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Court : Supreme Court of India

Decided On : Jan-05-2004

Reported in : AIR2004SC1280; 2004(1)ALD(Cri)447; 2004CriLJ880; 2004(1)CTC474; JT2004(1)SC81; 2004(1)KLT1038(SC); 2004(1)SCALE42; (2004)2SCC447

Judge : Doraiswamy Raju and; Arijit Pasayat, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 357, 357(1), 357(3), 357(4) and 357(5); Indian Penal Code (IPC), 1860 - Sections 147, 148, 149, 302 323, 448 and 452; Fatal Accidents Act, 1855; Constitution of India - Article 366

Appeal No. : Criminal Appeal No. 667 of 2003

Appellant : Mangilal

Respondent : State of Madhya Pradesh

Advocate for Def. : Siddhartha Dave and ; Vibha Datta Makhija, Advs.

Advocate for Pet/Ap. : T.N. Singh, Sr. Adv.,; Lakhan Singh Chauhan and; Anil Shriva

Disposition : Appeal allowed

Prior history : From the Judgment and Order dated 19.7.2002 of the Madhya Pradesh High Court in Crl. A. No. 38 of 1987

Judgement :

Arijit Pasayat, J.

1. An interesting question relating to the scope and ambit of Section 357 of the Code of Criminal Procedure, 1973 (for short 'the Code') is raised in this appeal which by order dated 15.10.2003 was limited to the question of grant of compensation as done by the High Court. In view of the aforesaid, and the question of law involved, it is not necessary to go into the factual aspects in detail.

2. The appellant (hereinafter referred to as 'the accused') faced trial along with seven others for alleged commission of offences punishable under Section 452, 148, 323 read with Section 149, 302 read with Section 149 of the Indian Penal Code, 1860 (for short 'the IPC') for allegedly causing death of one Rajinder Kumar (hereinafter referred to as 'the deceased'). All the accused persons including the appellant were found guilty for offences relatable to Section 448. They were also found guilty of offence relatable to Section 323 read with Section 149 IPC for having caused injuries to Amar Singh, the informant (PW-8). They were acquitted of the charges relatable to Section 148 IPC and were convicted in relation to Section 147 IPC. Appellant was acquitted of charges relatable to Section 323 read with Section 149 but was convicted under Section 302 IPC. The rest of the accused persons were not found guilty in relation to Section 302 read with Section 149 IPC. All the accused persons except accused Babu Lal were acquitted of the charges under Section 323 read with Section 149 IPC. Accused-appellant was sentenced to undergo life imprisonment for the offence punishable under Section 302 IPC and for the rest of offence he was sentenced to RI for six months each. Other accused persons were sentenced to undergo RI for six months each for two offences for which they were found guilty. Accused Babu Lal in addition was sentenced to undergo for all the three offences for six months RI. Four appeals were filed by the accused persons including the appellant before the High Court. By the impugned judgment, a Division Bench of Madhya Pradesh High Court maintained conviction of the appellant. It was noticed that the appellant before the High Court (except the present accused-appellant) have been in custody for about two months. It was noted that the trial Court had not awarded any compensation to

the heirs of the deceased and to the injured (PW-8). As the High Court did not feel it appropriate to send the rest of the accused persons to jail, direction was given that each of them shall pay compensation @ Rs. 30,000/- in terms of Sections 357(3) and (4) of the Code. The accused-appellant was also directed to pay similar compensation. Fixing a proportion by apportionment it was directed that out of the compensation, 2/3rd was to be paid to the heirs of the deceased while rest 1/3rd was to be paid to the injured (PW-8). Sentence of all the appellants in respect of Sections 147 and 148, and in case of accused-Babulal additionally for Section 323 was reduced to the period of imprisonment already undergone. Only accused-appellant Mangilal has preferred this appeal which as noted at the outset was restricted to the question of great of compensation.

3. Dr. T.N. Singh, learned senior counsel appearing for the appellant submitted that the High Court has not kept in view the object underlying the grant of compensation under Section 357 of the Code. This is a case where no fine was imposed by the trial Court, but the High Court directed payment of compensation. While fixing the quantum the accused persons were not heard thereby violating principles of natural justice. An additional liability was fastened on the accused-appellant, and therefore, the principles of natural justice mandated grant of an opportunity.

4. Per contra, learned counsel for the State submitted that the compensation is in addition to the fine and when for allocating fine no hearing is necessary, except while hearing on the question of sentence, there is no requirement for hearing the accused before awarding compensation. In any event, Section 357 nowhere postulates grant of an opportunity to be heard.

5. For appreciating rival submissions, it is appropriate to quote Section 357 of the Code along with the amendments in the State of Madhya Pradesh, which reads as follows:

'Section 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 to 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 (13 of 1855), entitled to recover damages from the person sentenced for the lost 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 is 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.'

6. The Madhya Pradesh State Amendment reads as follows:

'(a) In Sub-section (1), for-

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of may, when passing judgment, order the whole applied; substitute-

(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, and where a person against whom an offences is committed belongs to Scheduled Castes or Scheduled Tribes as defined in Clauses (24) and (25) of Article 366 of the Constitution of India, 1950 (in short the 'Constitution') except when both the accused person and the person against whom an offence is committed belong either to such castes or tribes, the Court shall, when passing judgment, order the whole or any part of the fine recovered to be applied; and

(b) substitute Sub-section (3) as under:-

3) When a Court imposes a sentence, of which fine does not form a part, the Court may, and where a person against whom an offence is committed belongs to Scheduled Castes or Scheduled Tribes as defined in Clause (24) and (25) of Article 366 of the Constitution, the Court shall, 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.

Provided that the Court may not order the accused person to pay by way of compensation any amount, if both the accused person and the person against whom an offence is committed belong either to the Scheduled Caste or the Scheduled Tribe. (M.P. Act 20 of 1978 w.e.f. 5.10.1978)'

7. Sub-section (1) of Section 357 deals with a situation when a Court imposes a fine or a sentence (including sentence of death) of which fine also forms a part. It confers a discretion on the Court to order as to how the whole or any part of fine recovered is to be applied. For bringing in application of Sub-section (1) of Section 357 it is a statutory requirement that fine is imposed and thereupon make further

orders as to the disbursement of the said fine in the manner envisaged therein. If no fine is imposed, Sub-section (1) of Section 357 has no application. In the case at hand no fine was imposed by the trial Court or the High Court. Sub-section (3) on the other hand deals with the situation where fine does not form part of the sentence imposed by a Court. In such a case, the Court when passing a judgment can order the accused persons to pay by way of compensation such amount as may be specified in the order to the person who has suffered a loss or injury by reason of the act of which the accused person has been so convicted and sentenced. The basic difference between Sub-section (1) and (3) is that in the former case, the imposition of fine is the basic and essential requirement, while in the latter even in the absence thereof empowers the Court to direct payment of compensation. Such power is available to be exercised by an Appellate Court or by the High Court or Court of Sessions when exercising revisional powers. Sub-section (5) deals with a situation when the Court fixes the compensation in any subsequent civil suit relating to the same matter. While awarding compensation the Court is required to take into account any sum paid or recovered as compensation under Section 357 of the Code.

8. The power of the Court to award compensation to victims under Section 357 is not ancillary to other sentences but is in addition thereto. In Hari Singh v. Sukhbir Singh and Ors. : 1989 CriLJ116 it was observed that the power under Section 357 is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a recommendatory measure to rehabilitate to an extent the beleaguered victims of the crime, a modern constructive approach to crimes, a step forward in our criminal justice system. In Sarwan Singh and Ors. etc. v. The State of Punjab : 1978 CriLJ1598 it was held that in awarding compensation, the Court has to decide whether the case is fit one in which compensation has to be awarded. If it is found that the compensation should be ordered to be paid, then while arriving at the quantum to be paid, Courts are obliged to keep into account the capacity of the accused to pay the compensation besides taking into consideration also the nature of the crime in each case, the justness of the claim for compensation and the need for it in the context of the victim or members of the family of the victim and other relevant circumstances, if any, in so fixing or apportioning the amount of compensation. As noted above, the

mode of application of the fine is indicated in Sub-section (1) of Section 357. Sub-section (3) contains an independent and distinct power to award compensation.

9. That brings us to the most crucial question, that is, whether the Court was required to hear accused before fixing the quantum of compensation. It is urged by the learned counsel for the State that unlike a sentence of fine before imposition of which a Court is required to hear the accused while considering the question of quantum of sentence, it is but natural that the trial Court after hearing on the question of sentence does not impose a fine, but in terms of Sub-section (3) of Section 357 proceed to award compensation, at that juncture or even during the course of hearing as to the quantum of sentence by sufficient indication made by the Court concerned, the accused gets opportunity to present his version as to the relevant criteria or norms to be applied in the context of the case before the Court on the quantum of compensation. The position cannot be said to be, in any way different while the Appellate or Revisional Court also does it in terms of Sub-section (4), as long as it requires to be done in the light of the criteria indicated as above, unless it is by any agreement or consent of the parties such compensation has been fixed.

10. Even if a statute is silent and there are no positive words in the Act or Rules made thereunder there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected, by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, powers inheres in every Tribunal/Court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on principles of natural justice irrespective of the extent of its application by express provision in that regard in given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to

imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See Swadesi Cotton Mills etc. etc. v. Union of India etc. etc., AIR 1961 SC 818). Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are: notice of the case to be met, and opportunity to explain.

11. In the aforesaid premises, the irresistible conclusion is that opportunity has to be granted before directing payment of compensation under Section 357(4) of the Code.

12. The use of the expression 'may' throws light on the legislative intent in the context it is used. It has been used in the permissible sense and does not make it obligatory. In the aforesaid background, the inevitable conclusion is that if the Appellate Court intends to award compensation an opportunity of hearing has to be granted so that the relevant aspects like the need to award compensation, capacity of the accused to pay and several other relevant factors can be taken note of.

13. Accordingly, we set aside that part of the High Court judgment which relates to direction for payment of compensation by the accused-appellant and remit the matter back to the High Court, which shall grant an opportunity to the accused-appellant, and the adjudication shall be limited to that question particularly relating to the liability of the appellant only since others are said to have already paid the respective amount. It is made clear that we have not expressed any opinion on the merits of the issue to be decided under Section 357(4) of the Code. The appeal is allowed to the extent indicated.

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