

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 739 of 2019**

Smt. Sutapa Mukharjee, Wd/o Lt. Shri Sudeep Kumar Mukharjee, A/o 66 years, R/o Tiwari Chaal, Rajendra Nagar, Bilaspur, Distt. Bilaspur, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, Through the Collector, Office of Collector, Bilaspur, Distt. Bilaspur, Chhattisgarh.
- 2.Madhup Kumar Tandon S/o Late Shri Jagdish Prasad Tandon, R/o 04 Akbar Khan Chaal, In front of Mission Hospital, Tahsil and Distt. Bilaspur, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. Anish Tiwari, Advocate
 For Respondent 1/State:- Mr. Ravi Bhagat, Dy. G.A.
 For Respondent No. 2 :- Mr. Faiz Kazi, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

18/03/2021

- 1.Petitioner's husband namely Sudeep Kumar Mukharjee was convicted for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 by judgment dated 05/01/2012 and he was sentenced to imprisonment for one year along

with a compensation of ₹ 3,00,000/- payable to respondent No. 2 and it was further directed that in the event of non-payment of said compensation amount, he would have to serve jail sentence for three months. The said judgment of conviction was appealed by petitioner's husband but ultimately, the appeal stood dismissed by the appellate authority on 06/10/2012. In the meanwhile, recovery proceeding under Section 421 of CrPC was initiated by respondent No. 2 for realizing the amount of compensation, but unfortunately petitioner's husband died on 04/07/2015 and now, the proceeding for recovery of compensation/fine amount is pending against the petitioner which has been called in question by her in the instant writ petition.

2. Mr. Anish Tiwari, learned counsel for the petitioner, would submit that since petitioner's husband has already served jail sentence of one year as well as default sentence of another three months for non-payment of compensation, no proceeding under Section 421 of CrPC for recovery of compensation would lie and the compensation amount cannot be recovered. Even otherwise, the compensation could also not be

recovered as per Section 70 of IPC, as such, the instant writ petition be allowed and the recovery proceeding pending against the petitioner be quashed.

3. Mr. Faiz Kazi, learned counsel for respondent No. 2, would submit that in view of the decision rendered by the Supreme Court in the matter of Kumaran v. State of Kerala & Anr.¹ even if substantive jail sentence as well as default sentence both have been served, yet the compensation amount has to be recovered from the accused/his legal heirs, as such, the instant writ petition deserves to be dismissed. However, any objection with regard to Section 70 of IPC can be raised by the petitioner before the authority where the application under Section 421 of CrPC is pending.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

5. It is not in dispute that petitioner's husband has already served the substantive jail sentence of one year awarded to him by the trial Court as

¹ (2017) 7 SCC 471

affirmed by the appellate Court. It is also not in dispute that in default of non-payment of the compensation amount, petitioner's husband has also served the jail sentence for another three months. Thereafter, at the instance of respondent No. 2, recovery proceeding under Section 421 of CrPC was initiated against petitioner's husband but in the meanwhile, he died on 04/07/2015 and now, the said proceeding is pending against the petitioner for recovery of compensation amount despite serving of default sentence for three months, which is sought to be questioned in this writ petition.

6. Their Lordships of the Supreme Court in the matter of Kumaran (supra) pose the following question for consideration :-

"The present appeals raise an interesting question as to whether when compensation is ordered as payable for an offence committed under Section 138 of the Negotiable Instruments Act, and in default thereof, a jail sentence is prescribed and undergone, is compensation still recoverable."

7. Their Lordships considered the issue with reference to Section 421 and 431 of CrPC and held that even though a default sentence has been suffered by the accused, yet, compensation

would be recoverable in the manner provided under Section 421(1) of CrPC, which states as under :-

"27. These two judgments make it clear that the deeming fiction of Section 431 CrPC extends not only to Section 421, but also to Section 64 of the Penal Code. This being the case, Section 70 IPC, which is the last in the group of sections dealing with sentence of imprisonment for non-payment of fine must also be included as applying directly to compensation under Section 357(3) as well. The position in law now becomes clear. The deeming provision in Section 431 will apply to Section 421(1) as well, despite the fact that the last part of the proviso to Section 421(1) makes a reference only to an order for payment of expenses or compensation out of a fine, which would necessarily refer only to Section 357(1) and not 357(3). Despite this being so, so long as compensation has been directed to be paid, albeit under Section 357(3), Section 431, Section 70 IPC and Section 421(1) proviso would make it clear that by a legal fiction, even though a default sentence has been suffered, yet, compensation would be recoverable in the manner provided under Section 421(1). This would, however, be without the necessity for recording any special reasons. This is because Section 421(1) proviso contains the disjunctive "or" following the recommendation of the Law Commission, that the proviso to old Section 386(1) should not be a bar to the issue of a warrant for levy of fine, even when a sentence of imprisonment for default has been fully undergone. The last part inserted into the proviso to Section 421(1) as a result of this recommendation of the Law Commission is a category by itself which applies to compensation payable out of a fine under Section 357(1) and, by applying the fiction contained in Section 431, to compensation payable under Section 357(3)."

8. In the considered opinion of this Court, in view of the authoritative pronouncement of the Supreme Court in Kumaran (supra), petitioner's contention that she is not liable to pay the compensation amount as her husband has already served the substantial as well as default jail sentence is liable to be and is hereby rejected. However, petitioner's objection of compensation amount being non-recoverable on any legally permissible ground including based on Section 70 of IPC can always be raised before the Court where the application under Section 421 of CrPC is pending and in that event, the said Court would consider and dispose of the said objection/application after hearing the parties strictly in accordance with law.

9. With the aforesaid observation, the instant writ petition stands dismissed. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet