



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Rev.P. No. 9 of 2022

Date of Decision: 21.10.2024

Shri. Ananta Deb
Son of (L) Ram Charan Deb
(Convict presently serving sentence in Nongpoh District Jail, Ri-Bhoi)
Resident of Village Them Marwet,
P.S. Khanapara,
District Ri-Bhoi
State Meghalaya

.....Petitioner

-Versus-

State of Meghalaya
Through the Commissioner & Secretary to the
Government of Meghalaya
Department of Home (Police),
Civil Secretariat, Shillong

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	: Mr. S. Thapa, Adv. Mr. B. Snaitang, Adv. vice Mr. K. Paul, Sr. Adv.
For the Respondent(s)	: Mr. K.P. Bhattacharjee, GA Mr. A.H. Kharwanlang, Addl. Sr. GA

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication | |



in press:

Yes/No

J U D G M E N T

1. The learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh vide judgment dated 27.07.2021 and the related sentence dated 30.07.2021 passed in Special POCSO Case No. 23 of 2015 has convicted the petitioner of the offence under Section 354 IPC read with Section 8 of the POCSO Act, for which he was directed to undergo imprisonment of 3 years under Section 8, POCSO Act and 1 year respectively as punishment under Section 354 IPC. A fine of ₹ 1,50,000/- (rupees one lakh, fifty thousand) only, for the offence under Section 8 and another ₹ 50,000/- (rupees fifty thousand) only, for the offence under Section 354 was also simultaneously imposed, default in payment of such fine would entail further imprisonment of 1 year respectively.

2. Being thus aggrieved by such order of conviction and sentence imposed, the petitioner has now approached this Court with this application under Section 397 of the Code of Criminal Procedure for revision of the said order impugned herein.

3. Brief facts of the case is that on 14.11.2014, an FIR was lodged at the Khanapara Police Station, Ri-Bhoi District with a complaint that the petitioner has attempted to rape the minor daughter of the said complainant, following which the FIR was registered as Khanapara P.S. Case No. 47(11)2014 under Section 354 IPC and Section 8, POCSO Act.

4. The allegation is that on 12.11.2014, at about 9.30 pm when the minor daughter of the complainant went to the bathroom, the petitioner



tried to rape her, on being confronted, he refused to say anything leading to the complainant to beat him with a stick. Thereafter, on the village Headman and some Women Organisation being informed, the petitioner was handed over to the police where he was subsequently arrested in connection with the said incident.

5. Investigation followed by a final report filed by the Investigating Officer who has found prima facie evidence well established against the petitioner led him to be put on trial for the said offence under Section 8 POCSO Act and Section 354 IPC respectively. The trial before the learned Special Judge (POCSO) proceeded and on conclusion of the same, the said impugned judgment and sentence was passed. Hence this petition.

6. Heard Mr. S. Thapa, learned counsel for the petitioner who has submitted that initially, the petitioner has come before this Court seeking to overturn the said impugned order of conviction, however, in course of these proceedings, the substantive period of imprisonment of 3 years have already being undergone by the petitioner and at present, since the petitioner is not able to pay the fine imposed, therefore, prayer is now made only with regard to the issue of waiver or reduction of the amount of fine imposed. The State respondent not objecting to the revised prayer made, the hearing in this matter will accordingly be confined only on this issue.

7. It is the submission of the learned counsel that the learned trial court while imposing the fine along with the sentence of conviction has failed to consider the nature of work of the petitioner who at the relevant period was working as a muster roll under the Forest department with a



monthly income of about ₹ 30,000/- (rupees thirty thousand) only or so and as of now, since his employment was terminated, he is not earning anything at all. His financial capacity not being sound, the trial court ought to strike a balance between the capacity of the petitioner/convict to pay the fine which is excessive and the victim's rehabilitation.

8. Without giving any reasons as to why such an excessive amount of fine was imposed upon the petitioner ignoring his financial capacity, but rather seeking to compensate the survivor for the injury sustained to her psyche, the learned trial court has committed an error of judgment which requires to be rectified by this Court in this petition herein, submits the learned counsel.

