

Jully Reynold Vs. Manual

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Court : Kerala

Decided On : Jul-04-2003

Reported in : 2003(2)ALT(Cri)459; I(2004)BC339; [2004]122CompCas758(Ker); 2003(3)KLT439; [2004]53SCL115(Ker)

Judge : K.A. Abdul Gafoor and; J.M. James, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 357(3); Negotiable Instrument Act - Sections 138

Appeal No. : Crl. R.P. No. 1141 of 2001

Appellant : Jully Reynold

Respondent : Manual

Advocate for Def. : Party in person and; T.K. Kunhabdulla, Public Prosecutor

Advocate for Pet/Ap. : T.O. Xavier, Adv.

Disposition : Revision petition allowed

Judgement :

K.A. Abdul Gafoor, J.

1. This revision petition has come up before us based on a reference order dated 18.6.2003 by a learned Single Judge of this Court.

2. The revision petitioner was the accused in C.C. No. 510/99 on the file of the Judicial First Class Magistrate-II, Kochi. That case arose on a private complaint by the respondent under Section 138 of the Negotiable Instruments Act, 1881. The complainant was represented by a private counsel, like the accused. The State did not have any role at all in the prosecution of that case. The case ended in conviction. The revision petitioner/accused was sentenced to undergo simple imprisonment for two months, and to pay compensation of Rs. 30,000/- to the complainant under Section 357(3) of the Code of Criminal Procedure, 1973. A further direction was issued by the learned Magistrate under the same provision 'to pay compensation of Rs. 2000/- to the Government, as the Government had also already incurred expenses in this complaint'. This was challenged in appeal before the 4th Additional Sessions Judge, Ernakulam, in CrI.A. No. 213 of 2001. The appeal was dismissed confirming the order of the Magistrate. It is in the above circumstances, this Criminal Revision Petition has been filed.

3. The main contention urged in this revision is that the learned Magistrate did not have any jurisdiction to direct compensation to be paid to Government under Section 357(3) of the Code of Criminal Procedure. Compensation under the said provision can be directed to be paid only 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 State or the Government had not, by reason of the act of the revision petitioner relating to the cheque which formed the subject matter of the criminal case, suffered any loss or injury. So, the learned Magistrate ought not have directed payment of compensation to Government. The learned Additional Sessions Judge also did not appreciate this aspect properly, while confirming the order of the Magistrate, it is submitted.

4. When the revision petition came up for before the learned Single Judge, the matter was referred to a Division Bench. The learned Judge doubted the decision of this Court in *Varghese v. State of Kerala*, 2002 (1) KLT 488, wherein it has been held that in a case under Section 138 of the Negotiable Instruments Act, there arises no question of payment of compensation under Section 357(3) to the State. That decision is doubted raising a question by the learned Single Judge as follows, Can the expression the person who has suffered any loss or injury by reason of

the act for which the accused person has been so sentenced (as employed in Section 357(3) of Cr.P.C.) take in only the injured person/the victim of the crime? In the reference order, it is also observed as follows:

'10..... Undoubtedly it is one of the primary and primordial duty of the State to prevent crimes and prosecute the offenders. A major chunk of the revenue of the State is spent in such prosecution of the offenders in order to achieve and ensure harmony in a crime free society. It is of course the duty of the State; but the State is forced to suffer expenses in such prosecution because the offender commits the crime. Merely because it is duty of the State to prosecute the offender, it does not mean that the State does not suffer loss/expenses in the prosecution of the offender for the crime committed by him. I am unable to accept the reasoning that merely because it is the duty of the State to prosecute the offender, the State does not suffer any loss in such prosecution which is necessitated by the crime committed by the offender.'

5. The learned Judge was also of the view that 'if under Section 357(1), the State can be granted compensation for expenses incurred in prosecuting the offender, I am at a loss to understand why such a direction cannot be issued in favour of the State under Section 357(3) of the Cr.P.C. I am in these circumstances of the opinion that the expression 'the person who has suffered any loss or injury' must necessarily include not only the micro person - the individual victim but also the macro person - the State'.

6. As already mentioned above, the case on hand is one arisen under Section 138 of the Negotiable Instruments Act. As already noticed, it was a private complaint wherein the complainant had engaged a private counsel. The accused was also represented by a private counsel. The State did have no role at all in prosecuting the case. Therefore, the State did not incur any expenditure in prosecuting the offender. Necessarily, the question posed by the learned Judge in the order does not arise at all in the case on hand, where the State did not incur any loss at all for prosecuting that case. The expenditure incurred by the State for administration of justice does not come either within Sub-section (1) or within Sub-section (3) of Section 357 of the Code, to be compensated.

7. Even otherwise also, the case does not come under Section 357(3) to order compensation to Government or the State. The Government or the State has not 'suffered any loss or injury by reason of his act for which the accused person has been so sentenced'. The act which became an offence under Section 138 of the Negotiable Instrument Act was the dishonour of a cheque issued by the revision petitioner to the respondent. If at all one had suffered any loss or injury on account of such act of the revision petitioner, it is the respondent and none else. The Government has not suffered any loss on account of dishonour of the cheque. The Supreme Court has in the decision reported in Hari Kishan & State of Haryana v. Sukhbir Singh and Ors., AIR 1988 SC 2127, made it clear that the compensation envisaged in Section 357(3) is to the victims who has suffered by the act of the accused, to reassure the former that he/she has not been forgotten in the criminal judicial system. It is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. It is indicated as a constructive approach to the crime. The Supreme Court has set forth a guideline that compensation shall be determined taking into account the nature of the crime, the justness of the claim by the victim and the ability of the accused to pay and that the liability of several accused in a case shall vary depending upon the act of each accused.

8. In such circumstances, there arises no question of ordering compensation in terms of Section 357(3) of the Code, to the Government or State in a case under Section 138 of the Negotiable Instruments Act.

When the State had not incurred any loss by reason of the act of the accused, there arises no question of paying any compensation to the Government or State under Section 357(3) of the Code of Criminal Procedure, 1973. Accordingly, that part of the order of the learned Magistrate directing payment of Rs. 2000/- to Government, as confirmed by the Additional Sessions Judge, is set aside. That being the only issue agitated in this case, nothing further remains to be decided. The impugned judgment is confirmed subject to the aforesaid modification.

Criminal Revision Petition is thus allowed to the above extent.