

*** HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ CRIMINAL PETITION No.4577 OF 2018

% 27.04.2018

Mannam Ravi Kumar

.. Petitioner

And

\$ The State of Andhra Pradesh
rep. by Public Prosecutor,
High Court at Hyderabad and another.

.. Respondents

! Counsel for the petitioners : Sri Ghanta Rama Rao
Senior Counsel
Representing
Sri Ghanta Sridhar
Counsel for the petitioner.

Counsel for respondents : Public Prosecutor (A.P.)

< Gist :

> Head Note :

? Citations:

1. (2007) 6 SCC 528
2. 2011(3) CHN 112
3. (2001) 2 SCC416
4. 2018(5) Scale 109
5. (2001) 6 SCC 584
6. (1998) 4 SCC 551
7. AIR 1977 SC 1489
8. 2000 Cr1.L.J. 315
9. 1992 Supp.(1) SCC 335

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4577 OF 2018

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by the petitioner challenging the order in CrI.M.P.No.24 of 2018 in CrI.A.No.72 of 2018 pending on the file of VIII Additional District & Sessions Judge, Ongole.

The 2nd respondent filed a complaint against the petitioner before the Judicial Magistrate of I Class, Ongole, for the offence punishable under Section 138 of Negotiable Instrument Act, 1881 and after full fledged trial, the learned Magistrate find the petitioner guilty for the offence punishable under Section 138 of Negotiable Instrument Act, convicted and sentenced him to undergo rigorous imprisonment for 6 months and to pay fine of Rs.12,89,000/- in default to undergo simple imprisonment for three months. Aggrieved by the conviction and sentence, filed an appeal in CrI.A.No72 of 2018, which is pending on the file of VIII Additional District Judge, Ongole, along with a petition for interim suspension of the execution of sentence under Section 389(1) Cr.P.C., wherein the learned Sessions Judge while suspending the sentence directed the petitioner to deposit 1/4th of the cheque amount within two weeks from the date, besides other conditions. Aggrieved thereby, the present criminal petition is filed with a prayer to modify the order so far as the direction to deposit 1/4th of the fine amount is concerned, on the ground that the 2nd respondent - complainant is a finance company, having its

branches all over India and obtained mortgage of the property besides obtaining cheques as security for due payment of the amount and the appellate court, without appreciating the contentions, mechanically passed impugned order, directing the petitioner to deposit 1/4th of the cheque amount, the court has to take into consideration various attending circumstances to safeguard the interest of both the parties, but the court failed to consider various contentions raised by the petitioner, passed the impugned order erroneously and prayed to set aside the direction to deposit 1/4th of the cheque amount.

During hearing, Sri Ghanta Rama Rao, the learned Senior Counsel strenuously contended that the entire property of the petitioner is the subject matter of the mortgage created in favour of the 2nd respondent and that he has no properties even to sell and comply the directions to deposit 1/4th of the cheque amount and apart from that exparte award was passed by the Arbitrator for recovery of the amount due, and therefore, he is not in a position to comply the direction, the petitioner has to undergo imprisonment, which is prejudicial to the interest of the petitioner.

It is also contended that while passing an order exercising power under Section 389(1) Cr.P.C., the court has to take into consideration the capacity of the petitioner and the other prevailing circumstances to issue such direction to pay amount. When the amount due to the 2nd respondent is secured, issue of such direction to deposit 1/4th of the cheque amount is illegal and placed reliance on the Judgment of the Apex Court in **Dilip**

S.Dahanukar v. Kotak Mahindra Co. Ltd., and another¹, more particularly, paragraphs 10, 25, 38, 55 and 64 of the Judgment, in support of his contention and requested this Court to set aside the direction to deposit 1/4th of the cheque amount.

It is an undisputed fact that the 2nd respondent filed a complaint for the offence punishable under Section 138 of NI Act and after trial, the petitioner was found guilty for the offence punishable under section 138 of N.I. Act, convicted and sentenced to undergo six months and to pay fine of Rs.12,89,000/- in default to undergo simple imprisonment for three months, and further directed that the amount of Rs.12,89,000/- if recovered the same, the same shall be awarded to the complainant as compensation under Section 357 Cr.P.C.

The main endeavour of Sri Ghanta Rama Rao, learned Senior Counsel is that when appeal is preferred against the conviction and sentence and fine amount forms part with the compensation, the court cannot compel the parties to pay compensation as a condition precedent, to suspend the substantive sentence and placed reliance on the judgment of the Apex Court in **Dilip S. Dahanukar**, at paragraphs 10 and 11 of the judgment, it was observed that,

“10..... if a Court imposes a sentence of fine or a sentence or where it forms a part thereof, the Court is entitled to direct that whole or any part of the fine recovered, to be applied to in respect of the factors enumerated in clauses (a), (b), (c) or (d). Section 421 of the Code deals with the mode and manner in which the fine levied is to be recovered. Section 424 deals with the steps required to be taken by the Court where the amount of fine has

¹ (2007) 6 SCC 528

not been paid forthwith. Section 357 deals with two types of cases, namely, (i) where only a sentence has been imposed; and (ii) where fine also forms part of the sentence. When a fine is imposed simplicitor Section 421 read with Section 424 would be applicable but where fine forms part of the sentence, it would not have any application

11. A statute must be read harmoniously. An amount of compensation directed to be paid may not form part of fine. It may be awarded separately. It may be recoverable as if it is a fine in terms of Section 431 of the Code but by reason thereof it would not become automatically recoverable forthwith. The legal position, however, must be considered keeping in view the purport and object of the Act.”

Similarly, at paragraphs 24 to 30, the Apex Court discussed about the distinction between sub-sections (1) and (3) of Section 357 and the clauses (a) to (d) contained in Section 357(1). Ultimately, at paragraph 30 concluded that the fine can be imposed only in terms of the provisions of the Act. Fine which can be imposed under the Act, however, shall be double the amount of the cheque which stood dishonoured. When, however, fine is not imposed, compensation can be directed to be paid for loss or injury caused to the complainant by reason of commission of the offence. Clause (b) of sub-section (1) of Section 357 only provides for application of amount of fine which may be in respect of the entire amount or in respect of a part thereof. Sub-Section(3) of Section 357 seeks to achieve the same purpose and further concludes that the purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefor in mind.

It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must

be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub-Section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge. Thus the compensation awarded under Section 357 Cr.P.C. shall never be arbitrary and ultimately laid down the following principles, at paragraph 72, they are as follows:

“i) in a case of this nature, sub-section(2) of Section 357 of the Code of Criminal Procedure would be attracted even when the appellant was directed to pay compensation;

ii) the appellate court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;

iii) the amount of compensation must be a reasonable sum;

iv) the court, while fixing such amount, must have regard to all relevant factors including the one referred to in sub-section (5) of Section 357 of the Code of Criminal Procedure.

v) no unreasonable amount of compensation can be directed to be paid.”

Based on the facts and circumstances, the Apex Court directed to deposit Rs.1,00,000/- within four weeks, though the compensation awarded is Rs.15,00,000/-.

Taking into consideration of the Judgment of the Apex Court, the learned senior counsel, Sri Ghanta Rama Rao, made a strenuous and honest attempt to convince this Court to set aside the order to deposit 1/4th of the cheque amount. In view of specific contention urged by the counsel for the petitioner, it is relevant to advert Section 357 Cr.P.C.

Section 357 Cr.P.C. deals with 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.

There is an amendment to Section 357 Cr.P.C. with effect from 03.09.1993 (vide Andhra Pradesh Act 21 of 1993, Sec.2 (w.e.f.03.09.1993), which runs as follows:

(i) In Section 357, in sub-section(1), after the words “the Court may”, substitute the words “and where a person against whom an offence is committed belongs to Scheduled Castes or Scheduled Tribes as defined in clauses (24) and (25) of Article 366 of the Constitution of India, except when both the accused person and the person against whom an offence is committed belong either to such castes or tribes, the Court shall,”; and an offence is committed belong either to such castes or tribes, the Court shall, ; and

(ii) for sub-section (3), substitute the following sub-section, namely:-

“(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, and where a person against whom an offence is committed belongs to Scheduled Castes or Scheduled Tribes as defined in Clauses (24) and (25) of Article 366 of the Constitution of India, the Court shall, 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 accuse person has been so sentenced:

Provided that the Court may not order the accused person to pay by way of compensation any amount, if both the accused person and the person against whom an offence is committed belongs either to the Scheduled Castes or the Scheduled Tribes.”

The State amendment will not come in the way to decide to present issue. 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 in defraying the expenses properly incurred in the prosecution; 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. Therefore, imposition of fine and direction to pay fine amount of Rs.12,89,000/- towards compensation to the 2nd respondent would clearly fall under Section 357(1) Cr.P.C., whereas, **Dilip S Dahanukar** case pertains to clause 357(3) Cr.P.C.

Thus the facts in the present case and the facts in **Dilip S Dahanukar** case (referred supra) are distinguishable.

