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Sibi and anr. Vs. Vilasini and anr.

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Court : Kerala

Decided On : Jun-25-1998

Reported in : 1998(2)ALT(Cri)312; 1999CriLJ878

Judge : S. Marimuthu, J.

Acts : Probation of Offenders Act - Sections 4; Revenue Recovery Act; Indian Penal Code (IPC) - Sections 34, 109, 312 and 417; Code of Criminal Procedure (CrPC) , 1974 - Sections 357(3), 421 and 431

Appeal No. : Cri. R.P. No. 1 of 1998

Appellant : Sibi and anr.

Respondent : Vilasini and anr.

Advocate for Def. : S.U. Nasar, Public Prosecutor

Advocate for Pet/Ap. : T.A. Shaji, Adv.

Judgement :
ORDER

S. Marimuthu, J.

1. This Crl. Revision Petition is directed challenging the confirmed judgment of the Sessions Judge, Thalassery delivered in Crl. A. No. 112 of 1996. The first revision

petitioner was found guilty under Section 417 read with 34, I.P.C. and was sentenced to undergo rigorous imprisonment for two months and also found guilty under Section 312 read with 109, I.P.C. and thereby sentenced to undergo rigorous imprisonment for four months. In addition to the above sentences, he was directed to pay a sum of Rs. 50,000/- as compensation to the victim lady, Vilasini, first respondent herein, under the provisions of Section 357(3), Cr.P.C. and in case of default in payment of the compensation, he shall undergo rigorous imprisonment for a period of one year. The second accused-second petitioner who is the sister of the first petitioner-first accused was released under Section 4 of the Probation of Offenders Act. In the appeal, the Sessions Judge confirmed the conviction and sentence and also affirmed the payment of compensation of Rs. 50,000/- in to.

2. While taking this revision on file, this Court suspended the sentence of the Sessions Judge and also stayed his finding as to the payment of the compensation for one month. Thereafter, the stay was not extended.

3. Learned counsel Mr. Shaji, appearing for the revision petitioners submitted that already the first revision petitioner had undergone the substantial sentence of imprisonment awarded under Section 417 read with 34, I.P.C. and 312 read with 109, I.P.C. Even after the expiry of the terms of imprisonment he has not yet been released by the jail authorities on the ground that he has to still undergo imprisonment for a period of one year as per the default clause in the payment of compensation. Such a retention by the jail authority after the expiry of the substantial sentence of imprisonment is erroeous. For, the compensation was awarded under Section 357(3), Cr.P.C. where there is no rider for imprisonment in case of default in the payment of compensation. Section 357(3) Cr.P.C. reads as follows :

357(3). When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused per-son to pay, by way of compensation, such amount as may be specified in the order of the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

Hence the finding of the learned Magistrate to the effect that in default in the payment of compensation the first petitioner shall undergo imprisonment for a period of one year which was confirmed by the Sessions Judge in the criminal appeal, will have to be annulled. However, Section 431, Cr.P.C. stretches its hand for help at this situation. It reads as follows :

431. Money ordered to be paid recoverable as a fine.- Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine.

Section 421, Cr.P.C. is explicitly clear that in the case of default in the payment of fine Revenue Recovery Act can be resorted to for the recovery of the same. The provisions contemplated in Sections 431 and 421, Cr.P.C. are conspicuously clear that the amount of compensation awarded under Section 421 Cr.P.C. can be recovered under the Revenue Recovery Act. When that be the position of law, the finding of the learned Magistrate which was confirmed by the Sessions Judge in relation to the default clause in the payment of compensation of Rs. 50,000/- is erroneous and both the findings are liable to be set aside. Accordingly, those portions of the judgments relating to the default clause in the payment of compensation, of both the learned Magistrate and the Sessions Judge are set aside.

4. Coming to the substantial sentence of imprisonment imposed under Sections 417 and 312, I.P.C., the first petitioner has already under-gone the entire sentence of imprisonment. There-after, the jail authorities need not retain him further more in obedience to the findings of the Magistrate and the Sessions Judge with reference to the default clause in the payment of compensation since they are set aside in this order today (25-6-1998) by this Court. The first petitioner will have to be released forthwith by the jail authorities.

5. Coming to the payment of compensation, the learned counsel for the petitioners submitted that the first petitioner is not a man of sufficient means and with his financial capacity, he cannot dream of paying the compensation of Rupees 50,000/- to the victim lady and further the victim lady was also a party consenting

for the commission of the folly. But for this submission for bilateral responsibility, nothing in any form comes out for the rescue of the first petitioner. I further find that the consent of woman is irrelevant to attract Section 312, I.P.C. The first respondent, a young lady, is looking at the dark horizon on the sea like a boat without sailor. Shady hopes and misrepresentation have been penetrated into her mind by the first petitioner in order to meet his ends. Therefore for the commission of the folly taken in by the words employed in Section 312, Cr.P.C. the man alone is answerable. In that regard both the Courts below have rightly assessed the evidence and have come to the correct conclusion and hence those findings of the Courts below need no interference by this Court.

6. As regards the amount of compensation awarded, I do not think that it is exhorbitant. For, a lady of 23 years old because of the uncultured act of the first petitioner has lost her status in the society as per the tradition of this country and it is doubtful whether she will have a family life in the years to come. When that be the heart-burnt condition of the victim, the amount of Rupees 50,000/- as compensation never be excessive or exhorbitant. Therefore, the victim woman, defacto complainant, can rightly seek her remedy under the Revenue Recovery Act for realising the amount of Rs. 50,000/- from the first petitioner, awarded to her by way of compensation under Section 421 Cr.P.C.

7. On account of my' above discussion, the revision is allowed only in respect of the default clause in the payment of compensation of Rs. 50,000/-. In all other respects, namely, the substantial sentence of imprisonment and payment of compensation of Rs. 50,000/-, this revision petition will stand dismissed.

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