



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Reserved on : 09.09.2024
Pronounced on : 25.09.2024
CRR-3509-2017

1.

Manna LalPetitioner
Versus
M/s Paras Steel and othersRespondents

2.

CRR-3510-2017

Manna LalPetitioner
Versus
M/s Paras Steel and othersRespondents

3.

CRR-3511-2017

Manna LalPetitioner
Versus
M/s Paras Steel and othersRespondents

4.

CRR-3512-2017

Manna LalPetitioner
Versus
M/s Paras Steel and othersRespondents

5.

CRR-3513-2017

Manna LalPetitioner
Versus
M/s Paras Steel and othersRespondents

6.

CRA-S-559-2023 (O&M)
treated as CRR-1934-2024 (O&M)

Ramesh Kumar and anotherAppellants/Petitioners
Versus
Manna Lal and othersRespondents



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7.

**CRA-S-564-2023 (O&M)
treated as CRR-1933-2024 (O&M)**

Ramesh Kumar and another

.....Appellants/Petitioners

Versus

Manna Lal and others

.....Respondents

8.

**CRA-S-565-2023 (O&M)
treated as CRR-1929-2024 (O&M)**

Ramesh Kumar and another

.....Appellants/Petitioners

Versus

Manna Lal and others

.....Respondents

9.

**CRA-S-566-2023 (O&M)
treated as CRR-1930-2024 (O&M)**

Ramesh Kumar and another

.....Appellants/Petitioners

Versus

Manna Lal and others

.....Respondents

10.

**CRA-S-567-2023 (O&M)
treated as CRR-1932-2024 (O&M)**

Ramesh Kumar and another

.....Appellants/Petitioners

Versus

Manna Lal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Sandeep Singh Majithia, Advocate and
Ms. Chadanpreet Kaur Ahluwalia, Advocate
for the petitioner in all the revision petitions.

Mr. Rakesh Chopra, Advocate
for respondents No.1 and 2 in revision petitions and
for the appellants in appeals.

Mr. Navdeep Singh, DAG, Punjab.



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MANJARI NEHRU KAUL, J.

1. This order shall dispose of above referred cases as the parties involved in them are the same and similar question of facts are involved in them. The revision petitions have been preferred by petitioner-Manna Lal against his conviction and awarding of compensation to the complainant by the learned Appellate Court whereas the appeals have been preferred by appellant-complainant-Ramesh Kumar for enhancement of compensation awarded by the learned Appellate Court.

Submissions of the petitioner

2. The learned counsel for the petitioner-accused argued that the petitioner was convicted in Cases CIS No.NACT 349/2013, NACT 349/2013, 351/2013, 355/2013, 350/2013, 348/2013 under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') and was sentenced by the learned Sub Divisional Judicial Magistrate, Amloh to one year of rigorous imprisonment. The petitioner duly filed an appeal challenging the conviction/judgment dated 07.08.2015, and notably, no appeal was preferred by the complainant against the said judgment.

2A. It was further contended that while deciding the appeal filed by the petitioner, the learned Appellate Court erroneously directed the petitioner to pay a sum of Rs.5 lakhs as compensation to the complainant, despite the complainant not having filed any appeal or prayed for such relief. The learned counsel for the petitioner asserted that the powers of the learned Appellate Court under Section 386 of the

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Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') are clearly defined; as per which, in an appeal against a conviction by the accused, the Appellate Court does not have the jurisdiction to enhance the sentence imposed by the Trial Court. According to the learned counsel for the petitioner, the Appellate Court could only affirm or reverse the conviction; however, it could not enhance the sentence, as it erroneously did in this case by ordering payment of compensation.

2B. The learned counsel further submitted that compensation would form an integral part of a sentence, and therefore, by imposing compensation without any appeal or application by the complainant, the Appellate Court overstepped its jurisdiction. The petitioner, who has endured the trial process over several years, has already suffered personal and financial hardships, including the collapse of his business, which was his primary source of livelihood.

2C. Moreover, the learned counsel for the petitioner highlighted that the complainant had previously filed a civil suit seeking recovery of the same amount, which had been decreed in the complainant's favour. In support attention of this Court has been drawn to Annexure P-2. Consequently, the learned counsel for the petitioner contended that once the complainant had obtained a civil decree for the said amount, recovering the same through criminal proceedings under Section 357 of the Cr.P.C. was unjustified and legally impermissible.

Submissions by the complainant

3. Per contra, the learned counsel for the complainant contended that Section 138 of the NI Act is a victim-centric legislation

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aimed at compensating the victim by remedying the financial injury caused. It was submitted that the petitioner had been sentenced to one year of rigorous imprisonment in five separate complaints filed by the complainant, with the Trial Court directing the sentences to run consecutively. However, during the petitioner's appeal, the Appellate Court modified this, ordering the sentences to run concurrently. Along with this favourable modification, the Appellate Court also directed the petitioner to pay compensation to the complainant.

3A. The learned counsel for the complainant further argued that the Appellate Court was fully empowered under Section 357 of the Cr.P.C. to impose compensation. The learned counsel contended that as per the various judicial pronouncements and settled law, the power to award compensation is supplementary to the Court's sentencing powers and that the Appellate Court had the discretion to direct the petitioner to compensate the complainant, even in the absence of an explicit appeal or application from the complainant. In support, learned counsel placed reliance upon ***Hari Kishan and another Vs. Sukhbir Singh and Others : (1988) 4 SCC 551.***

3B. Moreover, the learned counsel for the complainant submitted that it is well-settled that the complainant is entitled to pursue all legal remedies available to him including both civil and criminal remedies simultaneously to seek redress for the financial losses caused by the petitioner. Each of these remedies can be availed by the complainant independent of the other and mere filing for a civil suit would not defeat his right to seek compensation under Section 357

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of the Cr.P.C.

3C. The learned counsel for the complainant also stated that in Criminal Appeals No.CRA-S-559 and 564-67 of 2023, the complainant had sought an enhancement of the compensation awarded by the Appellate Court. It was contended that the complainant had not only been deprived of the principal amount but also the interest on that amount over the years. Additionally, the petitioner's conduct, including exploiting the complainant's trust in their business relationship and delaying payment, had caused the complainant significant financial and emotional distress.

Findings of the Court

4. Having heard both sides, this Court finds it apposite to first examine the provisions of Section 357 of the Cr.P.C., which enables the Appellate Court to impose compensation on an accused, even when a fine is not part of the sentence. For facility of reference, Section 357 of the Cr.P.C. is reproduced below:-

“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

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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.”

5. The scope of Section 357 of the Cr.P.C. empowers the Courts to impose compensation as an additional remedy, independent of any other sentence. It is a well-settled legal principle that the power to order compensation under this Section is not ancillary or supplementary to the sentence but is in addition to it. In the landmark case of ***Hari Kishan and another Vs. Sukhbir Singh and Others : (1988) 4 SCC 551***, the Supreme Court categorically held:-

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“10. Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with sub-section (1). We are concerned only with sub-section (3). It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to, crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.”

6. At the cost of repetition, it must be reiterated that compensation is primarily rehabilitative in nature, intended to repair the harm done to the victim rather than to punish the offender. Further, in ***Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and another : (2007) 6 SCC 528***, the Supreme Court observed that compensation may be awarded separately and need not be linked to a fine. The Court noted the clear distinction between a 'fine' and 'compensation,' clarifying that while fines may only be imposed as per the specific provisions of law, compensation may be awarded to remedy the injury caused by the offence to the complainant.

7. In a more recent decision, ***Rajendra Bhagwanji Vs. State of Gujarat (Criminal Appeal no. 2481-24 of 2024, decided on May 9, 2024)***, Hon'ble the Supreme Court observed that the provision of

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compensation is entirely victim-centric, with no direct relation to the convict or the sentence imposed. The relevant paragraphs of this judgment are as follows:-

“22. The idea of victim compensation is based on the theory of victimology which recognizes the harsh reality that victims are unfortunately the forgotten people in the criminal justice delivery system. Victims are the worst sufferers. Victims’ family is ruined particularly in cases of death and grievous bodily injuries.

This is apart from the factors like loss of reputation, humiliation, etc. Theory of Victimology seeks to redress the same and underscores the importance for criminal justice administration system to take into consideration the effect of the offence on the victim's family even though human life cannot be restored but then monetary compensation will at least provide some solace.

