

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-2931-2014 (O&M)

Date of decision : 08.11.2016

Sweety

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rakesh Nehra, Advocate,
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. S.K. Garg Narwana, Sr. Advocate,
with Mr. Teevar Sharma, Advocate,
for respondent Nos.4 to 6.

JITENDRA CHAUHAN, J.

CRM-28721-2014

Heard.

For the reasons mentioned in the application, the same is allowed and the delay of 481 days in filing the instant revision petition is condoned, subject to all just exceptions.

Main case

The instant revision petition has been filed by the complainant-petitioner, impugning judgment dated 11.02.2013, passed Sessions Judge,

Jind (for short, 'the appellate Court'), whereby, the appeal preferred by the petitioner herein against judgment of acquittal recorded by learned Sub Divisional Judicial Magistrate, Narwana, (for short, 'the trial Court') dated 25.07.2012, was set aside and the accused were convicted under Sections 323 and 147 read with Section 149 of the Indian Penal Code and they were ordered to be released on probation for a period of one year.

While issuing notice of motion on 12.01.2015, the following order was passed:-

“During the course of arguments, learned counsel for the petitioner has confined his prayer only to the grant of compensation. It is argued that the accused were convicted under Sections 147, 323, read with Section 149 IPC but were released on probation. However, no compensation was granted to the complainant-injured under Section 357 Cr.P.C.

Notice of motion only on the question of grant of compensation to the petitioner under Section 357 Cr.P.C. for 6.3.2016.”

Learned counsel for the petitioner refers to the MLR, Ex.PW3/A, carried on the petitioner to state that she suffered three injuries viz.:-

- 1. Lacerated wound over the left half of scalp involving the frontoparietal area. Fresh clotted blood present. Advised X-ray.*
- 2. Complain of pain over left thigh. Advised X-ray.*

3. *Complain of pain over left arm. Advised X-ray.*

In K.A. Abbas H.S.A. Vs. Sabu Joseph and another, (2010) 6 Supreme Court Cases 230, Hon'ble the Supreme Court has laid down as under:-

“14) Section 357 of Cr.PC reads:-

“(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 shelf all offence, in paying in, 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 his 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 all 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.”

15) Essentially the section empowers the courts, not to just impose a fine alone or fine along with the sentence of imprisonment, but also when the situation arises, direct the accused to pay compensation to the person who has suffered any loss or injury by reason of the act for which the accused person has been sentenced.

16) The above view we have taken is supported by the decisions of this Court, to which we presently refer.

17) In the case of Sarwan Singh and ors. v. State of Punjab (AIR 1978 SC 1525), this court has noticed the object and genesis of the section.

“10. The law which enables the Court to direct compensation to be paid to the dependants is found in Section 357 of the CrPC (Act 2 of 1974). The corresponding provision in the 1898 Code was Section 545. Section 545 of the CrPC (Act 5 of 1898) was amended by Act 18 of 1923 and by Act 26 of 1955. The amendment which is relevant for the purpose of our discussion is 545(1)(bb) which, for the first time was inserted by Act 26 of 1955. By this amendment the court is enabled to direct the accused, who caused the death of another person, to pay compensation to the persons who are, under the Fatal Accidents Act, entitled to recover damages from the persons sentenced, for the loss resulting to them from such death. In introducing the amendment, the Joint Select Committee stated "when death has been caused to a person, it is but proper that his heirs and dependants should be compensated, in suitable cases, for the loss resulting to them from such death, by the person who was responsible for it. The Committee proceeded to state that though Section 545 of the Code as amended in 1923 was intended to cover such cases, the intention was not however very clearly brought out and therefore in order to focus the attention of the courts on

this aspect of the question, the Committee have amended Section 545 and it has been made clear that a fine may form a part of any sentence including a sentence of death and it has also been provided that the persons who are entitled under the Fatal Accidents Act, 1855, to recover damages from the person sentenced may be compensated out of the fine imposed. It also expressed its full agreement with the suggestion that at the time of awarding judgment in a case where death has resulted from homicide, the court should award compensation to the heirs of the deceased. The Committee felt that this will result in settling the claim once for all by doing away with the need for a further claim to a civil Court, and avoid needless worry and expense to both sides. The Committee further agreed that in cases where the death is the result of negligence of the offender, appropriate compensation should be awarded to the heirs. By the introduction of Clause (bb) to Section 545(1), the intention of the legislature was made clear that, in suitable cases, the heirs and dependents should be compensated for the loss that resulted to them from the death, from a person who was responsible for it. The view was also expressed that the court should award compensation to the heir of the deceased so that their claims would be settled finally. This object is sought to be given effect to by Section 357 of the new Code (Act 2 of 1973). Section 357(3) provides that 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. The object of the section therefore, is to provide compensation payable to the persons who are entitled to recover damages from the person sentenced even though fine does not form part of the sentence. Though Section 545 of 1898 Code enabled the court only to pay compensation out of the fine that would be imposed under the law, by Section 357(3) when a Court imposes a sentence, of which fine does not form a part, the Court may direct the accused to pay compensation. In awarding compensation it is necessary for the court to decide whether the case is a fit one in which compensation has to be awarded. If it is found that compensation should be paid, then the capacity of the accused to pay a compensation has to be determined. In directing compensation, the object is to collect the fine and pay it

to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensation for, imposing a default sentence for nonpayment

of fine would not achieve the object. If the accused is in a position to pay the compensation to the injured or his dependents to which they are entitled to, there could be no reason for the Court not directing such compensation. When a person, who caused injury due to negligence or is made vicariously liable is bound to pay compensation it is only appropriate to direct payment by the accused who is guilty of causing an injury with the necessary Mens Rea to pay compensation for the person who has suffered injury.”

18) In *Balraj v. State of UP* (AIR 1995 SC 1935), this court has held, that, Section 357(3) Cr. P.C. provides for ordering of payment by way of compensation to the victim by the accused. It is an important provision and it must also be noted that power to award compensation is not ancillary to other sentences but it is in addition thereto.”

Keeping in view the above dictum of law enunciated by Hon'ble the apex Court and considering the totality of facts and circumstances of the case in hand, this Court feels that the ends of justice would be met, in case, the accused-respondents are ordered to pay an amount of Rs.25,000/- to the complainant-petitioner, as compensation, within one month from the date of receipt of a certified copy of this order, failing which, the petitioner shall be at liberty to revive the instant petition.

Disposed of.

08.11.2016
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No