ensuring a dignified life. Article 21 of the Constitution mandates a “decent human minimum”, which must guide State compensation. The Petitioner therein was entitled to at least Rs. 2 lakhs. Since Rs. 20,000 had already been paid, the learned Single Judge awarded Rs. 1.8 lakhs plus interest, totalling Rs. 3.3 lakhs. It was further directed that the enhanced compensation is to be extended to all similarly situated victims of the 1984 Delhi riots by the Respondent therein, and widows and families of the victims are to be paid Rs. 3.5 lakhs, after adjusting

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<sup>21</sup> 1996 SCC OnLine Del 484



any prior *gratia*, which was to be identified and disbursed by a committee constituted by the State.

49. It is evident that the learned Single Judge in the above judgement took note of the fact that the *ex gratia* payment made via the GNCTD in 1986 was too meagre and held that the same must be enhanced. However, in subsequent years, the payments/compensation have been increased from time to time, and as it stands now, it is more than Rs. 10 lakhs along with other benefits.

50. In view of the above and the fact that the grant of compensation under Section 357A of the CrPC is expressly barred by Clause 4 of the DVCS, where the victim has already been compensated under any other government scheme, we do not consider it appropriate to award any further sums.

51. We are also of the view that, having held that the persons affected by the Sikh Riots would not be entitled to receive compensation due to the prospective application of the statutory provisions and the DVCS, the occasion does not arise for off-setting or deducting from any compensation payable, the *ex-gratia* payments already made and the Judgments relied in support of the same by the Learned *Amicus* would not be applicable in the present case.

**POST SCRIPT:**

52. We however hasten to add that, the present Judgment would not preclude any victims affected by the riots, who have not received compensation under the various schemes enumerated hereinabove, to lodge their claims with the appropriate authority(ies), who would, after due verification as to the entitlement, which verification, it is directed, should be carried out within a period of sixteen weeks from



the date of receipt of the claims, disburse the amounts due, within a period of eight weeks thereafter. The concerned authorities are directed to give wide publicity inviting such claims from eligible persons by way of appropriate advertisements, etc., in various dailies/newspapers, and in such other manner as considered appropriate to ensure its widest possible reach.

53. The Court would like to express its gratitude to the learned Amicus, Sr. Adv. Sumeet Verma for his assistance, and Mr. H. S. Phoolka, Ld. Sr. Adv, whom we add, had with his characteristic candour expressed his view that he would be limiting his arguments to the question of acquittal of the accused persons.

54. With the aforesaid directions, the present revision petition, along with pending application(s), if any, is disposed of.

**SUBRAMONIUM PRASAD, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**  
**AUGUST 11, 2025/va/er**