

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.2 of 2023

Arising Out of PS. Case No.-380 Year-2016 Thana- KOTWALI District- Patna

Ajay Kumar Singh, Son of Shri Jai Narayan Singh Resident of Jai Complex,
Ram Nagari More, Ashiyana Nagar, P.S- Rajiv Nagar, Dist- Patna Bihar

... .. Petitioner/s

Versus

1. The State of Bihar
2. M/S Aparna Housing and Construction Private Limited through its M.D,
namely, Rakesh Kumar Singh M/S Aparna Housing and construction Private
Limited, Shashi Niketan , Buddha Marg, P.S- Kotwali, Dist- patna through
its Managing Director, namely, Rakesh Kumar Singh (Male) Aged about 54
years, Son of Late Shashi Bhushan Prasad Singh, Dak Banglow road, P.S-
Kotwali, Dist- Patna

... .. Respondent/s

with

CRIMINAL REVISION No. 3 of 2023

Arising Out of PS. Case No.-380 Year-2016 Thana- KOTWALI District- Patna

Ajay Kumar Singh, Son of Shri Jai Narayan Singh Resident of Jai Complex,
Ram Nagari More, Ashiyana Nagar, P.S-Rajiv Nagar, Dist- Patna Bihar

... .. Petitioner/s

Versus

1. The State of Bihar
2. M/S Aparna Housing And Construction Pvt. Ltd., Through Its M.D.,
Namely, Rakesh Kumar Singh Son of Late Shashi Bhushan Prasad Singh
M/S Aparna Housing and Construction Private Limited, Shashi Niketan,
Buddha Marg, P.S- Kotwali, Dist- Patna through its managing Director,
namely, Rakesh Kumar singh R/o- Dak Banglow Road, P.S- Kotwali , Dist-
patna

... .. Respondent/s

with

CRIMINAL REVISION No. 4 of 2023

Arising Out of PS. Case No.-380 Year-2016 Thana- KOTWALI District- Patna

Ajay Kumar Singh, Son of Shri Jai Narayan Singh R/o Jai Complex, Ram
Nagari More, Ashiyana Nagar, P.S.- Rajiv Nagar, District- Patna, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar



2. M/S Aparna Housing and Construction Pvt. Ltd., Shashi Niketan, Buddha Marg, P.S.- Kotwali District- Patna, through its Managing Director, namely, Rakesh Kumar Singh (male), aged about 54 years, Son of Late Shashi Bhushan Prasad Singh, Dak Banglow Road, P.S.- Kotwali, District- Patna

... .. Respondent/s

Appearance :

(In CRIMINAL REVISION No. 2 of 2023)

For the Petitioner/s : Mr. Kumar Kaushik, Advocate
For the OP No. 2 : Mr. Rama Kant Sharma, Sr. Advocate
Mr. Madhukar Anand, Advocate
For the State : Mr. Tarun Prasad Mandal, Advocate

(In CRIMINAL REVISION No. 3 of 2023)

For the Petitioner/s : Mr. Kumar Kaushik, Advocate
For the OP No. 2 : Mr. Rama Kant Sharma, Sr. Advocate
Mr. Madhukar Anand, Advocate
For the State : Mr. Yogendra Kumar, Advocate

(In CRIMINAL REVISION No. 4 of 2023)

For the Petitioner/s : Mr. Kumar Kaushik, Advocate
For the OP No. 2 : Mr. Rama Kant Sharma, Sr. Advocate
Mr. Madhukar Anand, Advocate
For the State : Mr. Yogendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 30-04-2025

1. The instant batch of Criminal Revision applications arises out of a common judgment and order, dated 13.10.2022, passed by the learned Additional Sessions Judge-XXVI, Patna in Criminal Appeal No. 129 of 2021, (preferred by the Petitioner, challenging the judgment of conviction and order of sentence), Criminal Appeal No. 135 of 2021 (preferred by the informant/victim, seeking award of compensation under Section 357 (3) of the Code of Criminal Procedure) and Criminal Appeal No. 45 of 2022 (preferred by the State of Bihar, seeking enhancement of



sentence), whereby and whereunder, the learned Appellate Court affirmed the conviction of the Petitioner under Sections 406, 420, 467, 468 and 120B read with Section 34 of the Indian Penal Code, and enhanced the sentence awarded to the Petitioner under Section 467 of the Indian Penal Code and further directed payment of compensation to the informant under Section 357 (3) of the Cr.P.C. Eventually, Criminal Appeal No. 129 of 2021, filed by the Petitioner, was dismissed.

2. Criminal Revision No. 02 of 2023 is treated as the lead case, which has been filed by the Petitioner/Ajay Kumar Singh for setting aside the judgment of conviction, dated 03.09.2021 and the order of sentence, dated 07.09.2021, passed by the learned Chief Judicial Magistrate, Patna in Trial No. 12 of 2021, arising out of G.R. No. 5113 of 2016 (Kotwali P.S. Case No. 380/2016), which was affirmed and modified by the judgment, dated 13.10.2022, passed by the learned Additional District and Sessions Judge—XXVI, Patna in Criminal Appeal No. 129 of 2021, whereby and whereunder, the Learned Appellate Court, while maintaining the conviction of the Petitioner,



has been pleased to enhance the sentence for offence punishable under Section 467 of the Indian Penal Code from 7 (seven) years to 10 (ten) years and has further been pleased to direct the Petitioner to undergo rigorous imprisonment for 3 (three) years for offences punishable under Section 406/34 of the Indian Penal Code, rigorous imprisonment of 7 (seven) years for the offences punishable under Section 420/34 of the Indian Penal Code, rigorous imprisonment of 10 (ten) years for the offences punishable under Section 467/34 of the Indian Penal Code, rigorous imprisonment of 7 (seven) years for offences punishable under Section 468/34 of the Indian Penal Code and rigorous imprisonment of 7 (seven) years for offence punishable under Section 120B of the Indian Penal Code with a further direction that the sentences were to run concurrently and the custody undergone by the convict was to be set off from the sentence awarded above.