9. In this regard, the learned counsel has referred to the provision of Section 63 of the Indian Penal Code which provision stipulates that if the amount of fine to be paid is not specifically mentioned, then the amount of fine which the offender is liable to pay is unlimited, however, the same should not be excessive. In this regard, the case of *Shantilal v. State of M.P.*, (2007) 11 SCC 243, para 32, 34 and 39 as well as the case of *Sharad Hiru Kolambe v. State of Maharashtra & Ors.* (2018) 18 SCC 718 para 17 & 18 was cited to buttress this contention.

10. The learned counsel has submitted that the observations and what was held in the said authorities relied upon are well applicable to the case of the petitioner herein, considering the fact that the imposition of fine is beyond his financial capacity and now that he has already served the substantial part of the sentence, the quantum of fine may be reduced since the amount of fine related to the offence has not been fixed as in some other statutes, for example, fine under the NDPS Act



which has a fixed amount.

11. Mr. K.P. Bhattacharjee, learned GA while opposing the contention and submission of the learned counsel for the petitioner on behalf of the State respondent has contended that the authorities relied upon by the petitioner are not relevant to the case of the petitioner since the same were passed in an appellate jurisdiction, while the petitioner herein has come before this Court on the strength of a revision petition.

12. Leading this Court to the provision of Section 397 Cr.P.C. the learned GA has submitted that the jurisdiction of this Court is confined to only examine the impugned order as to whether it was passed without jurisdiction or is illegal or improper. However, on perusal of the impugned order, it can be seen that there is no legal infirmity or illegality notice in the same.

13. The learned GA has further submitted that the learned trial court has shown due regard to all factors involved in the case of the parties and in the order of sentence, consideration has been given to the age of the accused/petitioner, who was 40-45 years at that time, the age of the survivor who was 12 years old at the relevant period, the nature of the crime, the compensation for the injury sustained to her psyche for which the petitioner is liable to pay has been duly taken note of while awarding such compensation and therefore, there is no question that such amount of fine which is actually the award of compensation to the survivor is not justified. In support of his contention, the learned GA has cited the case of *Rajendra Bhagwanji Umraniya v. State of Gujarat*, 2024 SCC Online SC 927, para 18, 19, 22, 23 & 24.



14. Again, the learned GA has submitted that the case against the petitioner involves sexual assault against a minor, any reduction of the sentence imposed could be assumed to be misplaced sympathy, which, under the facts and circumstances of the case cannot be extended to the petitioner/accused when the learned trial court had taken everything into consideration and after careful appreciation of the available evidence, had meted out the sentence as such. In this context, the case of *State of Punjab v. Dil Bahadur*, 2023 SCC Online SC 348, para 14 and 17 is cited in support thereof.

15. This Court is well aware of the fact that the consideration at this point of time would revolve only on the issue of the quantum of fine imposed by the learned trial court while awarding the sentence of conviction to the petitioner/accused. It is the contention of the learned counsel for the petitioner that the learned trial court had imposed a sentence of 3(three) years, under Section 8 of the POCSO Act, wherein the maximum sentence that could be awarded is 5(five) years and a sentence of 1(one) year under Section 354 IPC. Therefore, even if this Court is inclined to reduce the term of sentence imposed, it cannot be done so statutorily. The reliance of the learned GA in the case of *Dil Bahadur* (supra) may not be relevant to the facts of the present case wherein as observed, the term of imprisonment of the petitioner has been reduced to the minimum. Whereas, the Hon'ble Supreme Court taking the said case of *Dil Bahadur* speaks about reduction of sentence or account of misplaced or undue sympathy.

16. The learned GA has also impressed upon this Court that the fine imposed upon the petitioner/accused apart from the same being



mandatory as per the relevant sections of law are concerned, that is, Section 8 of the POCSO Act and Section 354 IPC where not only the term of imprisonment has been prescribed but that an additional penalty by way of payment of fine has also been stipulated. The learned trial court had made it clear that the payment of fine is in the form of compensation to be awarded to the survivor and as such, there is no question of reduction of the same.

17. In this connection, the reference made to the case of Rajendra Bhagwanji Umraniya (supra) cited by the learned GA wherein the Apex Court has discussed at length the concept of victim compensation vis-à-vis the provision the Section 357 of the Criminal Procedure Code is worth noting, the relevant portion being reproduced herein below as:

“18. Section 357 of the Criminal Procedure Code, 1973 reads thus:

“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 knowing 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 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.”

19. Way back in 1981, this Court speaking through Krishna Iyer, J. in *Maru Ram v. Union of India* [(1981) 1 SCC 107], held that while social responsibility of the criminal to restore the loss or heal the injury is part of the punitive exercise; the length of the prison term is no reparation to the crippled or bereaved and is futility compounded with cruelty. Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. Time and again this Court has reiterated that it is an important provision but courts seldom invoke the same. It empowers the court to award compensation to victims while passing judgment



of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused.

22. The idea of victim compensation is based on the theory of victimology which recognizes the harsh reality that 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. Theory of Victimology seeks to redress the same and underscores the importance for criminal justice administration system 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.

23. The provision of Section 357 recognizes the aforesaid and is victim centric in nature. It has nothing to do with the convict or the sentence passed. The spotlight is on the victim only. The object of victim compensation is to rehabilitate those who have suffered any loss or injury by the offence which has been committed. Payment of victim compensation cannot be a consideration or a ground for reducing the sentence imposed upon the accused as victim compensation is not a punitive measure and only restitutory in nature and thus, has no bearing with the sentence that has been passed which is punitive in nature.

24. The words "*any loss or injury*" used in Section 357 of the CrPC clearly indicates that the sole factor for deciding the compensation to be paid is the victim's loss or injury as a result of the offence, and has nothing to do with the sentence that has been passed. Section 357 of CrPC is intended to reassure the victim that he/she is not forgotten in the criminal justice system. It is a constructive approach to crimes based on the premise that mere punishment of the offender may not give solace to the victim or its family."

18. This Court is in agreement with the proposition of law as found in the said authorities cited by the learned GA and is also aware of the fact that the direction of the court for a convict to undergo a certain



period of imprisonment cannot be connected to the amount of fine imposed along with it inasmuch as the aforesaid provision of Section 8 POCSO Act and 354 IPC (supra) provides for imposition of fine independent of the period of imprisonment when the words “*liable to fine*” and “*or with fine*” respectively have been used. The only connection to the imposition of fine and the period of imprisonment that can be found in the sentence awarded is that the trial court has directed that in default of payment of fine the petitioner is to undergo further imprisonment of another 1(one) year.

19. This direction for payment of fine, in default thereof to further undergo imprisonment of another year would be the only aspect to be considered by this Court at this juncture.

20. The learned counsel for the petitioner has referred to the provision of Section 63 IPC to say that though there is no limit to the amount of fine to be imposed as far as the case of the petitioner is concerned, however, the same should not be excessive, keeping in mind the financial capability and capacity of the petitioner who would be unable to pay the amount of fine on account of him being unemployed. The case of Shantilal (supra), para 32 and 39 has been relied upon by the petitioner in the context, the same being hereby reproduced as follows:

“32. A general principle of law reflected in Sections 63 to 70 IPC is that an amount of fine should not be harsh or excessive. The makers of IPC were conscious of this problem. The authors of the Code, therefore, observed:

"Death, imprisonment, transportation, banishment, solitude, compelled labour, are not, indeed, equally disagreeable to all men. But they are so disagreeable to all men that the legislature, in assigning these punishments to offences, may safely neglect the differences produced by



temper and situation. With fine, the case is different. In imposing a fine, it is always necessary to have as much regard to the pecuniary circumstances of the offender as to the character and magnitude of the offence. The mulct which is ruinous to a labourer is easily borne by a tradesman, and is absolutely unfelt by a rich zamindar. It is impossible to fix any limit to the amount of a fine which will not either be so high as to be ruinous to the poor, or so low as to be no object of terror to the rich. There are many millions in India who would be utterly unable to pay a fine of fifty rupees; there are hundreds of thousands from whom such a fine might be levied, but whom it would reduce to extreme distress; there are thousands to whom it would give very little uneasiness; there are hundreds to whom it would be a matter of perfect indifference, and who would not cross a room to avoid it. The number of the poor in every country exceeds in a very great ratio the number of the rich. The number of poor criminals exceeds the number of rich criminals in a still greater ratio. And to the poor criminal it is a matter of absolute indifference whether the fine to which he is liable to be limited or not, unless it be so limited as to render it quite inefficient as a mode of punishing the rich. To a man who has no capital, who had laid by nothing, whose monthly wages are just sufficient to provide himself and his family with their monthly rice, it matters not whether the fine for assault be left to be settled by the discretion of the courts, or whether a hundred rupees be fixed as the maximum. There are no degrees in impossibility. He is no more able to pay a hundred rupees than to pay a lakh. A just and wise Judge, even if entrusted with a boundless discretion, will not, under ordinary circumstances, ...would leave it quite in the power of an unjust or inconsiderate Judge to inflict on such an offender all the evil which can be inflicted on him by means of fine....