23. The provision of Section 357 recognizes the aforesaid and is victim centric in nature. It has nothing to do with the convict or the sentence passed. The spotlight is on the victim only. The object of victim compensation is to rehabilitate those who have suffered any loss or injury by the offence which has been committed. Payment of victim compensation cannot be a consideration or a ground for reducing the sentence imposed upon the accused as victim compensation is not a punitive measure and only restitutory in nature and thus, has no bearing with the sentence that has been passed which is punitive in nature.

24. The words "any loss or injury" used in Section 357 of the CrPC clearly indicates that the sole factor for deciding the compensation to be paid is the victim's loss or injury as a result of the offence, and has nothing to do with the sentence that has been passed. Section 357 of CrPC is intended to reassure the victim that he/she is not forgotten in the criminal justice system. It is a constructive approach to crimes based on the premise that mere punishment of the offender may not give solace to the victim or its family.”

8. A careful reading of these observations indicates that the imposition of compensation cannot be construed as an enhancement of

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sentence under Section 386 of the Cr.P.C. Therefore, this Court finds no merit in the petitioner's argument that the Appellate Court acted beyond its jurisdiction in awarding compensation.

9. In light of the above, the petitions filed by the petitioner-convict are devoid of merit and are hereby dismissed.

Appeals filed by the complainant

10. Turning to the appeals filed by the complainant, the Court posed a specific query to the learned counsel for the complainant regarding the maintainability of his appeals, especially given that the complainant had not appealed against the Trial Court's judgments before the Appellate Court. In response, the complainant's counsel submitted that under the proviso to Section 372 of the Cr.P.C., a victim is entitled to appeal against an order imposing inadequate compensation, thereby rendering the present appeals maintainable. The counsel also informed the Court that a revision petition had initially been filed, but the Registry directed the complainant to file an appeal instead.

10A. It is crucial to underscore that the right to appeal is a statutory right and is neither inherent nor a natural right. Therefore, provisions related to appeals must be interpreted strictly. While Section 372 of the Cr.P.C. does empower victims to appeal against inadequate compensation, it specifies that such appeals should be filed in the Court where an appeal against an order of conviction would ordinarily lie. Section 374 of the Cr.P.C. states that an appeal against a conviction by a Judicial Magistrate of the First Class (JMFC) lies with the Sessions

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Court. Therefore, the appropriate forum for the complainant's appeal would have been the Sessions Court, not this Court.

11. Since, the learned counsel for the complainant orally requested that the appeals be treated as revision petitions, as he was advised by the Registry to file appeals instead of revisions, hence in the peculiar circumstances of this case, and to avoid unnecessary multiplicity of proceedings, this Court, in the interest of justice, deems it appropriate to treat the appeal as a revision petition instead of dismissing it on technical grounds.

12. Adverting to the complainant's prayer for enhancement of the compensation, it is essential to note that while Section 357 of the Cr.P.C. does not prescribe an upper limit for compensation, the amount awarded must be reasonable and not arbitrary. The determination of reasonableness depends on the nature of the offence and the financial capacity of the accused to pay.

13. In the present case, the Appellate Court redressed the financial loss caused by the offence by awarding the complainant the cheque amount as compensation. One of the factors in determining the amount of compensation would be the financial capacity of the accused to pay. In this regard, the learned counsel for the petitioner-accused has emphasized that the petitioner has lost his business due to his incarceration, which has taken a serious hit to his financial incapacity to pay.

14. It is also pertinent to note that a portion of the amount, specifically Rs.43,94,768/-, has already been awarded with interest to

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the complainant in the civil suit. Though civil and criminal remedies are distinct, any compensation awarded in a civil suit can be considered a mitigating factor when determining the amount of compensation in criminal proceedings. Given these facts, this Court finds no merit in the complainant's argument that the compensation awarded by the Appellate Court is inadequate especially when the financial loss caused to the complainant has been redressed by the learned Appellate Court.

15. Accordingly, the appeals, now treated as revision petitions, are also dismissed, and no further enhancement of compensation is warranted.

16. Pending applications, if any, stand disposed of.

25.09.2024

Vinay

**(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No