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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20.12.2024

Date of decision: 24.01.2025

\+ BAILAPPLN.1959/2021

SAIF ALI @ SOHAN ……Petitioner

Versus

THE STATE GNCT OF DELHI ……Respondent

\+ W.P.(CRL)1054/2021 & CRL.M.(BAIL)722/2021

RAJINDER SINGH ……Petitioner

Versus

STATE ……Respondent

\+ CRL.A.352/2020 & CRL.M.A.12830/2024

KARAN ……Petitioner

Versus

STATE GNCT OF DELHI ……Respondent

Appearances:

For Petitioners:

Mr. Kanhaiya Singhal, Mr.Prasanna & Ms.Anisha Rastogi, Advs. in CRL.A. 352/2020

For Respondents:

Mr.Vikas Pahwa, Sr. Adv. (Amicus Curiae) with Mr. Prabhav Ralli &Ms. Sanskriti Shakuntala Gupta, Advs. in Bail Appln.1959/2021 &W.P.(CRL) 1054/2021.
Mr.Ayush Puri, Mr.Sultan Haider Jafri &Mr. Kanav Madnani, Advs. for R1 &R2 in BAIL APPLN.1959/2021.
Mr.Rajiv Khosla, Mr.Amit Sharma, Mr.Sunil Singh & Mr.Sanjay Dubey, Advs. for the Applicant in CRL.A. 352/2020
Ms.Rupali Bandhopadhya, ASC (Crl.), GNCTD with Mr.Abhijeet Kumar, Adv.

Mr.Harsh Prabhakar, Mr.Yash Kotak, Ms.Pallavi Garg, Mr.Annirudh Tanwar, Mr.Dhruv Chaudhary, Mr.Adeeb Ahmad &Ms.Eshita Pallavi, Advs. for DSLSA.
Mr.Aman Usman,APP with Insp. Sidinesh Kumar,P.S.Nand Nagri, Insp. Ravi Kumar, P.S. Baba Haridas Nagar &W/SI Sushma, P.S. Najafgarh.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MS. JUSTICE PRATHIBA M SINGH
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE SAURABH BANERJEE
HON'BLE MR. JUSTICE MANOJ JAIN

REKHA PALLI, J.

JUDGMENT

1. This Larger Bench has been constituted upon the orders of Hon'ble the Chief Justice pursuant to the order dated 05.08.2021 passed in W.P.(CRL) 1054/2021 & CRL.M.B. 722/2021. Vide the said order, the learned Single Judge, while taking note of the inordinate delay in passing of orders on sentence as a result of the implementation of the directions issued vide the decision of a Full Bench of this Court in ***Criminal Appeal 352/2003*** *titled*

"Karan v. State of NCT of Delhi", observed that any modification of the directions issued by the Full Bench could be considered only by a Full Bench and, therefore, directed that the matter be placed before a Full Bench for modification of the guidelines issued in ***Karan (supra).*** Consequently, a Full Bench was constituted by Hon'ble the Chief Justice on 27.08.2021. The Full Bench so constituted, after considering the submissions of the parties, on 26.04.2024, directed that subject to orders of Hon'ble the Acting Chief Justice, the matter be listed before a Larger Bench. It is in these circumstances that this Larger Bench has been constituted.

2. We may begin by noting that in ***Karan (supra),*** the Full Bench upon consideration of the provisions of Sections 357 and 357A of the Code of Criminal Procedure, 1973 ("Cr.P.C.") (now Sections 395 and 396 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS)) for assessment and payment of victim compensation, issued directions laying down the detailed procedure to be followed by Trial Courts for assessing the quantum of victim compensation payable under Section 357, Cr.P.C.. Vide the directions so issued, the Full Bench not only prescribed the steps to be taken by the Trial Court after passing of order on conviction but also laid down the timeframe within which each of these steps must be completed before an order on sentence is passed.

3. It is also pertinent to note that on 03.06.2021, the learned Single Judge while dealing with W.P.(Crl) 1054/2021 and BAIL APPLN. 1959/2021 wherein bail was being sought noted that several similar cases were coming up before this Court, wherein, persons who already stand convicted were seeking bail on account of no order on sentence having been passed by the

Trial Court. Consequently, reports were sought from the DSLSA regarding adherence to the time period and submission of Victim Impact Reports (hereinafter "VIRs") to the Trial Court as per the directions issued in ***Karan (supra).***Vide its report dated 20.06.2021, the Delhi State Legal Services Authority (hereinafter "DSLSA") informed the Court that in compliance with the directions of this Court in ***Karan (supra),*** a detailed Standard Operation Procedure (SOP),*"Proceedings for Assistance of Compensation Computation in view of the Judgment in Criminal Appeal 352/2003 Titled "Karan v. State of NCT of Delhi"* ("PAC-C Protocol"), had been prepared laying down the procedure to be followed for determining victim compensation after conviction of the accused.

4. According to the guidelines on which the SOP of DSLSA is based**,** upon the pronouncement of judgment on conviction and supply of a copy thereof to the convict, 10 days is being granted to the convict/accused to submit his affidavit detailing his financial capacity to pay compensation to the victim. In its report, the DSLSA also pointed out that this period was often being extended beyond 10 days due to various reasons, including non-availability of a copy of the conviction order, inadequate legal representation for the convict, and absence of his family members. Time was also being spent in supplying a copy of the affidavit to the DSLSA, whereafter, as per the guidelines, the DSLSA was required to gather supplementary material and information, with the assistance of the SDM's office for preparation of the VIR for submission to the Trial Court. This entire process, it was pointed out, even as per the DSLSA's SOP, takes a minimum of 40 days but was often extending to months together.

5. The learned Single Judge, therefore, observed that on account of the procedure which the Trial Court was now required to follow**,** which procedure involved filing of a VIR by the DSLSA in every case, orders on sentence were being pronounced after a considerable delay of upto 2 years from the date of passing of conviction order. Consequently, the accused who is required to await the order on sentence remains incarcerated for months together without being able to file an appeal seeking consideration of his prayer for suspension of sentence by the Appellate Court.

