

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.1953 of 2016

DATE OF DECISION: JULY 25, 2016

MUNNI DEVI

...PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MRS. JUSTICE SNEH PRASHAR.**

PRESENT: MR. P.R.YADAV, ADVOCATE FOR THE PETITIONER.

M. JEYAPPAUL, J.

1. Petitioner Munni Devi is the wife of deceased Bijender Singh who was murdered. The case of murder was tried by learned Sessions Judge, Gurgaon. Accused Parveen who faced the trial was convicted under Section 302 IPC and was sentenced to undergo life imprisonment and pay a fine of ₹2000/- and in default of payment of fine, to further undergo simple imprisonment for a period of 1 year.

2. The present revision is filed by the wife of the deceased praying for award of compensation to the dependents of deceased Bijender Singh. The observation made by the trial Judge was that the sentence awarded to convict Parveen includes sentence of fine. Therefore, no compensation under Section 357(3) Cr.P.C. can be granted to the persons entitled to recover damages from the convict for loss suffered because of the death of Bijender Singh. But the fact remains that the trial Court considering the facts and circumstances of the case recommended invoking the provisions under Section 357(A) Cr.P.C. that the District Legal Services, Gurgaon may

determine the compensation to be awarded under the Victim Compensation Scheme to the dependents of deceased Bijender Singh.

3. Learned counsel appearing for the petitioner, referring to Section 357(1), 357(3) and Section 357A Cr.P.C., in the background of the decision of the Hon'ble Supreme Court in Ankush Shivaji Gaikwad vs. State of Maharashtra, 2013(2) RCR (Criminal) 1036, and Jage Ram and others vs. State of Haryana, 2015(1) RCR (Criminal) 802, submitted that imposition of fine as part of the sentence does not debar the Sessions Judge under Section 357(3) Cr.P.C. to grant compensation.

4. Section 357 of the Cr.P.C. reads as follows:-

“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 judgement, 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 bonafide 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 judgement, 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.”*

5. A bare reading of Section 357(1) Cr.P.C. makes it clear that when a Court imposes a sentence of fine, it has the discretion to convert the whole or part of the fine as compensation component and direct for payment of the same to the dependents of the deceased. Section 357(3) Cr.P.C. categorically states that in a case where fine does not form part of the sentence imposed by the Court, the Court has the discretion to direct the accused to pay compensation to the dependents of the deceased.

6. “Sub-section (1) of Section 357 deals with a situation when a Court imposes a fine or a sentence (including sentence of death) of which fine also forms a part. It confers a discretion on the Court to order as to how the whole or any part of fine recovered is to be applied. For bringing in application of sub-section (1) of Section 357 it is a statutory requirement that fine is imposed and thereupon make further orders as to the disbursement of the said fine in the manner envisaged therein. If no fine is imposed, sub-section (1) of Section 357 has no application. In the case at hand no fine was imposed by the trial Court or the High Court. Sub-section (3) on the other hand deals with the situation where fine does not form part of the sentence imposed by a Court. In such a case, the Court when passing

a judgment can order the accused persons to pay by way of compensation such amount as may be specified in the order to the person who has suffered a loss or injury by reason of the act of which the accused person has been so convicted and sentenced. The basic difference between sub-sections (1) and (3) is that in the former case, the imposition of fine is the basic and essential requirement, while in the latter even in the absence thereof empowers the Court to direct payment of compensation.” [Refer, **Mangilal vs. State of Madhya Pradesh, 2004 AIR (SC) 280**].

7. In the light of the above decision, there is no escape from the legal position that in a case where the Court imposes a sentence of fine, compensation can be awarded only out of the fine amount in terms of Section 357(1) Cr.P.C. In case of invocation of the above provision by the trial Court, the question of awarding compensation under Section 357(3) Cr.P.C. does not arise. In other words, Section 357(3) Cr.P.C. can be invoked by the Court only when fine does not form part of the sentence imposed by it.

8. In **Ankush Shivaji Gaikwad vs. State of Maharashtra, 2013 (2) RCR (Criminal) 1036**, the Hon'ble Supreme Court has held as follows:-

“62. 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.

63. *Coming then to the case at hand, we regret to say that the trial Court and the High Court appear to have remained oblivious to the provisions of Section 357 Criminal Procedure Code. The judgments under appeal betray ignorance of the Courts below about the statutory provisions and the duty cast upon the Courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future.”*

9. The Hon'ble Supreme Court having held that it is the duty of the Court to apply liberally Section 357 Cr.P.C. in the matter of grant of compensation in criminal cases, directed the Courts concerned to apply their mind, evaluate the materials and arrive at a fair and reasonable conclusion in the matter of award or refusal of compensation in terms of Section 357 Cr.P.C.

10. In our considered view, the above decision of Hon'ble Supreme Court does not lay down, as projected by the learned counsel appearing for the petitioner, that Section 357(3) Cr.P.C. can be invoked by the Court concerned even when fine forms part of the sentence imposed by the Court. It has only held that the Courts are supposed to apply their mind to the question of compensation in every criminal case and having applied their

mind to the above question, record its reason in support of the order or conclusion.

11. In the instant case, firstly it is found that the trial Court has imposed fine as part of the sentence. Therefore, the question of invocation of Section 357(3) Cr.P.C. for awarding compensation to the dependents of the deceased does not arise. But the trial Court should have ordered payment of compensation out of the fine imposed. But it is found that the accused has set up a plea that he was a poor man blessed with minor children. He being the only breadwinner of the family was sent to the jail for undergoing the sentence. Therefore, the trial Court thought it fit to invoke Section 357(A) Cr.P.C. and recommended that the District Legal Services Authority, Gurgaon, may determine the compensation to be awarded under the Victim Compensation Scheme to the dependents of the deceased.

12. In the above facts and circumstances, we find that such a course adopted by the trial Court cannot be found fault with. Therefore, for all these reasons, the revision fails and it stands dismissed.

(M. JEYAPPAUL)
JUDGE

July 25, 2016
Gulati

(SNEH PRASHAR)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes