

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.4674 and 4675 of 2018

COMMON ORDER:

The question involved in both the petitions being one and the same, I feel it is expedient to decide both the matters, by common order.

Petitioner Nos.1 and 2 are the accused in C.C.Nos.331 and 332 of 2015 on the file of Special Judicial Magistrate of First Class for Railways, Nellore. Respondent had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (the Act). After full-fledged trial, the learned Special Judicial Magistrate of First Class for Railways, Nellore, in C.C.No.331 of 2015, found the accused guilty for the offence punishable under Section 138 of the Act and convicted and sentenced accused No.2 to undergo simple imprisonment for a period of one year and to pay a fine amount of Rs.5,000/-, in default, to undergo simple imprisonment for a period of two months and, in case, accused No.2 did not undergo the sentence, accused No.1 was directed to pay compensation of Rs.2,40,00,000 lakhs; and, in C.C.No.332 of 2015, accused No.2 was sentenced to undergo simple imprisonment for a period of one year and to pay a fine amount of Rs.5,000/-, in default, to undergo simple imprisonment for a period of two months and, in case, accused No.2 did not undergo the

sentence, accused No.1 was directed to pay compensation of Rs.76.00 lakhs.

Aggrieved by the order, petitioners preferred appeals in Crl.A.Nos.133 and 132 of 2018 on the file of IV Additional District and Sessions Judge, FAC of II Additional District and Sessions Judge, Nellore. In the said appeals, Crl.MP.Nos.171 and 170 of 2018, under Section 389(1) Cr.P.C, were filed to suspend the substantive sentence of imprisonment and payment of compensation. The Appellate Court, while suspending the sentence, directed the petitioners to deposit 10% of the compensation amount before the Trial Court on or before 26.04.2018.

Aggrieved by the direction to deposit the compensation amount in both the cases, these two Criminal Petitions are filed mainly on the ground that the direction issued by the Appellate Court is contrary to law declared by the Apex Court; the petitioner discharged the debt due to respondent, thereby, not under any obligation to discharge the amount; and, that too, the amount ordered to be deposited by the Trial Court is not reasonable and prayed to set aside the order in Crl.MP.Nos.171 and 170 of 2018.

During hearing, learned counsel for the petitioners reiterated the grounds and would draw the attention of this Court to the merits of the appeal. This Court, while deciding an application under Section 482 Cr.P.C, can not

go into the merits of the case as the challenge is only to deposit of 10% of the compensation amount passed by the Appellate Court.

Learned Counsel for the petitioners contended that, in view of the judgment in **Dilip S.Dahanukar v. Kotak Mahindra Co. Ltd.**¹, a reasonable amount can be directed to be deposited, and what is reasonable amount depends on the facts and circumstances of the case.

When appeal is preferred against the conviction and sentence and fine amount forms part of 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 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

¹ (2007) 6 SCC 528

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, a strenuous and honest attempt was made to convince this Court to set aside the order to deposit 10% of compensation. 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.

When a Court imposes 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 compensation to the respondent would clearly fall under Section 357(3) 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

² 2011(3) CHN 112

Stanny Felix Pinto v. Jangid Builders Pvt. Ltd.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.

According to the principle laid down in **Dilip S.Dahanukar** (1 supra), when compensation is awarded under Section 357 (3) Cr.P.C. the Court can direct to deposit reasonable amount but, in fact, direction issued by the Trial Court would fall within Section 357(3) Cr.P.C. In such case, in view of the law laid down by the Apex Court in **Satyendra Kumar Mehra v. The State of Jharkhand**⁴, the order passed by the Court below is in accordance with law. Even otherwise, as per **Dilip S.Dahanukar** (1 supra), a reasonable amount can be ordered to be deposited. A direction to deposit 10% is just and reasonable. Therefore, no legal infirmity in the orders passed, to exercise power under Section 482 Cr.P.C. to quash the proceedings.

The Criminal Petitions are, accordingly, dismissed. At the end, learned counsel for the petitioners requested to extend time to comply with the direction issued by the Trial Court. In view of the request, time for compliance is extended by a further period of two weeks from today.

³ (2001) 2 SCC 416

⁴ 2018(5) Scale 109

Miscellaneous petitions pending, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY,J

Date:05.06.2018
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