6. During the pendency of these two matters before the learned Single Judge, the VIRs were submitted by the DSLSA and consequently, appropriate orders on sentence were passed by the respective Trial Court. Resultantly, even though the bail applications before the learned Single Judge became infructuous, the learned Single Judge, on 05.08.2021, opined that the unusual delay occasioned in the receipt of a VIR violated the constitutional right of an accused to speedy trial and, therefore, expressed the need for reconsideration of the guidelines issued by the Full Bench in ***Karan (supra)*** to ensure a reduction in the timelines prescribed thereunder. The relevant extracts of the order dated 05.08.2021, as contained in paragraphs nos. 6 and 7 thereof, reads as under:

> *"6. In view of the time period provided in the decision of the Full Bench and also that the same cannot be strictly adhered to as often the filing of affidavit by the accused and the verification thereof takes time, the time gap between passing of the judgment of conviction and the order on sentence has increased drastically. The unusual delay caused in receiving the Victim Impact Report violates the constitutional right of an accused for a speedy trial as also puts the accused in a piquant*

situation, as if the accused is on bail he is required to be taken in custody at the time of passing of the judgment of conviction, and in the absence of an order of sentence having been passed, his sentence cannot be suspended, thereby requiring this Court to relook the guidelines and ensure reduction in the period prescribed as far as possible and if deemed appropriate certain compliances be sought in advance during the trial.

7. In view of the practical difficulty being faced due to the delay in receipt of the Victim Impact Report, for which though efforts have been made to expedite the same by the Delhi State Legal Services Authority, an accused cannot be left without any remedy. Since the directions have been issued by the Full Bench of this Court and any modification therein will also be required to be carried out by the Full Bench, list these petitions before Hon'ble the Chief Justice for constitution of a Full Bench for modification of the guidelines issued."

7. In terms of the order passed by the learned Single Judge on 05.08.2021 Full Bench comprising of three Judges was constituted, which, as noted hereinabove, opined that the matter should be placed before a Larger Bench. Accordingly, a Larger Bench was constituted, and this is how the present matter for reconsideration of the guidelines issued in ***Karan (supra)*** has been placed before us. We are, therefore, required to consider whether the guidelines should be modified or should be altogether revoked.

8. It may also be apposite to note that while these matters were pending consideration, Mr. Rajiv Khosla, a practising Advocate of this Court, moved an application bearing no. 12830/2024 in ***Karan (supra)*** seeking setting aside/modification of the guidelines issued by the Full Bench. Considering

the significant implications the present matters hold, for the Criminal Justice System and on the rights of all stakeholders in Delhi, including the accused persons as also the victims and their families, we have, besides hearing learned counsel for the parties, also considered the submissions of the learned *Amicus Curiae,* Mr Vikas Pahwa, Senior Advocate, Mr Harsh Prabhakar, Advocate appearing on behalf of DSLSA and Mr Rajiv Khosla, Advocate.

9. Before proceeding to deal with the question arising for our consideration and the submissions of learned counsel for the parties, we may briefly refer to the factual matrix of the two matters placed before us.

10. In W.P.(Crl) 1054/2021, the petitioner was convicted on 10.12.2020 but could not apply for suspension of sentence or seek bail from the Trial Court as the order on sentence was yet to be passed for want of the VIR, which in terms of the judgment in ***Karan (supra),*** was required to be prepared by the DSLSA. Consequently, the petitioner who could not file an appeal at that stage approached this Court by way of a writ petition seeking grant of bail.

11. In similar circumstances, the petitioner in BAIL APPLN. 1959/2021 was, on 20.10.2020, convicted under Sections 5 and 6 of the POCSO Act, but was unable to file an appeal due to non-passing of an order on sentence. Consequently, he approached this Court on 03.07.2021 seeking bail by contending that since the order on sentence had not been passed even after eight months from the date of his conviction, he was unable to file a statutory appeal and, therefore, the only remedy available to him was to approach this Court by way of a bail application.

12. In support of their prayer for setting aside the guidelines issued by the Full Bench in ***Karan(supra),*** Mr Prabhakar, learned counsel for the DSLSA as also Mr. Rajiv Khosla, Advocate, have both urged that though the right of the victims to receive compensation, either from the accused or from the DSLSA, has to be safeguarded, once Section 357 of the Cr.P.C. does not contemplate the role of the State Legal Services Authority in determining compensation as opposed to the provisions of Section 357A, Cr.P.C., which requires the State to form a scheme for victim compensation, the guidelines issued by the Court in ***Karan (supra),*** mandating recommendations by way of a VIR from the DSLSA even in cases covered under Section 357, Cr.P.C. was not permissible. They have contended that assigning a role to the Legal Services Authority i.e. DSLSA, which was not envisaged by the Statute would amount to rewriting the legislative provisions.

13. In support of his aforesaid plea, Mr Prabhakar has, by relying on the decisions in ***P Ramachandra Rao v. State of Karnataka (2002) 4 SCC 578*** and ***Common Cause (A Regd Society) v. Union of India, (2008) 5 SCC 511,*** urged that as per Section 357, Cr.P.C., it is the function of the Court to determine compensation, which function could not have been delegated to a committee, i.e., the DSLSA merely by way of guidelines having no statutory backing and that too only on the premise that since the DSLSA has the expertise in determining compensation under the Delhi Victim Compensation Scheme as envisaged under Section 357A, Cr.P.C., it should give its recommendations for determining compensation under Section 357, Cr.P.C. as well. The schemes for award of compensation as envisaged by the legislature under Sections 357 and 357A, Cr.P.C. being different, they have

contended, this Court could not have imported the mechanism provided under Section 357A of the Cr.P.C. for the procedure to be adopted by the Trial Court for determining victim compensation under Section 357 of the Cr.P.C. as well.

14. Mr Prabhakar and Mr Khosla have further urged that as a result of the mandatory procedure laid down in ***Karan (supra),*** which requires not only affidavits to be filed both by the accused and the State/prosecution but also preparation of a VIR by the DSLSA, enormous delay, sometimes running into years, was being caused in passing of orders on sentence. Consequently, the accused persons continue to remain in custody after conviction without being given the opportunity to file a statutory appeal and seek suspension of sentence as per law.

15. They have submitted that while issuing the impugned guidelines, the Full Bench in ***Karan (supra)*** has proceeded to misinterpret the observations of the Apex Court in ***Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC 770***. This decision, they submit, while underscoring the significance of victim compensation, neither mandates any specific procedure to be followed by Trial Courts for conducting an inquiry to determine the quantum of compensation nor requires the accused to file an income affidavit as a precondition for awarding victim compensation under Section 357 of the Cr.P.C.. Consequently, it has been urged, that the guidelines issued in ***Karan (supra)*** have led to an anomalous situation where an altogether different procedure for the purposes of awarding victim compensation under Section 357, Cr.P.C. is being followed by the Trial Courts in Delhi. This procedure, they have submitted, is evidently leading to

inordinate delays in passing of orders on sentence, thus, violating the constitutional rights of the accused.