A similar question came up before the Calcutta High Court in **Kusum Jain v. Vinay Kumar Agarwala**² wherein the Calcutta High Court adverted to the principle laid down in **Dilip S Dahanukar** case (referred supra) and another judgment of the Division Bench of the Apex Court in **Stanny Felix Pinto v. Jangid Builders Pvt. Ltd., and Anr.**³ and held that imposition of fine and to pay the same towards compensation to the complainant would not fall under Section 357(3) Cr.P.C. and directed to deposit 1/4th of the cheque amount while suspending the sentence and upheld the judgment of the appellate court.

² 2011(3) CHN 112

³ (2001) 2 SCC 416

An identical question came up before the Apex Court in **Satyendra Kumar Mehra v. The State of Jharkhand**⁴, wherein the appellant, who is one of the accused in the case of **Lalu Prasad @ Lalu Prasad Yadav**, aggrieved by the order to pay a fine of Rs.25,000/- under each head as part of sentence preferred an appeal, but in the appeal the High Court of Jharkhand directed the appellant to deposit the fine imposed by the trial court.

Aggrieved by the order, the petitioner approached the Apex Court raising identical grounds and placed reliance on the judgment in **Dilip S Dahanukar** case referred supra, but the Apex Court based various judgments of Apex Court in **K.C. Sareen v. C.B.I. Chandigarh**⁵ and **Hari Singh v. Sukhbir Singh and Ors.**,⁶ upheld the order of the High Court holding that the Judgment in **Dilip S Dahanukar** would fall within clause (3) of Section 357 Cr.P.C.

Therefore, when fine is directed to be paid though ordered to be paid as compensation to the complainant, who suffered injury on account of such offence, it would fall under sub-Section(1) of Section 357 Cr.P.C. only, but not under sub-Section(3) of Section 357 Cr.P.C.

In the present case, the order passed by the trial court would fall under Section 357(1) Cr.P.C. and direction issued by the appellate court to deposit 1/4th of the cheque amount is not arbitrary, since the court is competent to impose such condition

⁴ 2018(5) Scale 109

⁵ (2001) 6 SCC 584

⁶ (1998) 4 SCC 551

as the court deems fit while deciding a petition under Section 389 Cr.P.C. to suspend the substantive sentence.

One of the contentions raised by the counsel for the petitioner is that entire property was mortgaged with the second respondent and that *ex parte* award was passed for recovery of the amount. But those are not considerations, however, the learned senior counsel, more particularly, highlighted the fundamental right of liberty guaranteed under the Constitution of India, but totally ignored the fate of complainant, who advanced huge amount and suffered loss on account of dishonor of cheque. If the Courts are particular about the fundamental rights of the accused, who was found guilty for the offence, who will palliate the pang of the complainant, but the courts are not taking care of the pain suffered by the complainant in criminal offences.

Therefore, to strike balance between the rights of the accused and the complainant, imposition of pre-condition to deposit 1/4th of the cheque amount to suspend the substantive sentence cannot be said to be arbitrary and passing an award for recovery of mortgaged property etc., are not relevant. Even otherwise, no such ground is raised before the court of appeal in CrI.M.P.No.24 of 2018 except raising bald ground and that the fine imposed by the court is heavy and beyond the capacity of the accused.

Therefore, in the absence of raising any such contention before the appellate court, this court while exercising power under Section 482 Cr.P.C. cannot modify the order. Even

otherwise in the present petition also, no such grounds are urged. Hence, those contentions require no further consideration.

Viewed from any angle, based on the ground urged before the appellate court and in the present petition based on the law laid down by the Apex Court recently in **Satyendra Kumar Mehra** case referred supra, it is difficult to uphold the contention of the petitioner. Thus, by applying principle laid down in the above judgment, the order passed by the appellate court cannot be faulted and it cannot be reversed or set aside, while, exercising power under Section 482 Cr.P.C.

The power of this Court under Section 482 Cr.P.C. is limited and such inherent power can be exercised sparingly and not in routine manner. The object of Section 482 Cr.P.C. is to give effect to any order under this Code, or to prevent abuse of the process of any Court, or otherwise to secure the ends of justice.

In **STATE OF KARNATAKA VS. L.MUNISWAMY & ORS.**⁷, **KAVITA V. STATE**⁸ and **STATE OF HARAYANA V. BHAJANLAL**⁹ the Apex Court highlighted the scope of Section 482 of Cr.P.C. Therefore, in view of the limited scope of Section 482 Cr.P.C. and the law declared by the Apex Court in various judgments, I find

⁷ AIR 1977 SC 1489

⁸ 2000 CrI LJ 315

⁹ 1992 Supp.(1) SCC 335

- 13 -

no ground to interfere with the order, consequently, the criminal petition is dismissed.

In the result, the criminal petition is dismissed.

As a sequel, miscellaneous petitions, if any, pending shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 27.04.2018

Note: L.R. Copy marked.

b/o. BV