It appears to us that the punishment of fine is a peculiarly appropriate punishment for all offences to which men are prompted by cupidity; for it is a punishment which operates directly on the very feeling which impels men to such offences. A man who has been guilty of great



offences arising from cupidity, of forging a bill of exchange, for example, of keeping a receptacle for stolen goods, or of extensive embezzlement, ought, we conceive, to be so fined as to reduce him to poverty. That such a man should, when his imprisonment is over, return to the enjoyment of three-fourths of his property, a property which may be very large and which may have been accumulated by his offences, appears to us highly objectionable. Those persons who are most likely to commit such offences would often be less deterred by knowing that the offender had passed several years in imprisonment, than encouraged by seeing him, after his liberation, enjoying the far larger part of his wealth...”

39. We are mindful and conscious that the present case is under the NDPS Act. Section 18 quoted above provides penalty for certain offences in relation to opium poppy and opium. Minimum fine contemplated by the said provision is rupees one lakh (“fine which shall not be less than one lakh rupees”). It is also true that the appellant has been ordered to undergo substantive sentence of rigorous imprisonment for ten years which is minimum. It is equally true that maximum sentence imposable on the appellant is twenty years. The learned counsel for the State again is right in submitting that Clause (b) of sub-section (1) of Section 30, CrPC authorises the court to award imprisonment in default of payment of fine up to one-fourth term of imprisonment which the court is competent to inflict as punishment for the offence. But considering the circumstances placed before us on behalf of the appellant-accused that he is very poor; he is merely a carrier; he has to maintain his family; it was his first offence; because of his poverty, he could not pay the heavy amount of fine (rupees one lakh) and if he is ordered to remain in jail even after the period of substantive sentence is over only because of his inability to pay fine, serious prejudice will be caused not only to him, but also to his family members who are innocent. We are, therefore, of the view that though an amount of payment of fine of rupees one lakh which is minimum as specified in Section 18 of the Act cannot be reduced in view of the legislative mandate, ends of justice would be met if we retain that part of the direction, but order that in default of payment of fine of rupees one lakh, the



appellant shall undergo rigorous imprisonment for six months instead of three years as ordered by the trial court and confirmed by the High Court.”

21. Upon due consideration, this Court in exercise of its power under Section 397 Cr.P.C would partly agree with the learned GA that the impugned judgment as a whole merits no interference as the same has been passed taking everything into consideration. However, only as regard the imposition of fine, this Court finds that the learned trial court has failed to properly consider the financial status of the petitioner, the fact that he is working in a Grade-IV post as a muster roll which could be temporary in nature and also that he has since been relieved from his employment, the amount of fine imposed may have been excessive. Thus, impropriety in the impugned sentence is accordingly detected which would allow this Court to revise the same, if so warranted.

22. This Court is also brought to notice that the petitioner had already undergone the substantial period of imprisonment and is about three months or so in custody in excess of the said period, which in all probability could be termed as a part compliance to the period of default payment of fine. Be that as it may, under the circumstances, this Court is of the considered opinion that in striking a balance between the entitlement of the survivor in terms of compensation and the consideration of the pecuniary situation of the petitioner, it would be sufficient to direct that the petitioner pay a consolidated amount of fine of ₹ 1,00,000/- (rupees one lakh) only to be finally let off in this case.

23. Accordingly, this petition is hereby disposed of with a direction that the petitioner deposit a sum of ₹ 1,00,000/- (rupees one lakh) only following which he is to be released from custody.



24. Send back the trial court case records.

Judge