

SUPREME COURT OF INDIA

Dilip S. Dahanukar

Vs.

Kotak Mahindra Co. Ltd.

Crl.A.No.521of 2007

(S.B. Sinha and Dalveer Bhandari JJ.)

10.04.2007

JUDGMENT

S.B. SINHA, J.

Leave granted.

Interpretation of Section 357 of the Code of Criminal Procedure, 1973 ('the Code', for short) vis-à-vis the provisions of the Negotiable Instruments Act ('the Act', for short), as regards power to impose sentence of fine is involved in these appeals which arise out of a judgment and order dated 6.6.2006 passed by the High Court of Bombay in Criminal Writ Petition No.

1167 of 2006.

Accused No.1-M/s. Goodvalue Marketing Co. Ltd., a company registered and incorporated under the [Companies Act, 1956](#) and Accused No.2-Appellant herein were convicted for commission of an offence involving Section 138 of the Act by a judgment of conviction and sentence dated 23.2.2006 holding :

"The accused No.1 company M/s. Goodvalue Marketing Co. Ltd. stands convicted for the offence punishable under Section 138 r.w. 141 of Negotiable Instruments Act.

The accused No.1 company, is sentenced to pay a fine of Rs.25,000/- (Rupees Twenty Five Thousand only). In default of payment of fine, the accused No.2 Mr. Dilip Dahanukar, the Chairman of accused No.1 and representative at the trial, shall suffer S.I. for 1 month.

The accused No.2 Mr. Dilip S. Dahanukar, stands convicted for the offence punishable under Section 138 r.w. 141 of [Negotiable Instruments Act, 1881](#).

The accused No.2 is sentenced to suffer S.I. for 1 month.

The accused No.2 is also directed to pay compensation to the complainant, quantified (sic) at Rs.15,00,000/- (Rupees Fifteen lakhs only), under Section 357(3) of Cr.P.C. The accused No.2 is entitled to pay the amount of compensation in two equal monthly instalments of Rs.7,50,000/- each. The first instalment of Rs.7,50,000/- shall be paid on or before 23-03-2006 and the second instalment of Rs.7,50,000/- shall be paid on or before 24-04-2006 in default of payment of the amount of compensation the accused No.2 shall suffer further S.I.

for 2 month."

An appeal was preferred thereagainst. The Appellate Court by an order dated 27.4.2006 while admitting the appeal, directed them to deposit a sum of Rs. 5 lakhs each within four weeks from the said date. A writ petition was filed by the appellants questioning the legality of the said order which by reason of the impugned judgment has been dismissed.

Submissions of Mr. Subash Jha, learned Counsel appearing on behalf of the appellant are :

i) That having regard to the provisions of Section 357(2) of the Code, the impugned judgment is wholly unsustainable inasmuch as in terms thereof the amount of fine imposed would automatically be suspended.

ii) Right to prefer an appeal being a constitutional right in terms of Article 21 of the Constitution of India, no condition could have been imposed in respect therefor or for suspension of sentence.

Mr. Uday Umesh Lalit, learned Senior Counsel appearing on behalf of the respondents, on the other hand, would submit that a distinction must be made between imposition of fine and application thereof, as contemplated under Clauses (a) to (d) of Sub-Section (1) of Section 357 and an amount of compensation directed to be paid under Section (3) thereof.

We have noticed hereinbefore the sentence imposed upon the accused.

It was submitted that a conjoint reading of Section 357 read with Sections 421 and 424 of the Code would clearly go to show that it is permissible for a Court to direct recovery of fine forthwith and if it is to be held that recovery of fine is automatically stayed, Section 421 and 424 of the Code would become nugatory.

The Act is a special statute. Section 138(1) thereof provides for imposition of sentence upto two years or a fine which may extend to twice the amount of the cheque or with both.

Before embarking upon the rival contentions raised by the parties, we may notice the relevant provisions of the Code :

"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- * * * * (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;

* * * * (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.

* * * * (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."

"421. Warrant for levy of fine. (1) When an offender has been sentenced to pay a fine the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may- (a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357."

"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:"

"439. Special powers of High Court or Court of Session regarding bail. (1) A High Court or Court of Session may direct- (a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

It is, therefore, apparent that if a Court imposes a sentence of fine or a sentence or where it forms a part thereof, the Court is entitled to direct that whole or any part of the fine recovered, to be applied to in respect of the factors enumerated in clauses (a), (b), (c) or (d). Section 421 of the Code deals with the mode and manner in which the fine levied is to be recovered.

Section 424 deals with the steps required to be taken by the Court where the amount of fine has not been paid forthwith. Section 357 deals with two types of cases, namely, (i) where only a sentence has been imposed; and (ii) where fine also forms part of the sentence. When a fine is imposed simplicitor Section 421 read with Section 424 would be applicable but where fine forms part of the sentence, it would not have any application.

A statute must be read harmoniously. An amount of compensation directed to be paid may not form

part of a fine. It may be awarded separately. It may be recoverable as if it is a fine in terms of Section 431 of the Code but by reason thereof it would not become automatically recoverable forthwith. The legal position, however, must be considered keeping in view the purport and object of the Act.

An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the Code. Right of Appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a Fundamental Right. Right of Appeal, thus, can neither be interfered with or impaired, nor it can be subjected to any condition.

We may take notice of some of the decisions operating in the field in this behalf.

In *Garikapati Veeraya vs. N. Subbiah Choudhry & Ors.* [AIR 1957 SCR 540], this Court opined :

"(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

This Court, in *Babu Rajirao Shinde vs. The State of Maharashtra* [(1971) 3 SCC 337], observed that a convicted person must be held to be at least entitled to one appeal as a substantial right.

Yet again in *Siddanna Apparao Patil vs. The State of Maharashtra* [(1970) 1 SCC 547], this Court held :

"The right to prefer an appeal from sentence of Court of Sessions is conferred by Section 410 of the Criminal Procedure Code. The right to appeal is one both on a matter of fact and a matter of law. It is only in cases where there is a trial by jury that the right to appeal is under Section 418 confined only to a matter of law."

In *State of Gujarat vs. Salimbhai Abdulgaffar Shaikh and Others* [(2003) 8 SCC 50], it was held:

"10. Sub-section (4) of Section 34 of POTA provides for an appeal to the High Court against an order of the Special Court granting or refusing bail. Though the word "appeal" is used both in the Code of Criminal Procedure and the Code of Civil Procedure and in many other statutes but it has not been defined anywhere. Over a period of time, it has acquired a definite connotation and meaning which is as under:

"A proceeding undertaken to have a decision reconsidered by bringing it to a higher authority, especially the submission of a lower court's decision to a higher court for review and possible reversal.

An appeal, strictly so-called, is one in which the question is, whether the order of the court from which the appeal is brought was right on the material which the court had before it.

An appeal is removal of the cause from an inferior to one of superior jurisdiction for the purposes of obtaining a review or retrial.

An appeal, generally speaking, is a rehearing by a superior court on both law and fact."