3. Criminal Revision No. 03 of 2023 has also been preferred by the same Petitioner against the judgment, dated 13.10.2022, passed by the learned Additional District and Sessions Judge–XXVI in Criminal Appeal No. 135 of 2021,



arising out of the same trial, whereby and whereunder, the learned Court below while affirming the conviction of the Petitioner further directed him to pay compensation, amounting to Rs. 61,47,800/- under Section 357(3) of the Code of Criminal Procedure, 1973, in lieu of the fine originally imposed by the learned Trial Court.

4. Criminal Revision No. 04 of 2023 also proceeds from the same prosecution and has been filed, challenging the judgment of the Appellate Court, passed in Criminal Appeal No. 45 of 2022, preferred by the State of Bihar, wherein the sentence awarded to the Petitioner under Section 467 IPC was enhanced from 7 years to 10 years, notwithstanding the limitation imposed upon the Appellate Court under Section 386 read with Section 29 of the Code of Criminal Procedure, 1973.

5. The prosecution case, as supported from the records, is that on the basis of a written complaint, dated 12.08.2016, submitted by one Rakesh Kumar Singh, Managing Director of M/s Aparna Housing and Construction Pvt. Ltd., Kotwali P.S. Case No. 380 of 2016, was registered for the offences punishable under Sections



467, 468, 420, 406, 120B and 34 of the Indian Penal Code.

6. It was alleged in the written report that the informant, who is engaged in real estate development and leasing properties to multinational corporations, was dishonestly and fraudulently induced by three persons, namely Vishal Kumar Mishra (also known as Bablu), Ajay Kumar Singh (the Petitioner herein), and Rajiv Ranjan Singh @ Raju, all of whom were allegedly functioning as Directors of a private company, namely AVR Green Homes Pvt. Ltd.

7. The said accused persons are stated to have misrepresented themselves as owners in possession of a certain land, located opposite Lakshmi Complex, Boring Road, Patna, and proposed to sell the same to the informant's company. It is stated that documents such as the Sale Agreement, Absolute Sale Deed, Certificate of Incorporation, Memorandum and Articles of Association of AVR Green Homes Pvt. Ltd. were produced in support of the said representation.

8. The informant, on being convinced, is said to have taken a bank loan from Punjab National Bank and



proceeded to invest a total sum of Rs. 3,88,85,000/- (Three Crores Eighty-Eight Lakhs Eighty-Five Thousand Only) between 12.03.2012 to 08.07.2016 through RTGS transactions and cash payments into the account of AVR Green Homes Pvt. Ltd. and personally to Vishal Kumar Mishra.

9. When the informant's legal advisor, Narendra Prasad Singh, Advocate examined the title documents, he expressed serious doubts as to the legal viability of the documents produced. On being confronted, the accused persons allegedly gave repeated assurances and even executed an undertaking dated 09.12.2012, promising to return the invested amount along with 18% interest.

10. However, despite such promises, the refund was never made. It is further alleged that on 08.07.2016, two of the accused persons, namely Ajay Kumar Singh and Vishal Kumar Mishra, again visited the informant and executed another document reaffirming their commitment to refund the money by 30.09.2016. But when repeated follow-up calls were made in August 2016, the accused persons not only evaded repayment but allegedly issued



threats, leading to the institution of the present FIR.

11. Pursuant to investigation, police submitted a charge-sheet, bearing No. 395/2016, dated 30.09.2016. Cognizance was taken on 13.10.2016 and charges were eventually framed on 19.07.2018 under Sections 467, 468, 420, 406, 120B & 34 IPC.

12. During the course of trial, the prosecution examined five witnesses, including the informant and investigating officer. Multiple documents, including banking records, RTGS receipts, undertaking letters, account opening forms, sale deeds, and company registration certificates were brought on record as exhibits.

13. After considering the oral and documentary evidence, the learned Chief Judicial Magistrate, Patna convicted the Petitioner and sentenced him to undergo rigorous imprisonment ranging from 3 to 7 years under various penal provisions, coupled with a fine of Rs. 50,000/- under each head. All sentences were directed to run concurrently.

14. The Appellate Court, vide judgment, dated 13.10.2022, disposed of three appeals simultaneously. The



Petitioner's Appeal (Cr. Appeal No. 129/2021) was dismissed; the informant's Appeal (Cr. Appeal No. 135/2021) was allowed by awarding compensation of Rs. 61,47,800/- under Section 357(3) Cr.P.C.; and the State's Appeal (Cr. Appeal No. 45/2022) was allowed by enhancing the sentence under Section 467 IPC to 10 years' rigorous imprisonment.

15. Aggrieved by the entirety of the judgment of the Appellate Court, the Petitioner has now preferred the present batch of three revisions, which are being adjudicated together. As noted hereinabove, all three criminal revision applications arise from a common criminal prosecution, being Kotwali P.S. Case No. 380 of 2016. However, Criminal Revision Nos. 03 of 2023 and 04 of 2023, though filed by the same Petitioner, challenging distinct aspects of the appellate judgment, dated 13.10.2022, passed by the learned Additional District and Sessions Judge–XXVI, Patna.

16. Criminal Revision No. 03 of 2023 has been preferred against the order passed in Criminal Appeal No. 135 of 2021, filed by the informant/complainant, whereby



the learned Appellate Court, while affirming the conviction of the Petitioner, has been pleased to direct payment of compensation to the tune of Rs. 61,47,800/- (Sixty-One Lakhs Forty-Seven Thousand Eight Hundred only) under Section 357(3) of the Code of Criminal Procedure, in lieu of the fines imposed by the learned Trial Court.

17. It is contended in the said revision that the direction to pay compensation under Section 357(3) Cr.P.C. is without any inquiry or assessment of the Petitioner's capacity to pay, and passed without affording any opportunity of hearing or written submission on quantum.

18. It is further stated that the compensation amount of Rs. 61,47,800/- appears to have been calculated with reference to the loan and interest liability borne by the informant, and not necessarily correlated with any criminal liability proven against the Petitioner. The Appellate Court has also directed that the interest shall be computed from the date of loan disbursed by Punjab National Bank and further ordered for recovery in terms of Section 431 IPC read with Section 421 Cr.P.C., effectively converting a criminal conviction into an execution of a civil recovery.



19. In support of Criminal Revision No. 03 of 2023, a Second Supplementary Affidavit has been filed on behalf of the Petitioner by his son, Kunal Pratap Singh, affirming: that the Petitioner has already surrendered before the learned Trial Court on 17.04.2023 (Annexure-A2); that the Petitioner has already undergone substantial custody, approximately 5 years, i.e., from 14.08.2016 to 02.05.2017 and thereafter from 07.03.2018 to 17.06.2022; and that the Petitioner's family is financially dependent upon him, his wife is medically unwell, and one son resides abroad, while the other is preparing for competitive examinations in Delhi.

20. It is also argued that the learned Appellate Court erred in substituting the sentence of fine imposed by the learned Trial Court with an order of compensation under Section 357(3) Cr.P.C., without any enabling request from the victim, without proper computation, and without recording any justification for the substitution.

21. At this stage, this is for the Court to decide upon Cr. Revision No. 3 of 2023 as to whether the decision of Cr. Appeal No. 135 of 2021, modifying the order of



sentence of payment of fine for the offences punishable under Sections 406/34, 420/34, 467/34, 468/34 and 120B of the IPC could have been modified (Apost) and in place of fine, direction for payment of compensation under Section 357 (3) of the Cr.P.C. could have been passed.

22. It is submitted by the learned Advocate appearing on behalf of the accused/Petitioner that victim cannot file an appeal for enhancement of sentence of fine in accordance with proviso to Section 372 of the Cr.P.C. He is not entitled under the Statute to file an appeal against the inadequacy of sentence of fine.

23. In order to appreciate his argument, it is necessary to consider the provision of Section 372 of the Cr.P.C. where the victim is empowered to prefer an appeal under certain circumstances. The proviso says: -

“372. the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation and such appeal shall lie to the Court to which an Appeal ordinarily lies against the order of conviction of such Court.”



24. A plain reading of the provision states that the victim has statutory right to challenge an order of acquittal by filing an appeal, an order of conviction for a lesser offence and an order imposing inadequate compensation.

25. It is contended by the learned Advocate appearing on behalf of the Petitioner that victim's statutory right to file an appeal, challenging inadequacy of compensation only lies when an order of compensation is passed by the Trial Court which forms a part of fine under Section 357 (1) of the Cr.P.C.

26. In the instant case, no order was passed under Section 357(3) of the Cr.P.C. by the Trial Court. Therefore, the first Appellate Court had no jurisdiction to alter the sentence of fine, passed by the Trial Court and substitute the same by an order under Section 357(3) of the Cr.P.C.

27. The learned Advocate appearing on behalf of the Petitioner also submits that the order passed by the Trial Court in Cr. Appeal No. 135 of 2021, substituting the order of sentence of fine by an order under Section 357(3) of the Cr.P.C. is illegal and incorrect and in the teeth of Section 386(b) of the Cr.P.C.



28. 386 (b) of the Cr.P.C. deals with the powers of the Appellate Court in an appeal from conviction. It says:

“386 (b)..... in an appeal from a conviction

1. reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

2. alter the finding, maintaining the sentence, or

3. with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same; -

(c) in an appeal for enhancement of sentence -

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as



to enhance or reduce the same.”

29. Thus, it is submitted by the learned Advocate appearing on behalf of the Petitioner that an order of compensation under Section 357 (3) is not in the nature of sentence, whereas an order of compensation, of which fine forms a part of sentence under Sub-section (1) of Section 357, is in the nature of a sentence.

30. Thus, when the informant preferred an appeal for enhancement of sentence, it was the statutory duty of the learned Appellate Court to confine itself within the scope of Section 357 (1) of the Cr.P.C. The learned Appellate Court cannot alter a sentence of fine by deleting it altogether and pass an order of compensation.

31. Practically, this Court did not get any assistance from Mr. Rama Kant Sharma, learned Sr. Advocate appearing on behalf of the informant/opposite party by way of counter argument against the provisions of law, as contended by Mr. Kumar Kaushik, learned Advocate appearing on behalf of the Petitioner.

32. Therefore, it is the duty of the Court to consider as to whether the victim can prefer an appeal



against an order of sentence passed by the Trial Court, where the Trial Court did not feel it necessary to pass any order of compensation under Section 357(3) of the Code of Criminal Procedure.

33. Section 2 (wa) defines victim -

"victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir".

34. In ***Mallikarjun Kodagali (Dead) represented through L.Rs. v The State of Karnataka***, reported in ***(2019) 2 SCC 752***, it is observed by the Hon'ble Supreme Court in paragraphs 8 and 9 as hereunder: -

"8. The rights of victims, and indeed victimology, is an evolving jurisprudence and it is more than appropriate to move forward in a positive direction, rather than stand still or worse, take a step backward. A voice has been given to victims of crime by Parliament and the judiciary and that voice needs to be heard, and if not already heard, it needs to be raised to a higher decibel so that it is



clearly heard.

9. With this background, we need to consider the questions that arise before us consequent to the introduction of the proviso to Section 372 CrPC with effect from 31-12-2009. The questions are somewhat limited : Whether a “victim” as defined in CrPC has a right of appeal in view of the proviso to Section 372 CrPC against an order of acquittal in a case where the alleged offence took place prior to 31-12-2009 but the order of acquittal was passed by the trial court after 31-12-2009? Our answer to this question is in the affirmative. The next question is : Whether the “victim” must apply for leave to appeal against the order of acquittal? Our answer to this question is in the negative.”

35. While dealing with the questions framed by the Hon’ble Supreme Court in paragraph 9, the Hon’ble Supreme Court referred to a decision of the Full Bench of Gujarat High Court in ***Bhavuben Dineshbhai Makwana v. State of Gujarat & others***, reported in ***2012 SCC OnLine Guj 5764***, with approval and quoted paragraph 23 of Bhavuben Dineshbhai Makwana (supra), which reads as



hereunder:

“23. In our opinion, the correct law, as emerging from the scheme of the Code, would be that the right of a victim to prefer an appeal (on limited grounds enumerated in proviso to Section 372 of the Code) is a separate and independent statutory right and is not dependent either upon or is subservient to right of appeal of the State. In other words, both the victim and the State/prosecution can file appeals independently without being dependent on the exercise of the right by the other. Moreover, from the act or omission for which the accused has been charged, there may be more than one victim and the loss suffered by the victims may vary from one victim to the other victims. Therefore, each of such victims will have separate right of appeal and in such appeals, the grievance of each of the appellant may be different. For instance, in an act of arson when a joint property of different persons has been set on fire, the loss suffered by each of the co-sharers may be different. In such a case, each co-sharer has a separate right of appeal and such right of one does not depend even on the filing of such appeal by



another victim.”

36. In the aforesaid decision, the Full Bench of Gujarat High Court noted that if the victim restricts the appeal to the grievance to inadequacy of the compensation or punishment for a lesser offence, it does not become an appeal against acquittal but the appeal is really directed against “any other sentence or order not being an order of acquittal” within the meaning of Article 115(b) of the Limitation Act, 1963 and thus, no question of taking special leave arises.

37. The same issue came up for consideration before the Division Bench of the Calcutta High Court in the case of *Mahafuja Banu v. Md. Asadul Islam*, reported in **2012 SCC OnLine Cal 9390 39**. On due consideration of series of decisions, passed by different High Courts on the issue, it was held that the judgment of acquittal had not attained finality, in that the victim had a right to file a revision petition and the State had the right to file an appeal. All that the proviso to Section 372 CrPC had done was to replace the right of a revision with the right to appeal.

38. The Division Bench of Patna High Court in the



case of ***Parmeshwar Mandal v. State of Bihar***, reported in
2013 SCC OnLine Pat 602, held: -

“23. Proviso to Section 372 of the Code is in two parts. First clause of the said proviso begins with “provided that” and ends with “inadequate compensation” and creates a right in the victim to prefer appeal against any order passed by a court either (i) acquitting the accused, or (ii) convicting for a lesser offence, or (iii) imposing inadequate compensation. Thereafter, by inserting conjunction “and”, another clause has been added in the same sentence by which forum for preferring such appeal has been identified, which relates to procedural part of law. Thus, the said proviso contains both substantive part, creating right in the victim to prefer an appeal, and procedural part, by identifying the forum for filing such an appeal.

39. Finally, in paragraph 85, it is held by the Hon’ble Supreme Court in Mallikarjun Kodagali (supra) that a victim can file appeal against:

- (i) any order passed by a court acquitting the accused;*
- (ii) any order passed by a court*



where the accused is convicted of a lesser offence but the victim feels that he should have been convicted for a higher offence. Obviously the appeal lies against the acquittal of the accused for a higher offence;

(iii) an appeal lies where the victim is not satisfied by the quantum of compensation awarded.

40. Thus, an appeal, challenging inadequacy of compensation, is neither an appeal against acquittal or conviction. This is an appeal against any other sentence or order, not being an order of acquittal within the meaning of Article 115(b) of the Limitation Act.

41. Now, the question that arises for consideration is whether “inadequacy of compensation” includes “denial of payment of compensation” passed by the Trial Court in its order and secondly whether in an appeal filed by the informant/victim, the Court of Appeal can pass an order of sentence including payment of fine amount and in default of payment of fine, sentence of imprisonment.

42. According to the learned Advocate for the Petitioner, the Appellate Court, at best, could modify the



order of sentence with a direction to pass an order of compensation of which fine forms a part of sentence under Section 357 (i) of the Cr.P.C.

43. “Inadequacy” according to Oxford English Dictionary means, “a state of being inadequate or not sufficient, deficiency or lack”. It can refer to lack of quantity, quality or competency.

44. Black’s Law Dictionary, 2nd Edition, defines the term “Inadequate” as “Insufficient; disproportionate; lacking in effectiveness or in conformity to a prescribed standard or measure”

45. Thus, in my considered view, not only insufficiency but also in case of lack of compensation, or non-payment of compensation, the victim of crime is entitled to prefer an appeal, demanding compensation under section 357(3) of the Cr.P.C.

46. In such case, it is within the jurisdiction of the Appellate Court to alter the order of conviction, maintaining substantive sentence of imprisonment for the offences proved and setting aside the order of payment of fine and passing an order under Section 357(3) of the Cr.P.C.



47. Section 357 of the Cr.P.C. reads as follows: -

“S. 357 (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.

48. In ***Sarwan Singh v. State of Punjab***, reported in ***(1978) 4 SCC 111***, the Hon'ble Supreme Court recorded the object and genesis of Section 357 in paragraph 10 of the report. Paragraph 10 reads as hereunder: -

“10. The law which enables the Court to direct compensation to be paid to the dependants is found in Section 357 of the Code of Criminal Procedure, 1973 (Act 2 of 1974). The corresponding provision in the 1898 Code was Section 545. Section 545 of Code of Criminal Procedure, 1898 (Act 5 of 1898) was amended by Act 18 of 1923 and by Act 26 of 1955. The amendment which is relevant for the purpose of our discussion is 545(1)(bb) which, for the first time inserted by Act 26 of 1955. By this amendment the court is enabled to direct the accused, who caused the death of another person, to pay compensation to the persons who are, under the Fatal Accidents Act, entitled to recover damages from the persons sentenced, for the loss resulting to them



from such death. In introducing the amendment, the Joint Select Committee stated “when death has been caused to a person, it is but proper that his heirs and dependants should be compensated, in suitable cases, for the loss resulting to them from such death, by the person who was responsible for it. The Committee proceeded to state that though Section 545 of the Code as amended in 1923 was intended to cover such cases, the intention was not however very clearly brought out and therefore in order to focus the attention of the courts on this aspect of the question, the Committee have amended Section 545 and it has been made clear that a fine may form a part of any sentence including a sentence of death and it has also been provided that the persons who are entitled under the Fatal Accidents Act, 1855, to recover damages from the person sentenced may be compensated out of the fine imposed. It also expressed its full agreement with the suggestion that at the time of awarding judgment in a case where death has resulted from homicide, the court should award compensation to the heirs of the deceased. The Committee felt that this



will result in settling the claim once for all by doing away with the need for a further claim in a civil court, and avoid needless worry and expense to both sides. The Committee further agreed that in cases where the death is the result of negligence of the offender, appropriate compensation should be awarded to the heirs. By the introduction of clause (bb) to Section 545(1), the intention of the legislature was made clear that, in suitable cases, the heirs and dependants should be compensated for the loss that resulted to them from the death, from a person who was responsible for it. The view was also expressed that the court should award compensation to the heir of the deceased so that their claims would be settled finally. This object is sought to be given effect to by Section 357 of the new Code (Act 2 of 1974). Section 357 (3) provides that 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. The object of the section therefore, is to provide compensation payable to the persons who are entitled to recover damage from the person sentenced even though fine does not form part of the sentence. Though Section 545 enabled the court only to pay compensation out of the fine that would be imposed under the law, by Section 357(3) when a Court imposes a sentence, of which fine does not form a part, the Court may direct the accused to pay compensation. In awarding compensation it is necessary for the court to decide whether the case is a fit one in which compensation has to be awarded. If it is found that compensation should be paid, then the capacity of the accused to pay a compensation has to be determined. In directing compensation, the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensation for, imposing a default sentence for non-payment of fine would not achieve the object. If the accused is in a position to pay the compensation to the injured or his dependents to which they are entitled to,



there could be no reason for the court not directing such compensation. When a person, who caused injury due to negligence or is made vicariously liable is bound to pay compensation it is only appropriate to direct payment by the accused who is guilty of causing an injury with the necessary mens rea to pay compensation for the person who has suffered injury.”

49. In **Balraj v. State of U.P.**, reported in (1994) 4 SCC 29, the Hon’ble Supreme Court held that Section 357(3) of the Cr.P.C. provides for ordering of payment by way of compensation to the victim by the accused. It is an important provision and it must also be noted that the power to award compensation is not ancillary to other sentence but it is an addition thereto.

50. Thus, there is a qualitative different between Sub-section (1) and Sub-section (3) of Section 357. Sub-section (1) of Section 357 provides power to the Court to award compensation to victims of the offence out of the sentence of fine imposed on accused, however, Sub-section (3) of Section 357 is in addition to the power of granting



compensation by a Court on conclusion of trial to the victim in addition to what has been provided in Section 357(1) of the Cr.P.C.

51. In ***K. A. Abbas v. Sabu Joseph & Anr.***, reported in ***(2010) 6 SCC 230***, the Hon'ble Supreme Court observed in paragraph 18 as follows: -

“18. 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 the 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 the victim who has suffered by the action of the accused. It may be noted that this power of the 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 as 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 the courts to exercise this power liberally so as to meet the ends of justice in a better way.”

52. For the foregoing discussions, this Court can come to an irresistible conclusion that in appeal, which is continuation of a criminal case, victim had substantive right to claim compensation for the loss or injury which he incurred for the wrongful act/offence committed by the accused and both the Trial Court as well as the 1st Court of Appeal has power within their statutory jurisdiction to pass an order of compensation.

53. Criminal Revision No. 04 of 2023, on the other hand, has been filed, challenging the order passed in Criminal Appeal No. 45 of 2022, preferred by the State of Bihar, wherein the learned Appellate Court has been pleased to enhance the sentence under Section 467 of the Indian Penal Code from 7 years to 10 years, while maintaining other sentences as originally awarded.

54. The specific grievance raised in Revision No.



04 of 2023 is that the learned Appellate Court has:

Exceeded its jurisdiction under Section 386(b)(i) of the CrPC: - Ignored the bar imposed by Section 29 CrPC, which limits the sentencing power of a Magistrate to 7 years imprisonment;

Violated the second proviso to Section 386 CrPC, which categorically prohibits an Appellate Court from enhancing the sentence beyond the sentence imposable by the trial court from whose judgment the appeal arises; and

Failed to provide any reasoned basis for enhancement, and did not even issue a specific notice for enhancement of sentence, as mandated by law.

55. It is urged that the trial having been conducted by the learned Chief Judicial Magistrate, the maximum punishment that could have been imposed by him was 7 years. Consequently, the Appellate Court, hearing an appeal from such judgment, could not have enhanced the punishment to 10 years under Section 467 IPC, thereby contravening both statutory and constitutional safeguards under Articles 20 and 21 of the Constitution of India.

56. It is also noteworthy that in the impugned



appellate judgment, while dealing with enhancement of sentence and imposition of compensation, the learned Appellate Court has not considered the Petitioner's submission on mitigating circumstances, including:

Long custody already undergone;

Non-repetition of offence;

Age, health, and family circumstances;

The fact that co-accused were absconding; and
the Petitioner alone was tried and convicted.

57. It is in this backdrop that the present two revisions (Cr. Rev. Nos. 03 of 2023 and 04 of 2023) have been filed, supplementing Criminal Revision No. 02 of 2023, and challenging the additional penal consequences imposed by the learned Appellate Court—one being compensatory in nature, and the other being enhancement of imprisonment.

58. Learned counsel appearing for the Petitioner has assailed the legality of the conviction and sentencing orders, urging that both the learned Trial Court and Appellate Court have committed serious errors of law and procedure. The principal contentions advanced are of



twofold: first, that the conviction under Sections 467 and 468 IPC is unsupported by the evidentiary record, and second, that the Appellate Court exceeded its jurisdiction in enhancing the sentence beyond the statutory limit permissible under the Code of Criminal Procedure.

59. While deciding Cr. Revision No. 2 of 2023, filed by the accused/Petitioner, challenging the legality, validity and propriety of the sentence passed by the Court of Appeal, this Court, relying on the decision of the Hon'ble Supreme Court in the case of *State of Kerala, Managing Director v. Puttumana Illath Jathavedan*, reported in *(1999) 2 SCC 452*, records that in its revisional jurisdiction, the High Court can call for and examine the records of any proceedings for the purpose of satisfying itself as to correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a Second Appeal jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to



re-appreciate the evidence and come to its own conclusion on the same, when the evidence has already been appreciated by the Magistrate as well as the learned Sessions Judge in appeal, unless glaring feature is brought to the notice of the High Court, it would otherwise tantamount to gross miscarriage of justice.

60. In the instant case, Mr. Kumar Kaushik, learned Advocate appearing on behalf of the accused/Petitioner, in course of argument, did not raise any objection as to the correctness of appreciation of evidence on record by both the Trial Court and the Court of Appeal. In course of his argument, he lays emphasis upon the question as to whether the order of sentence passed by the Court of Appeal was justified or not under the facts and circumstances of the case.

61. It is contended that the conviction under Sections 467 and 468 of the Indian Penal Code cannot be sustained, as the prosecution has failed to identify any forged document attributable to the Petitioner. There is neither handwriting examination nor forensic evidence to establish that any document was falsely made or fabricated



by the Petitioner. In this regard, learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of ***Sheila Sebastian v. R. Jawaharaj***, reported in **(2018) 7 SCC 581**, where the Court elaborated on the essential requirement that the person charged with forgery must be the maker of the false document.

62. The Hon'ble Court in paragraphs 19 and 25 of the aforesaid judgement held as hereunder:

“19. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. As per Section 464, a person is said to make a false document if (i) he made or executed a document claiming to be someone else or authorized by someone else; or (ii) altered or tampered a document; or (iii) obtained a document by deception. The appellant had not created or executed any document or part of a document. There is no evidence that the appellant either made or executed the Will.”

25. Admittedly, in this case, the appellant is not the scribe or the attesting witness or the



beneficiary under the Will. There is no evidence led by the complainant to show that the appellant is the person who made the forged document or part of the document. A charge of forgery cannot be imposed on a person who is not the maker of the same. Under Section 464, a person is said to make a false document if he made or executed a document claiming to be someone else or authorized by someone else or altered or tampered a document or obtained a document by deception. In the present case, there is no evidence to show that the appellant had committed forgery.”

63. It is thus submitted by the learned Advocate appearing on behalf of the Petitioner that the learned courts below failed to identify any specific document found to be forged or to indicate how the Petitioner was connected to such forgery. The conviction, therefore, stands vitiated for want of foundational proof.

64. Learned counsel for the Petitioner further submits that the enhancement of sentence from 7 to 10 years under Section 467 IPC by the Appellate Court is contrary to law. The power of the Appellate Court, it is



submitted, is confined by the limitation imposed under Section 29(2) CrPC, which prescribes the sentencing jurisdiction of a Magistrate. Consequently, the appellate court, while deciding an appeal arising from such judgment, could not enhance the sentence beyond the statutory ceiling of 7 years.

65. In support of this proposition, reliance is placed upon a judgment of the Hon'ble Supreme Court in ***Jagat Bahadur Singh v. State of M.P.***, reported in ***AIR 1966 SC 945***, where the Court held as follows:

“The High Court was thus in error in sentencing the appellant to undergo imprisonment in respect of the offence under S. 392 for a period exceeding two years. In our view, the Sessions Judge, who tried the case, was competent to award only a sentence of imprisonment for a term not exceeding two years, and the High Court could not, in the appeal, award a sentence higher than what the Sessions Judge could have awarded. Both on principle and authority, it is clear that the power of the appellate court to pass a sentence must be measured by the power of the court from



whose judgment an appeal has been brought before it.”

66. This limitation on enhancement is further reinforced in ***K. Bhaskaran v. Sankaran Vaidhyan Balan***, reported in ***(1999) 7 SCC 510***, where the Hon’ble Court, interpreting the second proviso to Section 386 Cr.P.C, observed that:

“Provided further that the appellate court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the court passing the order or sentence under appeal.”

67. It is argued that the learned Appellate Court completely overlooked this statutory restriction and enhanced the sentence without notice, without reasoning, and without jurisdiction.

68. Learned counsel for the Petitioner also contends that the compensation order of Rs. 61,47,800/- under Section 357(3) CrPC is legally unsustainable. The Appellate Court, it is submitted, had already affirmed the sentence of fine imposed by the Trial Court. In such a circumstance, the power under Section 357(3), which



applies only where no fine is imposed, could not have been invoked.

69. Reliance is placed upon the decision of the Hon'ble Supreme Court in ***Sivasuriyan v. Thangavelu***, reported in **(2004) 13 SCC 795**, wherein it was held:

“On a plain reading of the aforesaid provision [Section 357(3)], it is crystal clear that the power can be exercised only when the court imposes sentence by which fine does not form a part. In the case in hand, a court having sentenced to imprisonment, as also fine, the power under sub-section (3) of Section 357 could not have been exercised.”

70. Similar view was taken in ***State of Punjab v. Gurmej Singh***, reported in **(2002) 6 SCC 663**, where it was held:

“A reading of sub-section (3) of Section 357 would show that the question of award of compensation would arise where the court imposes a sentence of which fine does not form a part.”

71. Learned counsel for the Petitioner further submits that even assuming the power to award



compensation under Section 357(3) CrPC was available, the Court was required to conduct an inquiry into the financial condition of the accused. No such inquiry was undertaken in the present case. In support of his contention, the Petitioner relies on ***Manish Jalan v. State of Karnataka***, reported in **(2008) 8 SCC 225**, wherein the Hon'ble Court held:

“If the accused is not in a position to pay the compensation to the injured or his dependents to which they are held to be entitled to, there could be no reason for the court to direct such compensation. The order passed by the learned Magistrate, therefore, is totally unwarranted and uncalled for.”

72. A similar concern was raised in ***Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.***, reported in **(2007) 6 SCC 528**, wherein the Hon'ble Supreme Court observed:

“Before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged. [...] An enquiry in this behalf even in a summary way, may be necessary.”



73. It is also urged that the judgment of the Appellate Court suffers from lack of proper judicial reasoning. The Appellate Court, despite dealing with conviction and sentencing issues, failed to conduct a comprehensive review of evidence or address key legal contentions. In ***Dinesh Lal v. State of Uttarakhand***, reported in ***(2016) 1 SCC 590***, the Hon'ble Court held:

“The impugned judgment and order passed by the High Court is neither a well-reasoned order nor based on a careful reappraisal of the evidence on record. The High Court has merely reproduced the findings of the trial court and has observed that the reasons given by the trial court do not suffer from any illegality or infirmity.”

74. The principle of reasoned adjudication was also reiterated in ***Majjal v. State of Haryana***, reported in ***(2013) 6 SCC 798***, where the Court said:

“Reasons cannot be cryptic. They must be cogent and must deal with the issues raised. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter.”



75. Learned counsel appearing on behalf of Respondent has opposed the criminal revisions, submitting that there is no illegality in either the conviction or in the award of compensation under Section 357(3) CrPC. It is contended that the Petitioner has deliberately attempted to avoid accountability for criminal acts that led to financial devastation of the informant, and has now raised technical objections, which do not withstand legal scrutiny.

76. It is submitted by the learned counsel appearing on behalf of Respondent that “victim” within the meaning of Section 2(wa) CrPC, being the direct sufferer of financial loss to the tune of Rs 3,88,85,000/-, out of which Rs. 61,47,800/- was withdrawn by the Petitioner for his personal use, including for purchase of car and housing loan repayment.

77. The Respondent No. 2 had filed Criminal Appeal No. 135 of 2021, aggrieved by the Trial Court’s failure to award compensation, and the same was allowed by the Appellate Court. It is argued that such appeal was fully maintainable under the third clause of Section 372 CrPC, which allows a victim to prefer an appeal on the



ground of inadequate compensation.

78. In support of the contention, the Respondent No. 2 has relied upon the legislative intent behind the Code of Criminal Procedure (Amendment) Act, 2008, wherein it was noted:

“At present, the victims are the worst sufferers in a crime and they don't have much role in the court proceedings. They need to be given certain rights and compensation so that there is no distortion of criminal justice system.”

79. It is contended by the Counsel for Respondent No. 2 that the learned Trial Court neither awarded any compensation nor gave any reason for declining the same. In such circumstances, the informant was left with no other recourse but to invoke the appellate jurisdiction for compensation, which is not only valid but encouraged in the post-2009 legal regime.

80. The Learned Counsel for Respondent No. 2 has argued that the award of compensation of Rs. 61,47,800/- by the learned Appellate Court was both just and legal, keeping in view the gravity of loss, suffered, and



the unrefuted evidence regarding financial transactions.

81. It is urged that even if the penal provisions (Sections 420, 467, 468 IPC) contain the word “fine” as part of punishment, the award of compensation does not fall foul of Section 357(3), particularly since no actual fine was imposed or recovered at trial.

82. In support, reliance is placed upon ***Ankush Shivaji Gaikwad v. State of Maharashtra***, reported in ***(2013) 6 SCC 770***, specifically para 66, which reads:

“To sum up: while the award or refusal of compensation in a particular case may be within the court’s discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a



conviction of the accused. Capacity of the accused to pay, which constitutes an important aspect of any order under Section 357 CrPC, would involve a certain enquiry, albeit summary, unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.”

83. In response to the Petitioner’s plea that the company (AVR Green Homes Pvt. Ltd.) was not made an accused, the Respondent has clarified that supplementary charge-sheet was filed against the company, and cognizance was taken, thereby satisfying all legal preconditions.

84. As regards the plea of non-confrontation under Section 313 CrPC, it is submitted that no prejudice has been demonstrated by the Petitioner and that such omissions, if any, are curable irregularities, not affecting the outcome.

85. The Respondent has pointed out that:

(i) The cheques were signed by the Petitioner



himself;

(ii) The loan amount of Rs. 3.70 crores was transferred into the company's account; and

(iii) The Petitioner used Rs. 61,47,800/- for personal gain, facts proved through bank records and evidence of PW-5, an officer of Punjab National Bank.

86. It is submitted that Section 357(3) CrPC is not inapplicable merely because "fine" is mentioned in the penal provision. In fact, Section 406 IPC allows sentence of fine or imprisonment or both, and the Appellate Court had full jurisdiction to direct compensation even in absence of a fine component.

87. The Learned Counsel for the Respondent No. 2 has urged that compensation is not part of sentence, but rather a restorative measure, and even Section 53 IPC does not recognize compensation as a punishment. Thus, the power exercised by the Appellate Court falls squarely within the permissible bounds.

88. After having examined the contentions advanced by learned counsel for the Petitioner and Respondents, this Court finds that the core dispute revolves



around the legality and sustainability of (i) the conviction under Sections 467 and 468 IPC, (ii) the enhancement of sentence by the appellate court under Section 467 IPC, and (iii) the award of compensation under Section 357(3) CrPC in the absence of fine imposed by the trial court.

89. On the question of forgery and fabrication, the Petitioner has primarily relied on *Sheila Sebastian* (supra), to assert that there is no evidence to prove that the Petitioner either made, executed, altered, or tampered any document, nor is there forensic or handwriting evidence to that effect. This Court notes that while the prosecution has introduced several documents and account statements, there is no specific document identified or established as “forged” by the Petitioner within the meaning of Section 463 IPC.

90. While Respondent No. 2 has not contested the absence of forensic verification but has submitted that the use of false undertakings and diversion of funds, coupled with the Petitioner’s control over financial instruments, establishes fraudulent conduct. However, this argument, though substantial on the aspect of cheating or misappropriation, does not directly meet the technical



requirements of forgery under Section 467 IPC. Thus, a divergence arises on the sufficiency of evidence to sustain a conviction under forgery-related provisions.

91. Regarding the enhancement of sentence by the Appellate Court, the Petitioner has invoked *Jagat Bahadur Singh* (supra) and *K. Bhaskaran* (supra), to argue that a sentence beyond 7 years could not have been imposed by the Appellate Court when the trial was conducted by a Chief Judicial Magistrate, in view of the bar under Section 29(2) CrPC read with the second proviso to Section 386(b)(i) CrPC.

92. The Learned Counsel for Respondent No. 2, on this point, has not directly addressed the statutory bar under Section 29(2) CrPC or provided any counter-authority permitting such enhancement. The written submission focuses predominantly on compensation and do not engage with the issue of appellate sentencing power. This silence operates to the Petitioner's benefit and suggests a lack of rebuttal on this crucial question of jurisdiction.

93. The most contested issue arises in relation to the award of compensation under Section 357(3) CrPC. The



Petitioner argues that (i) compensation cannot be ordered when fine is already part of the sentence, citing *Sivasuriyan v. Thangavelu* (supra) and (ii) no inquiry into financial capacity was held, as required by *Manish Jalan and Dilip S. Dahanukar* (supra).

94. In response, Respondent No. 2 relies upon *Ankush Shivaji Gaikwad* (supra), specifically para 66, to assert that a summary inquiry suffices and that in clear cases the Court may dispense with it altogether if the facts on record are sufficient.

95. This Court notes that *Ankush Shivaji Gaikwad* (supra) does not mandate a full-fledged inquiry in every case, but rather emphasizes that the Court must apply its mind and record reasons. The Petitioner's case is that no such reasoning was recorded. The Respondent argues that the record itself reflected the Petitioner's means and the quantum of loss, thereby justifying the award.

96. Further legal contention is that the interpretation of whether compensation can be ordered where a sentence includes fine. The Petitioner asserts that such power is excluded under Section 357(3), which applies



only where no fine is imposed. The Respondent counters by urging a purposive interpretation of Section 357 and arguing that compensation is not punishment and can stand independently.

97. Thus, the question arises whether, in the present facts where the Trial Court imposed imprisonment and no fine, and the Appellate Court awarded compensation under Section 357(3) CrPC could have been validly invoked. This Court notes the absence of fine in the Trial Court's order, and the Appellate Court's action must be tested within that framework.

98. Another point that has been raised from the Petitioner's side is the absence of opportunity to represent against compensation. The Respondent answered this by pointing to the Appellate Court's discretion under *Ankush Shivaji Gaikwad* (supra), but does not point to any actual opportunity having been given or any specific finding on financial capacity.

99. The primary issues which fall for consideration in these revision applications are of threefold:

(i) Whether the conviction of the Petitioner under



Sections 467 and 468 IPC is sustainable in the absence of specific proof of forgery or fabrication;

(ii) Whether the Appellate Court was justified in enhancing the sentence under Section 467 IPC beyond the statutory limit prescribed for the Trial Court under Section 29 CrPC;

(iii) Whether the award of compensation under Section 357(3) CrPC by the Appellate Court was valid in the absence of a fine component and in the absence of any financial enquiry.

100. The Petitioner has been convicted under Sections 406, 420, 467, 468, 120B, and 34 IPC. While the conviction under Sections 420 and 406 relates to cheating and criminal breach of trust, the most serious charges pertain to forgery of valuable security under Sections 467 and 468 IPC.

101. However, a perusal of the evidence on record reveals that no specific document has been demonstrated to be forged. There is no handwriting or signature comparison conducted by an expert. There is also no witness to the creation or alteration of any such false document. The



documents relied upon by the prosecution such as the undertakings, RTGS slips, and account statements may reflect misrepresentation or breach, but they are not *per se* forged instruments within the meaning of Sections 463 or 464 IPC.

102. In ***Sheila Sebastian*** (supra), the Hon'ble Supreme Court held that a charge of forgery cannot lie unless the accused is shown to be the maker or fabricator of a false document. In the absence of such a finding, a conviction under Sections 467 and 468 IPC is legally unsustainable.

103. Accordingly, this Court finds that the conviction of the Petitioner under Sections 467 and 468 IPC is not borne out by the evidence and is liable to be set aside.

104. The trial was conducted by the learned Chief Judicial Magistrate, whose sentencing powers are governed by Section 29(2) Cr.P.C. As per the second proviso to Section 386(b)(i) Cr.P.C., an Appellate Court cannot impose a punishment which the trial court itself could not have awarded.

105. In ***Jagat Bahadur Singh*** (supra) and ***K.***



Bhaskaran (supra), the Hon'ble Supreme Court has authoritatively held that the Appellate Court is bound by the sentencing limits of the Trial Court in such cases.

106. The enhancement of sentence from 7 to 10 years under Section 467 IPC by the learned Appellate Court is thus held to be without jurisdiction and in direct contravention of statutory limits. The said order of enhancement is accordingly set aside and the original sentence of 7 years, even if otherwise sustainable, is treated as non-existent for the purpose of law.

107. The Appellate Court, while hearing an appeal, filed by the victim under Section 372 Cr.P.C., has directed the Petitioner to pay compensation amounting to Rs. 61,47,800/- under Section 357(3) Cr.P.C. The Petitioner's primary objection is that such compensation could not have been awarded as the sentence already included fine, and that no financial enquiry or opportunity of hearing was granted.

108. The Hon'ble Supreme Court in ***Sivasuriyan v. Thangavelu***, (supra) and ***State of Punjab v. Gurmej Singh*** (supra), has held that compensation under Section



357(3) is permissible only when fine is not part of the sentence. In the present case, although the Trial Court mentioned fine, the actual sentence was of imprisonment only, without any operative fine.

109. Respondent No. 2 has relied upon *Ankush Shivaji Gaikwad* (supra), to argue that a Court can award compensation even without formal enquiry if the facts are evident from the record. While this proposition is legally sound, this Court finds no recorded reasoning in the appellate judgment about the Petitioner's capacity to pay. The amount awarded is substantial and corresponds almost exactly with the financial transaction, including interest—suggesting an element of restitution rather than penal relief.

110. In *Dilip S. Dahanukar* (supra) and *Manish Jalan* (supra), the Hon'ble Supreme Court held that before awarding compensation, especially of substantial quantum, Courts must hold a summary enquiry or at least offer the convict a meaningful opportunity to be heard.

111. This Court, therefore, holds that while the power to award compensation exists, its exercise in the present case was procedurally flawed due to absence of



hearing, no recorded satisfaction about capacity, and direct substitution of a civil liability under the likeness of a criminal compensation.

112. This Court also considers it appropriate to refer to *K. A. Abbas* (supra) though not cited by either party. In that decision, the Hon'ble Supreme Court reiterated the mandatory requirement of inquiry and recording reasons under Section 357(3) Cr.P.C.

113. In the present case, the amount awarded approximates a civil recovery and is not supported by material on record establishing means, hearing, or judicial satisfaction. The award of compensation thus cannot be sustained.

114. In view of the discussion hereinabove, the criminal revision applications are disposed of in the following terms:

115. Criminal Revision No. 02 of 2023 is partly allowed. The conviction under Sections 467 and 468 IPC is set aside. Conviction under Sections 420, 406, and 120B IPC is affirmed, but the sentence is reduced to period already undergone.



116. Criminal Revision No. 03 of 2023 is disposed of. The direction of the Appellate Court to pay compensation of Rs. 61,47,800/- under Section 357(3) Cr.P.C. is affirmed.

117. Criminal Revision No. 04 of 2023 is allowed. The enhancement of sentence under Section 467 of the Indian Penal Code from 7 years to 10 years is held to be without jurisdiction and is set aside. The original sentence of 7 years as awarded by the Trial Court is restored, but is reduced to the period already undergone in the light of this Court’s findings.

118. Consequently, all the three revision petitions are disposed of on contest. The Petitioners shall be set at liberty forthwith unless wanted in any other case. There is no order as to costs.

(Bibek Chaudhuri, J)

skm/-

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