16. Mr Prabhakar and Mr Khosla have finally urged that the directions issued in ***Karan (supra)*** requiring the convict to disclose his income and assets by way of an affidavit alongwith the details of the assets of his family members are also violative of Articles 20 and 21 of the Constitution of India as also of Sections 315 and 316 of the Cr.P.C. (Sections 353 and 354 of the BNSS). The disclosure of information required to be made by the accused by way of an affidavit would not only amount to self-incrimination but there was also the danger of this information being used by other investigating agencies such as the Enforcement Directorate, etc to implicate the accused. They have, therefore, contended that even if information regarding the paying capacity of the accused was required for determining victim compensation, the same could be obtained either from the ITR of the accused or from his statement under Section 313, Cr.P.C., without compelling him to disclose this information on oath.

17. Mr Aman Usman, the learned APP has also highlighted the practical difficulties which the accused faces in filing his affidavit qua his income and assets as required under the guidelines. He has urged that in cases where the prescribed sentence is more than three years, the convict, if not already in judicial custody, is immediately taken into custody upon conviction. Resultantly, while in jail, he does not have the resources or mechanism to file the requisite affidavit detailing his financial position and that too within the period of 10 days prescribed under the guidelines**.** Furthermore, this problem is compounded in cases where the accused have already been in

custody for many years, and therefore, they are unable to ascertain the details of their assets and income within the prescribed time.

18. Mr. Vikas Pahwa, the learned *Amicus Curiae*, in line with the pleas taken by the learned counsel for the parties, has also urged that the discretion vested with the Trial Court to quantify and award victim compensation under Section 357, Cr.P.C. could not have been delegated to the DSLSA. His plea being, that while Section 357A, Cr.P.C. explicitly envisages the role of the State Legal Services Authority in determining compensation, the said Authority cannot give any recommendations qua the compensation payable under Section 357, Cr.P.C.. The provisions of Section 357, Cr.PC clearly and unequivocally vest the discretion to award victim compensation with the Trial Court and, therefore, the same could not have been delegated to the DSLSA as directed under the guidelines.

19. Mr. Pahwa has further urged that even if the Trial Court requires any assistance for determining the quantum of victim compensation to be awarded, the said information can, without associating the DSLSA, be easily ascertained by issuing appropriate directions to the SHO/I.O.This procedure, he submits, is being followed by the Motor Accident Tribunal while adjudicating "Motor Accident Claims" where reports are called from the SHO/I.O. itself. This practice being followed by the Tribunal has been approved by the Apex Court in ***Jai Prkash v National Insurance Co. Ltd. 2010 (2) SCC 607*** and ***Gohar Mohammad v. Uttar Pradesh State Road Transport Corporation (2023) 4 SCC 381.*** His plea being that the investigating officer is equipped with the mechanism to carry out a detailed verification with respect to the accused as well as the victim and, thus, there

is no reason that this duty to collect information and submit recommendations qua the quantum of compensation to be awarded by the Court under Section 357, Cr.P.C. should be assigned to the DSLSA.

20. He has also emphasised that as a result of the procedure prescribed in ***Karan (supra)***, inordinate delay in passing of orders on sentence was being caused**,** which delay was not only on account of delay in furnishing of affidavits either by the prosecution or by the convict, but also on account of administrative reasons, including the heavy workload with the DSLSA. He has, therefore, urged that the timelines prescribed in ***Karan (supra)*** could be shortened by directing the accused persons to file their affidavits well in advance, i.e., prior to their conviction itself. According to him, the requisite financial information pertaining to the accused could be collected at two stages, firstly at the stage of framing of charge and then again at the stage of recording of his statement under Section 313 Cr.P.C.. His contention being that the accused can be asked to file a preliminary affidavit setting out his assets and liabilities at the stage of framing of charges itself and thereafter be asked to file an updated affidavit reflecting any changes in his income, assets, or liabilities during the trial. It is his plea that if this procedure were to be followed, it would not only reduce unnecessary delays but also ensure that correct financial information was available with the Court.

21. Finally, he has urged that requiring the accused to submit an affidavit of his assets and income would not, in any manner, be violative of his constitutional rights, either under Article 20 or Article 21 of the Constitution of India. In support of his plea, he has sought to place reliance on the decisions of the Apex Court in ***Selvi v. State of Karnataka 2010 (7) SCC***

263 and ***State of U.P v. Sunil 2017 (14) SCC 516.*** He has contended that even though Article 20(3) of the Constitution of India prohibits compelling an accused to give his testimony which would be self-incriminatory, directing him to provide information only for the purposes of determining his financial position would not be barred thereunder. His plea, therefore, being that such information would not amount to self-incrimination as the same would neither *'furnish a link in the chain of evidence'* against him nor in any manner lead to his incrimination in the case against him.

22. Having considered the submissions of the learned counsel for the parties, we may begin by noting that the parties are *ad idem* that in terms of Section 357, Cr.PC (Section 395 of the BNSS), victim compensation is required to be awarded by the Trial Court at the time of passing of order on sentence. However, this provision while making it mandatory for the Court to pass orders for grant of victim compensation in appropriate cases, neither lays down the procedure to be followed by Trial Courts nor specifies the factors which must be considered while deciding whether to grant compensation and, if yes, the quantum thereof. The Full Bench in ***Karan (supra),*** while highlighting the significance of granting compensation to victims and their families in paragraph nos. 156 to 167 of its decision, formulated a framework outlining the steps to be followed by the Trial Courts for awarding compensation under Section 357, Cr.P.C.. It may, therefore, be apposite to refer at this stage itself to paragraph nos. 156 to 167 of the judgment, which read as under:

> *"156. Victims are unfortunately the forgotten people in the criminal justice delivery system. Victims are the*

worst sufferers. Victims" family is ruined particularly in cases of death and grievous bodily injuries. This is apart from the factors like loss of reputation, humiliation, etc. The Court has to take into consideration the effect of the offence on the victim's family even though human life cannot be restored but then monetary compensation will at least provide some solace.

157. The criminal justice system is meant for doing justice to all - the accused, the society and the victim.

158. Justice remains incomplete without adequate compensation to the victim. Justice can be complete only when the victim is also compensated. Sections 357 & 357A of Cr.P.C.

159. Section 357 Cr.P.C. empowers the Court to award compensation to victims who have suffered by the action of the accused.

160. The object of the Section 357(3) Cr.P.C. is to provide compensation to the victims who have suffered loss or injury by reason of the act of the accused. Mere punishment of the offender cannot give much solace to the family of the victim – civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread earner of the family.

161. Section 357 Cr.P.C. is intended to reassure the victim that he/she is not forgotten in the criminal justice system.

162. Section 357 Cr.P.C. is a constructive approach to crimes. It is indeed a step forward in our criminal

justice system.

163. The power under Section 357 Cr.P.C. is not ancillary to other sentences but in addition thereto.

164. The power under Section 357 Cr.P.C. is to be exercised liberally to meet the ends of justice in a better way.

165. Section 357 Cr.P.C. confers a duty on the Court to apply its mind on the question of compensation in every criminal case.

166. The word "may" in Section 357(3) Cr.P.C. means "shall" and therefore, Section 357 Cr.P.C. is mandatory.

167. The Supreme Court in Ankush Shivaji Gaikwad (supra) has given directions that the Courts shall consider Section 357 Cr.P.C. in every criminal case and if the Court fails to make an order of compensation, it must furnish reasons."

23. It is also the common case of the parties that under the provisions of Section 357A of the Cr.P.C. (Section 396 of the BNSS) a scheme, in coordination with the Central Government, is required to be prepared by every State Government for providing funds for the purposes of awarding compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and require rehabilitation.This compensation to be paid by the State under the Victim Compensation Scheme so framed is in addition to the fine as may have been imposed by the Trial Court under Sections 326A, 376AB, 376D, 376DA and 376DB of the Indian Penal Code (Sections 65, 70 and 124 (1) of the BNSS.)

24. Learned counsel for the parties as also the learned *Amicus Curiae* have further urged that while the right of the victims to receive compensation either from the accused under Section 357, Cr.PC and/or from the DSLSA under Section 357A, Cr.PC has to be safeguarded, it is the mandatory procedure laid down in ***Karan (supra)*** for determining victim compensation under Section 357, Cr.P.C. which is leading to delay in passing of orders on sentence. It is their plea that even if the Court in ***Karan (supra)*** was justified in framing guidelines for determining the eligibility of the victim to receive compensation as also the quantum of compensation, the formats for the affidavits to be furnished by the accused and the State directed under the guidelines are leading to inordinate delay in passing of orders on compensation and sentence.

25. In order to appreciate this plea of the parties, we may now refer to the guidelines issued by the Full Bench, which we may note have been issued in exercise of its powers under Article 227 of the Constitution of India. The same are contained in paragraph nos. 168 to 178 of the decision and read as under:

> *"Quantum of compensation*
>
> *168. The amount of compensation is to be determined by the Court depending upon gravity of offence, severity of mental and physical harm/injury suffered by the victim, damage/losses suffered by the victims and the capacity of the accused to pay. While determining the paying capacity of the accused, the Court has to take into consideration the present occupation and income of the accused. The accused can also be directed to pay monthly compensation out of his income. Financial capacity of the accused*

169. Before awarding compensation, the Trial Court is required to ascertain the financial capacity of the accused. This Court has formulated the format of an affidavit to be filed by the accused after his conviction to disclose his assets and income which is Annexure-A hereto. Victim Impact Report

170. This Court has formulated the format of Victim Impact Report (VIR) to be filed by DSLSA in every criminal case after conviction. Victim Impact Report (VIR) shall disclose the impact of the crime on the victim. The format of the Victim Impact Report in respect of criminal cases, other than motor accident cases, is Annexure B-1. The format of Victim Impact Report in respect of motor accident cases is Annexure B-2.

Summary Inquiry

171. A summary inquiry is necessary to ascertain the impact of crime on the victim, the expenses incurred on prosecution as well as the paying capacity of the accused.

172. This Court is of the view that the summary inquiry be conducted by Delhi State Legal Services Authority (DSLSA) considering that DSLSA is conducting similar inquiry under the Delhi Victim Compensation Scheme, 2018 and is well conversant with the manner of conducting the inquiry.

173. After the conviction of the accused, the Trial Court shall direct the accused to file the affidavit of his assets and income in the format of Annexure-A within 10 days.

174. After the conviction of the accused, the Court shall also direct the State to disclose the expenses incurred on prosecution on affidavit alongwith the supporting documents within 30 days.

175. Upon receipt of the affidavit of the accused, the

Trial Court shall immediately send the copy of the judgment and the affidavit of the accused in the format of Annexure-A and the documents filed with the affidavit to DSLSA.

176. Upon receipt of the judgment and the affidavit of the accused, DSLSA shall conduct a summary inquiry to compute the loss suffered by the victims and the paying capacity of the accused and shall submit the Victim Impact Report containing their recommendations to the Court within 30 days. Delhi State Legal Services Authority shall .seek the necessary assistance in conducting the inquiry from SDM concerned, SHO concerned and/or prosecution who shall provide the necessary assistance upon being requested.

177. The Trial Court shall thereafter consider the Victim Impact Report of the DSLSA with respect to the impact of crime on the victims, paying capacity of the accused and expenditure incurred on the prosecution; and after hearing the parties including the victims of crime, the Court shall award the compensation to the victim(s) and cost of prosecution to the State, if the accused has the capacity to pay the same. The Court shall direct the accused to deposit the compensation with DSLSA whereupon DSLSA shall disburse the amount to the victims according to their Scheme.

178. If the accused does not have the capacity to pay the compensation or the compensation awarded against the accused is not adequate for rehabilitation of the victim, the Court shall invoke Section 357A Cr.P.C. to recommend the case to the Delhi State Legal Services Authority for award of compensation from the Victim Compensation Fund under the Delhi Victims Compensation Scheme, 2018."

26. From the aforesaid, what emerges is that while laying down the framework for the steps to be followed by Trial Courts for determining compensation under Section 357, Cr.P.C., this Court also specified the time frame for each of the steps required to be followed by the Trial Courts before passing orders on sentence and victim compensation. This framework was intended to standardize the process of passing orders for victim compensation and makes the DSLSA responsible for working out the amount required to be awarded as compensation under Section 357 of the Cr.P.C. by holding a summary inquiry. This direction to the DSLSA was issued on the premise that the DSLSA was already conducting similar inquiries under the Delhi Victim Compensation Scheme and was, therefore, well conversant with the manner of conducting such inquiries for determining compensation.

27. It also emerges that the procedure laid down by this Court requires filing of an affidavit of income and assets by the accused, an affidavit by the State disclosing expenses incurred on prosecution and thereafter, by way of a VIR, recommendations qua the quantum of compensation to be made by the DSLSA, based on which the Trial Court then passes an order for award of compensation, if any, to the victim, alongwith the order on sentence.We also find that by way of these guidelines, this Court besides laying down the procedure to be followed by the Trial Courts for determining and awarding victim compensation also prescribed the formats not only of the affidavits required from the accused and the prosecution but also the format for the preparation of VIR by the DSLSA. Furthermore, the Court also specified the

documents which the accused is required to submit with his affidavit of income and assets.

28. The DSLSA, in its written submissions, by way of the tabulation noted hereinbelow, has explained the steps required to be taken as per the guidelines alongwith the timelines prescribed therefor and has stated that an SOP in this regard has been framed by them:

No.	*Description of task/event*	*Timeline*
1	*Trial Court pronounces the Judgment of Conviction*	*X*
2	*Convict is directed to file an affidavit of its assets and income before the Trial Court.*	*Y (X + 10 days)*
3	*State discloses the expenses incurred on prosecution on affidavit to the Trial Court*	*X + 30 days*
4	*The Trial Court forwards the affidavit received from the convict along with a copy of its judgment to the DSLSA*	*(No timeline prescribed)*
5	*DSLSA upon receipt of the copy of the judgment and the affidavit of the convict, shall conduct the summary inquiry with the assistance of SHO and SDM concerned and submit the 'Victim Impact Report' to the Trial Court.*	*Y + 30 days (No separate timeline prescribed in the Judgment for compliance by SHO/SDM.)*
5	*Trial Court upon considering affidavit of*	*(No timeline*

	State/prosecution and the 'Victim Impact Report' passes Order on sentence	*prescribed)*

29. From the aforesaid, what emerges is that as per the guidelines,10 days' time is granted to the accused and 30 days' time is granted to the State for filing their respective affidavits, whereafter the DSLSA is required to conduct a summary inquiry, and then prepare its report (VIR). Consequently, it is evident that, as per the SOP issued by the DSLSA in tune with the guidelines, the entire process has to be completed within a period of 40 days as the State is required to quantify the expenses incurred on prosecution within the same period of 30 days during which the DSLSA is required to conduct its inquiry and prepare the VIR. It has, however, been urged before us that in practice, these timelines are rarely being adhered to as the entire process is inherently time consuming. This, we have been informed, is due to various reasons, including delay on part of the accused in furnishing his affidavit of income and assets, delay on part of the State in quantifying the expenses towards prosecution and finally, delay on part of the DSLSA in verifying the affidavits submitted by the accused/prosecution and preparing the VIR.

30. It is only after this process which requires not only affidavits, from both the convict/accused as also the prosecution but also a summary inquiry by the DSLSA and submission of a VIR to the Trial Court is completed that the Trial Court can consider passing an appropriate order on sentence alongwith an order awarding compensation. As noted hereinabove, it is the common stand of all the parties that this composite process laid down under the guidelines, though expected to be completed within 40 days, often takes

months together, with the period often extending to over an year. Consequently, this causes inordinate delay in passing of orders on sentence, which cannot be passed till victim compensation under Section 357, Cr.P.C. in accordance with the directions issued in ***Karan (supra),*** is determined. Resultantly, in the absence of an order on sentence, the judgment cannot be treated as complete and, therefore, the accused is unable to file an appeal under Section 374 Cr.P.C. (Section 415 of the BNSS). In this regard, reference may be made to the following observations of the Apex Court in ***Rama Narang v. Ramesh Narang (1995) 2 SCC 513:***

> ***"13.*** *Chapter XXVII deals with judgment. Section 354 sets out the contents of judgment. It says that every judgment referred to in Section 353 shall, inter alia, specify the offence (if any) of which and the section of the Penal Code, 1860 or other law under which, the accused is convicted and the punishment to which he is sentenced.* ***Thus a judgment is not complete unless the punishment to which the accused person is sentenced is set out therein. Section 356 refers to the making of an order for notifying address of previously convicted offender.*** *Section 357 refers to an order in regard to the payment of compensation. Section 359 provides for an order in regard to the payment of costs in non-cognizable cases and Section 360 refers to release on probation of good conduct.* ***It will thus be seen from the above provisions that after the court records a conviction, the accused has to be heard on the question of sentence and it is only after the sentence is awarded that the judgment becomes complete and can be appealed against under Section 374 of the Code."***
>
> ***(Emphasis supplied)***

31. In the light of the aforesaid uncontroverted factual position, we find that two questions arise for our consideration in the present matter. The first being as to whether the Full Bench in ***Karan (supra)*** could, in exercise of its

powers under Article 227 of the Constitution of India, set down the detailed stepwise procedure to be followed by the Trial Courts for determining compensation under Section 357, Cr.P.C. and delegate the task of conducting an inquiry for the purposes of determining the quantum of compensation payable under the said provision. An ancillary question thereto would be whether the Court could prescribe the formats in which information should be sought from the accused regarding his financial condition by way of an affidavit. If the answer to the first question is in the affirmative, the next question then would be, whether the guidelines issued in ***Karan (supra)*** need to be modified in any manner, and if yes, the extent of the modifications required.

32. To answer the first question, it would be apposite to begin by noting that these guidelines have been issued by the Court in exercise of its powers of superintendence under Article 227 of the Constitution of India, for which purpose we may refer to the following observations of the Court:

> *"151. Article 227 of the Constitution empowers the High Court with the superintendence over all Courts and Tribunals throughout its territory. The power of superintendence under Article 227 includes the administrative as well as judicial superintendence i.e. the High Court can transfer a case by exercising its administrative power of superintendence or its judicial power of superintendence. Article 235 of the Constitution empowers the High Court with respect to the posting and promotion of Judicial Officers.*
>
> *152. Code of Criminal Procedure vests in the High Court plenary powersrelating to the superintendence over the subordinate Courts including the appointment, posting, promotion and transfer of the judicial officers. Section 194 empowers the High Court to direct a*

Sessions Judge to try particular cases. Section 407 empowers the High Court to transfer the cases on judicial side and Section 483 empowers the High Court to transfer the cases on the administrative side. Section 482 vests inherent power in the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. Section 483 empowers the High Court to exercise superintendence over the subordinate judiciary. Rule 3 of Part B of Chapter 26 of Delhi High Court Rules empowers the High Court to transfer the cases on administrative grounds. To summarize, the High Court has both judicial as well as administrative power to regulate administration of justice."

33. We may now note the provisions of Sections 357, Cr.P.C. (identical to Section 395 of the BNSS) which make it obligatory for the Trial Court to consider granting compensation to the victim in appropriate cases while passing an order on sentence. The same reads as under:

357. Order to pay compensation.—(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having

abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

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

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

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

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

34. Since it has been urged by learned counsel for the parties that while issuing the guidelines for determining the compensation payable, if any, under Section 357, Cr.P.C., this Court in ***Karan (supra)*** has wrongly adopted the procedure applicable only to cases covered under Section 357A, Cr.P.C, we may also refer to Section 357A, Cr.P.C. This provision we find, lays down the framework for compensation to be awarded by the State Legal Services Authority, by way of a Victim Compensation Scheme which is to be framed by the State Government, in consultation with the Central Government. The same reads as under:

> *"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 incharge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit."

35. From a perusal of the aforesaid provisions of Sections 357 and 357A, Cr.P.C., what clearly emerges is that under the Code, while the State Legal Services Authority is required to step in for the purposes of awarding compensation in the eventualities specified in Section 357A, Cr.P.C., under Section 357, Cr.P.C. the said Authority has no role in passing of orders awarding victim compensation. It is, thus, evident that in accordance with the scheme of Section 357, Cr.P.C. it is the sole prerogative of the Trial Court to compute and award victim compensation under cases covered by this provision.

36. This distinction between the procedure to be followed for determining compensation under Sections 357 and 357A of the Cr.P.C., we find is crystal clear and in our considered opinion, could not have been ignored by the Full Bench. Once the statute does not envisage a role for the DSLSA under Section 357 of the Cr.P.C., it was not open for this Court to assign the very task of conducting an inquiry for the purposes of determining the quantum of compensation payable, if any, to the DSLSA. The legislature having explicitly conferred the discretion to assess and award victim compensation under Section 357, Cr.P.C. only on the Trial Courts, the DSLSA could not

be asked to make recommendations in this regard and that too by simply borrowing the mechanism envisaged under Section 357A, Cr.P.C., which provision operates in an entirely different field. The directions requiring the DSLSA to conduct a summary inquiry for determination of victim compensation after conviction of the accused would, in our view, amount to clothing the DSLSA with a power which the legislature does not envisage. This delegation would, therefore, be contrary to the very scheme of Section 357, Cr.P.C., which unambiguously vests the Trial Courts with the discretion to determine what would be fair and equitable under the circumstances, for which purpose the Court is required to take into account the peculiar facts of each case.

37. In this regard, reference may be made to the following observations of the Constitution Bench in ***P Ramachandra Rao v. State of Karnataka (2002) 4 SCC 578,*** wherein the Apex Court while dealing with the time limit fixed by the Court for conclusion of criminal proceedings, held as under:

> ***"25.*** *The primary function of the judiciary is to interpret the law. It may lay down principles, guidelines and exhibit creativity in the field left open and unoccupied by legislation. Patrick Devlin in The Judge(1979) refers to the role of the Judge as law-maker and states that there is no doubt that historically, Judges did make law, at least in the sense of formulating it. Even now when they are against innovation, they have never formally abrogated their powers; their attitude is:"We could if we would but we think it better not." But as a matter of history, did the English Judges of the golden age make law? They decided cases which worked up into principles. The Judges, as Lord Wright once put it in an unexpectedly picturesque phrase, proceeded "from case*

to case, like the ancient Mediterranean mariners, hugging the coast from point to point and avoiding the dangers of the open sea of system and science". The golden age Judges were not rationalisers and, except in the devising of procedures, they were not innovators. ***They did not design a new machine capable of speeding ahead; they struggled with the aid of fictions and bits of procedural string to keep the machine on the road.***

(Emphasis supplied)

26. Professor S.P. Sathe, in his recent work (year 2002) Judicial Activism in India — Transgressing Borders and Enforcing Limits, touches the topic "Directions : A New Form of Judicial Legislation". Evaluating legitimacy of judicial activism, the learned author has cautioned against court ***"legislating" exactly in the way in which a legislature legislates and he observes by reference to a few cases that the guidelines laid down by court, at times, cross the border of judicial law-making in the realist sense and trench upon legislating like a legislature.***

"Directions are either issued to fill in the gaps in the legislation or to provide for matters that have not been provided by any legislation. The court has taken over the legislative function not in the traditional interstitial sense but in an overt manner and has justified it as being an essential component of its role as a constitutional court." (p. 242).

"In a strict sense these are instances of judicial excessivism that fly in the face of the doctrine of separation of powers. The doctrine of separation of powers envisages that the legislature should make law, the executive should execute it, and the judiciary should settle disputes in accordance with the existing law. In reality such watertight separation exists nowhere and is impracticable. Broadly, it means that one organ of the

State should not perform a function that essentially belongs to another organ. While law-making through interpretation and expansion of the meanings of open-textured expressions such as 'due process of law', 'equal protection of law', or 'freedom of speech and expression' is a legitimate judicial function, ***the making of an entirely new law … through directions … is not a legitimate judicial function." (p. 250).***

(Emphasis supplied)

27. Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings *and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our* ***opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible.*** *Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time-limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of the court. This is permissible for the judiciary to do. But it may not, like the legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973*."

(Emphasis supplied)

38. It would also be apposite to refer to the decision of the Apex Court in ***Common Cause (A Regd Society) (supra),*** wherein it was observed as under:

> *"36. We would also like to advert to orders by* ***some courts appointing committees and giving these committees power to issue orders to the authorities or to the public. This is wholly unconstitutional****. The power to issue a mandamus or injunction is only with the court.* ***The court cannot abdicate its function by handing over its powers under the Constitution or CPC or Cr.P.C. to a person or committee appointed by it. Such "outsourcing" of judicial functions is not only illegal and unconstitutional****, it is also giving rise to adverse public comment due to the alleged despotic behaviour of these committees and some other allegations. A committee can be appointed by the court to gather some information and/or give some suggestions to the court on a matter pending before it, but the court cannot arm such a committee to issue orders which only a court can do."*
>
> ***(Emphasis supplied)***

39. In the light of the aforesaid, we are of the considered view that even though under Article 227 of the Constitution of India, the High Court has the power to fill lacunae in the legislation by issuing guidelines, the Court cannot, under the garb of issuing guidelines, legislate and lay down parameters which only the legislature is entitled to promulgate. In the present case, the Full Bench has, by way of the guidelines issued in ***Karan (supra),*** delegated the obligation imposed on the Trial Court to determine the quantum of compensation under Section 357, Cr.P.C. to the DSLSA. In our opinion, by issuing such directions delegating the responsibility of

recommending the quantum of victim compensation to be awarded under Section 357, Cr.P.C. to the DSLSA, the Court has, in fact, sought to obliviate the distinction drawn by the legislature between Sections 357 and 357A of the Cr.P.C. and, therefore,the directions issued in ***Karan (supra)*** virtually amount to rewriting the legislative provisions of Section 357, Cr.P.C. which, as noted hereinabove, do not envisage any recommendations from the State Legal Services Authority.

40. It also emerges that in issuing the guidelines laying down the procedure to be followed by the Trial Courts for awarding compensation, the Full Bench took note of the decision in ***Ankush Shivaji Gaikwad (supra),*** wherein the Apex Court underscored the importance of adopting a victim centric approach while awarding compensation under Section 357, Cr.P.C. We, however, find that while emphasising on the duty of the Court to consider in each case whether compensation should be awarded to the victim, the Apex Court explained that in determining whether compensation should be awarded to the victim or not, the Court must apply its mind to all relevant factors and if necessary, hold a summary inquiry. In this regard, reference may be made to paragraph no. 66 of the decision in ***Ankush Shivaji Gaikwad (supra)*** which reads as under:

> ***"66.*** *To sum up : while the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive*

at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family."

41. It is, thus, evident that even the Statute as also the decision of the Apex Court in ***Ankush Shivaji Gaikwad (supra)*** requires the Court itself to determine whether compensation is to be paid to the victim and, if yes, the quantum thereof. We, however, find that the Full Bench while issuing the impugned guidelines, not only delegated this task to the DSLSA but has also, by way of Annexures A, B and B-1 forming part of the guidelines, prescribed the format for the affidavit of income and assets to be furnished by the accused as also for the affidavit to be submitted by the prosecution. Further, even the format for preparation of VIR by the DSLSA has been set out in the judgment itself. When the legislature is silent regarding the factors which the Court may take into account for determining compensation under Section 357 Cr.P.C., there was absolutely no justification to prescribe the formats either for the affidavit or for the VIR.

42. We are, therefore, of the view that even though the High Court has both supervisory as well as administrative powers to regulate administration of justice and, therefore, can issue directions to the Trial Court, these directions

are required to be in consonance with the legislative scheme. In our opinion, by prescribing such rigid formats for the affidavit of the accused as also of the prosecution, alongwith the format in which the VIR is to be prepared by the DSLSA, the Full Bench has virtually taken away the discretion of the Court under Section 357, Cr.P.C. to quantify and award victim compensation by taking into account the facts peculiar to each case. In our considered view, when the legislature has deliberately not set down any fixed criteria or rule regarding the factors to be considered while awarding victim compensation under Section 357 Cr.P.C., the compartmentalisation of factors enumerated in the formats as has been prescribed by the Full Bench amounts to curtailing the very discretion of the Trial Court and, therefore, these guidelines are liable to be set aside on this ground also.

43. Now, coming to the plea of the learned counsel for the parties that the directions to the accused/convict to file an affidavit on oath, disclosing his assets/income fall foul of his right against self-incrimination as enshrined under Article 20(3) of the Constitution of India as also Sections 315 and 316 of the Cr.P.C. (Sections 353 and 354 of the BNSS). In this regard we may begin by noting that while learned counsel for the parties, by relying on Section 4(2) of the Oaths Act, 1969 and Section 313 of the Cr.P.C. (Section 351 of the BNSS), have urged that requiring the convict to file an affidavit regarding his financial capacity would be violative of his constitutional and statutory rights, the learned *Amicus Curiae* has contended otherwise and has submitted that the requirement of filing an affidavit of income and assets by the accused cannot be treated as being violative of either Article 20(3) of the Constitution of India or of Section 313, Cr.P.C.

44. To appreciate this plea of the parties, it would be apposite to first refer to the provisions of Section 4(2) of the Oaths Act, 1969, which stipulate that it shall not be lawful to administer oath or affirmation upon the accused person in criminal proceedings unless he is examined as a witness for the defence. The same read as under:

> *"4. Oaths or affirmations to be made by witnesses, interpreters and jurors*
>
> *(1) Oaths or affirmations shall be made by the following persons, namely:*
> *(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence;*
> *(b) interpreters of questions put to, and evidence given by, witnesses; and*
> *(c) jurors:*
> *Provided that, where the witness is a child under twelve years of age, and the Court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.*
>
> ***(2) Nothing in this section shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation***

that he will faithfully discharge those duties."

(Emphasis supplied)

45. We may now refer to Section 313 of the Cr.P.C., which deals with the power of the Trial Court to examine the accused by asking him such questions as deemed necessary. The same reads as under:

> *"313. Power to examine the accused.*
>
> *(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court -*
>
> *(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;*
>
> *(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case :*
>
> *Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).*
>
> ***(2) No oath shall be administered to the accused when he is examined under sub-section (1).***
>
> ***(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.***
>
> *(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.*
>
> *(5) [The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put*

to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.] [Inserted by Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 22.]"

(Emphasis supplied)

46. It would also be useful to refer to Sections 315 and 316 of the Cr.P.C. (*pari materia* to Sections 353 and 354 of the BNSS), which, in line with the provisions of Section 313, Cr.P.C., reinforce the principle that an accused cannot be compelled to give evidence. The same read as under:

"315. Accused person to be competent witness.

(1)Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:
Provided that -(a)he shall not be called as a witness except on his own request in writing;
(b)his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.
(2)Any person against whom proceedings are instituted in any Criminal Court under Section 98, or Section 107, or Section 108, or Section 109, or Section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings :Provided that in proceedings under Section 108, Section 109 or Section 110, the failure of such person to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry."

***"**316. No influence to be used to induce disclosure.*

> *Except as provided in Sections 306 and 307, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge."*

47. From a cumulative reading of Section 4(2) of the Oaths Act, 1969 and Section 313 (2) and (3) Cr.P.C., it clearly emerges that the accused person can at no stage of the trial be asked to make a statement on oath. Further, his refusal to answer any questions put to him by the Court under Section 313, Cr.P.C. cannot render him liable to punishment. Not only this, even Section 315 of the Cr.P.C. is hedged with a caveat that the failure of the accused to give evidence would not result in any presumption against him. Similarly, Section 316, Cr.P.C. provides that except as provided in Sections 306 and 307 of the Cr.P.C. (Sections 343 and 344 of the BNSS), no influence, by means of any promise or threat or otherwise, shall be used upon an accused to induce him to disclose or withhold any matter within his knowledge. In the light of the aforesaid, when not only the provisions of the Oaths Act but also the Cr.P.C. (now the BNSS) make it clear that despite the power of the Court to examine the accused under Section 313, Cr.P.C., he cannot be compelled to make a statement on oath, the directions issued in ***Karan (supra)*** requiring the accused to give details of his income and assets by way of an affidavit in the format prescribed, would certainly not be in consonance with the scheme envisaged under Sections 313, 315 and 316 of the Code.

48. Despite the aforesaid legislative scheme, from which it appears that the accused cannot be compelled to make a statement on oath, the learned *Amicus Curiae* has, by relying on the decision in ***Selvi (supra),*** urged that

seeking information from the accused regarding his financial position by way of an affidavit would neither be violative of Article 20(3) of the Constitution of India nor of Sections 313 and 315, Cr.P.C.. His plea being that the bar to seek information on oath applies only to information which may lead to self-incrimination and therefore, there is no impediment in seeking the details regarding the financial status of the accused as the same has neither any connection with the evidence led during the trial nor in any manner amounts to self-incrimination. In order to appreciate this plea of the learned *Amicus Curiae*, we may refer to the following observations of the Apex Court as contained in paragraph no. 145 of the decision in ***Selvi (supra):***

> *"145. The next issue is whether the results gathered from the impugned tests amount to `testimonial compulsion', thereby attracting the prohibition of Article 20(3). For this purpose, it isnecessary to survey the precedents which deal with what constitutes `testimonial compulsion' and how testimonial acts are distinguished from the collection of physical evidence. Apart from the apparent distinction between evidence of a testimonial and physical nature, some forms of testimonial acts lie outside the scope of Article 20(3). For instance, even though acts such as compulsorily obtaining specimen signatures and handwriting samples are testimonial in nature, they are not incriminating by themselves if they are used for the purpose of identification or corroboration with facts or materials that the investigators are already acquainted with. The relevant consideration for extending the protection of Article 20(3) is whether the materials are likely to lead to incrimination by themselves or `furnish a link in the chain of evidence' which could lead to the same result. Hence, reliance on the contents of compelled testimony*

comes within the prohibition of Article 20(3) but its use for the purpose of identification or corroboration with facts already known to the investigators is not barred."

