

CWP No.913 of 2018

[1]

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

**CWP No.913 of 2018
Date of decision:18.01.2018**

Piara Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Namit Khurana, Advocate,
for the petitioners.

Rakesh Kumar Jain, J. (Oral)

The petitioners have challenged the validity of the warrants of recovery dated 01.07.2017 (Annexure P-3 colly), by which respondent no.2 has directed the realization of the amount of fine from the petitioners as arrears of land revenue.

In short, the petitioners were prosecuted in a case registered vide FIR No.93 dated 01.07.2014, registered under Sections 302, 148 and 149 IPC and Sections 25 and 27 of the Arms Act, 1959 at Police Station Kot Ise Khan. The learned Sessions Judge, Moga, vide his order dated 27.01.2017, held the petitioners guilty and vide his order dated 30.01.2017, pronounced the sentence. Besides the physical punishment awarded to the petitioners, they were also visited with the fiscal punishment in terms of Section 357(1) Cr.P.C. and it was ordered that in case the amount of fine is realized, the amount of ₹2.50 lacs shall be disbursed to the legal heirs of deceased Darshan Singh and

amount of ₹5 lacs shall be disbursed to the legal heirs of deceased Kirpal Singh as compensation under Section 357(1) Cr.P.C. The petitioners have filed Criminal Appeal No.D-322-DB of 2017 against the order of conviction and sentence before this Court along with an application bearing CRM No.10227 of 2017, wherein the petitioners had prayed for staying the recovery of fine. The said application was disposed of by this Court on 24.03.2017 with the following order:-

“No ground is made out for staying the recovery of fine. However, in case the applicants deposit the amount of fine in the Court of learned Chief Judicial Magistrate, Moga, Rs.2,50,000/- shall be paid to the legal representatives of deceased Darshan Singh and the amount of Rs.5,00,000/- shall be disbursed to legal representatives of deceased Kirpal Singh as compensation subject to their furnishing adequate sureties to the satisfaction of the Chief Judicial Magistrate, Moga for restitution of the amount in case the appeal of the applicants succeeds.

The application is disposed of accordingly.”

Thereafter, the Court of Additional Sessions Judge, Moga referred the matter to the District Collector, Moga for recovery of the fine from the petitioners. The warrants of recovery (Annexure P-3 Colly) issued by the Additional Sessions Judge, Moga to the District Collector, Moga are under challenge in this petition as the recovery is being effected as the arrears of land revenue in terms of the provisions of the Punjab Land Revenue Act, 1887.

Counsel for the petitioners has submitted that as per Section 357(2) of the Act, the recovery cannot be effected because the appeal has not been decided. The provisions of Section 357 of the Cr.P.C. reads as under:-

“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 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 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.”

Counsel for the petitioners has also relied upon a decision of this Court rendered in the case of **Bhola Ram vs. State of Punjab and others**, 2009(5) RCR(Civil) 485 to contend that the question of default of payment of fine and recovery thereof will arise only on completion of period of imprisonment and non-payment of fine.

After hearing learned counsel for the parties, examining the available record and keeping in view the aforesaid facts and circumstances, I am of the considered opinion that there is no merit in the present petition because at the time of passing the order of conviction, the competent Criminal Court had not only imposed the punishment for the offence committed by the petitioners for serving rigorous imprisonment in jail but also imposed the sentence of fine separately. Thereafter, the Court had directed that in case the fine is realized, then the same may be disbursed in a particular manner. The petitioners have challenged the order of conviction and sentence by way of appeal along with an application for staying the recovery of fine. The said application has been specifically dismissed by this Court after admitting their appeal, therefore, there is no question of staying the recovery of fine only on the pretext of Section 357(2) of the Act. Since there is no stay, the Additional Sessions Judge, Moga had approached the District Collector for the purpose of recovery of the fine, which is to be paid to the family of the deceased Darshan

Singh and Kirpal Singh by way of compensation. Moreover, the decision relied upon by the petitioners is also not applicable to the facts and circumstances of the present case.

In view of the above, I do not find anything wrong in the warrants of recovery issued by the Additional Sessions Judge, Moga and consequently, the present petition is hereby dismissed being denuded of any merit, though without any order as to costs.

January 18, 2018
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No