49. From the aforesaid observations of the Apex Court, it emerges that the learned *Amicus Curiae* is correct in urging that the bar under Article 20(3) of the Constitution of India would be applicable only to material which is likely to lead to self-incrimination of the accused or furnish a link in the chain of evidence and could lead to self-incrimination. It would, therefore, be permissible to seek information from the accused on oath as may be used only for the purposes of identification or which otherwise has no connection with the charge against him. We are, however, of the view that the information regarding the list of his assets and income from the accused cannot be said to be so innocuous so as to not impact the accused at all. Further, there is also merit in the plea of the learned counsel for the parties that the information provided by the accused regarding his financial status may sought to be used by other investigating agencies such as the Enforcement Directorate and, therefore, may amount to self-incrimination. We, therefore, have no hesitation in agreeing with the learned counsel for the parties that the direction to the accused/convict to furnish an affidavit detailing his assets and liabilities would be violative of both his constitutional and statutory rights.

50. Finally, we may now deal with the plea of the learned counsel for the parties that the mandatory steps required to be followed under the guidelines before an order for compensation can be passed by the Court was causing inordinate delay in passing of orders on sentence, thereby violating the right of the accused to speedy trial as envisaged under Article 21 of the

Constitution of India. This plea, we may note, has also been pressed by the learned *Amicus Curiae.* It has been submitted by learned counsel for the parties as also by the learned *Amicus Curiae* that even though specific timelines have been set down in the guidelines, for furnishing of affidavits both by the accused and the State/prosecution as also for furnishing of VIR by the DSLSA, these timelines are in practice not being followed. This is on account of various reasons; firstly, the delay in furnishing the affidavit of income and assets by the accused, which could be because the accused who has been in custody for a long time may not be aware of the details of his assets or may not have the necessary resources to collect information regarding his assets. It could also be because the accused does not belong to Delhi and, therefore, time may be required by him to collect the requisite financial information. We have also been informed that the prosecution is also often unable to file its affidavit in the prescribed period of 30 days.

51. The parties have further contended that as the process for verification of information furnished by the accused and the prosecution is time consuming, even the time required for preparation of the VIR by the DSLSA often exceeds the timeline set down in the guidelines. The fact that the timelines prescribed in the guidelines for submission of affidavits and VIR are not being adhered to, is evident from the details of the 'District Wise Status of Pendency of VIR' furnished by the DSLSA, in its report filed before this Court. Further, we have been informed by the learned counsel for the DSLSA that taking into account the verifications which are required to be made, it would not be feasible to prepare the VIR by reducing the prescribed timeline under the guidelines.

52. In the light of the aforesaid stand taken by the DSLSA, there can be no doubt about the position that after the issuance of guidelines in ***Karan (supra)*** inordinate delay is being caused in passing of orders on sentence and consequently, convicts all across Delhi are made to languish in jail to await the orders on sentence after their conviction. This prolonged detention of the accused, during which he is disabled from exercising his right to file an appeal under Section 374 of the Cr.P.C. (Section 415 of the BNSS) would certainly be unjust, unfair and unreasonable. We are, therefore, inclined to agree with the learned counsel for the parties that on account of the mandatory procedure set down under the guidelines, the statutory as well as the fundamental rights of the accused for speedy trial are being violated.

53. In the light of the aforesaid, we are of the considered view that the directions issued by the Full Bench in ***Karan (supra)*** for associating the DSLSA for determining the quantum of compensation, if any, to be awarded under Section 357 of the Cr.P.C. (Section 395, BNSS) are unsustainable and are required to be set aside. We, accordingly, declare that the guidelines issued by the Full Bench in paragraph nos. 169 to 187 of ***Karan (supra),*** would no longer be operative and, therefore, will not be required to be followed any further by the Trial Courts in any pending trials. This would, however, not have any impact on cases where the trial already stands concluded with the sentence being awarded after following the procedure laid down under these guidelines. In view of our aforesaid conclusion, that the guidelines issued in ***Karan (supra)*** are liable to be set aside, we do not deem it necessary to deal with the submission of the learned *Amicus Curiae*

that the guidelines may be modified to reduce the delay in passing of orders on sentence and compensation.

54. Having said so and making it clear that the guidelines set out in ***Karan (supra)*** would no longer be enforceable, we direct that the learned Trial Courts would, while passing orders of compensation, if any, to the victims under Section 357 Cr.P.C. (Section 395, BNSS) adopt a victim centric approach. In determining the compensation, if any, payable, under Section 357, Cr.P.C., the Trial Court may take into account the income and assets of the accused and any other factors as may be deemed appropriate, for which purpose information may be elicited not only from the I.O./prosecuting agency but also from the accused, who will, however, not be asked to make any statement on oath or by way of an affidavit. We however make it clear that this order will not preclude the learned Trial Courts from seeking assistance of the DSLSA, as and when deemed necessary**.** Needless to state, these directions will have also no effect on the manner in which compensation is required to be awarded under Section 357A, Cr.P.C. (Section 396 BNSS) after consultation with the DSLSA.

55. The two petitions alongwith all pending applications as also the application being CRL. M.A. 12830/2024 in ***Karan (supra)*** are accordingly disposed of in the aforesaid terms.

56. Before we conclude, we would be failing in our duty if we do not place on record our appreciation for the valuable assistance rendered to this Bench by the learned *Amicus Curiae*, Mr.Vikas Pahwa, Senior Advocate as also by the learned counsel for all the parties who have not only meticulously highlighted the legal issues but have also drawn our attention to the practical difficulties arising as a result of implementation of the guidelines.

57. Copy of this judgment be forwarded to the Registrar General of this Court who shall send the same to the District Judge (HQs) for being circulated to all concerned Courts.

(REKHA PALLI)
JUDGE

(PRATHIBA M. SINGH)
JUDGE

(SUBRAMONIUM PRASAD)
JUDGE

(SAURABH BANERJEE)
JUDGE

(MANOJ JAIN)
JUDGE

JANUARY 24, 2025
acm/kk/sr/bs