SUPREME COURT OF INDIA

R.Mohan

Vs.

A.K.Vijaya Kumar

Crl.A.No.883 of 2012

(Aftab Alam and Ranjana Prakash Desai,JJ.)

03.07.2012

JUDGMENT

Ranjana Prakash Desai,J.

1. Leave granted.

2. These two appeals can be disposed of by a common judgment as they arise out of the same facts and challenge the same judgment and order dated 15/12/2011 of the Madras High Court. Special Leave Petition (Crl.) No.2299 of 2012 is filed by accused - R. Mohan ('the accused' for convenience) and Special Leave Petition (Crl.) No.3327 of 2012 is filed by complainant - A.K. Vijaya Kumar ('the complainant' for convenience).

3. The accused was tried by the Vth Metropolitan Magistrate Court, Egmore, Chennai for an offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the said Act") and, by order dated 16/4/2004 he was sentenced to undergo 3 months simple imprisonment and to pay compensation of Rs.5 lakhs to the complainant under Section 357(3) of the Code of Criminal Procedure Code (for short, "the Code"), in default, to undergo two months simple imprisonment. In appeal, the IIIrd Additional Fast Track District Sessions Judge, Chennai confirmed the conviction and sentence. In revision, the High Court confirmed the order of conviction and sentence of three months simple imprisonment and to pay compensation of Rs.5 lakhs, however, the High Court was of opinion that no separate sentence could be awarded in default of payment of compensation when substantive sentence of imprisonment is independently awarded. The High Court, therefore, set aside the sentence in default of payment of compensation. Being aggrieved by the said order of conviction and sentence, the accused has approached this court by way of Special Leave Petition (Crl.) No.2299 of 2012. The complainant has filed Special Leave Petition No.3327 of 2012 being aggrieved by the order of the High Court to the extent it sets aside the order of sentence in default of payment of compensation.

4. The brief facts are as under:

> "The case of the complainant is that on 10/9/2001, the accused and his wife jointly borrowed a sum of Rs.5 lakhs from him and executed a promissory note in his favour. The accused also issued a cheque dated 14/5/2002 in favour of the complainant towards the principal amount. When the cheque was presented by the complainant with his banker for payment, it was dishonoured with bank's remark "insufficient funds". The complainant, thereafter, issued a statutory notice under Section 133 of the said Act. The accused in his reply stated that he had borrowed only Rs.3,00,000/-; that he had paid the said amount and that the cheque was issued only as a security and that it was not returned though demanded. The complainant then filed a Complaint under Section 200 of the Code. During the trial, the complainant examined himself. The accused did not examine any witness in support of his case. He denied the complaint's case. He relied on an entry from a diary maintained by him showing that as of April, 2002, only a sum of Rs.90,101/- was due and payable by him to the complainant.

5. On these facts, the accused was sent up for trial before the Vth Metropolitan Magistrate, Egmore, Chennai, who convicted him as aforesaid. We have already noted how the matter travelled upto this Court.

6. We have heard Mr. R. Nedumaran, learned counsel appearing for the accused. He submitted that the courts below have fallen into a serious error in convicting the accused. He submitted that the importance of the diary entry (Ex.D1) showing that as of April 2002 only a sum of Rs.90,101/- was due and payable by the accused to the complainant was completely overlooked by all the Courts including the High Court. He pointed out that the complainant has accepted that in the said diary entry, he had, in his own handwriting, acknowledged that only Rs.90,101/- was payable by the accused to him. Counsel submitted that the accused had borrowed only Rs.3,00,000/- and had issued a blank cheque as security. He had repaid that amount. But the complainant misused the cheque. Counsel submitted that the promissory note was not executed by the accused. Counsel submitted that the order directing payment of Rs.5,00,000/- as compensation to the complainant is also illegal and unjust.

7. Mr. Jayanth Muth Raj, learned counsel for the complainant submitted that the High Court was in error in observing that no sentence could have been awarded to the accused in default of payment of compensation when substantive sentence of imprisonment was awarded. In support of his submissions counsel relied on Suganthi Suresh Kumar v. Jagdeeshan[1], and K.A. Abbas HSA v. Sahu Joseph and Another[2]. Counsel submitted that the impugned order of the High Court be set aside only to that extent.

8. So far as the merits of the case are concerned, we have no hesitation in recording that the High Court was perfectly justified in confirming the conviction and sentence. Ex-P1 is the promissory note in the sum of Rs.5 lakhs executed by the accused and his wife in favour of the complainant. The accused has not led any evidence to prove that the promissory note (Ex-P1) is a got up document. In his reply, he has nowhere taken such a stand. The cheque (Ex-P2) is also on record. According to the accused, he had borrowed only Rs.3 lakhs from the complainant and a blank cheque was offered as security to the complainant. It is suggested in the notice that the said cheque was misused by the complainant. This story has to be rejected in view of the promissory note (Ex-P1). The accused has relied on xerox copy of some pages from a diary maintained by him (Ex-D1). There is an entry in Ex-D1 that as of April, 2002, an amount of Rs.90,101/- was payable by the accused to the complainant. The complainant has honestly admitted that the said acknowledgement is in his handwriting. It is contended by the accused that this disproves the complainant's case that an amount of Rs.5 lakhs was due from him to the complainant and in discharge of that debt cheque (Ex-P2) was given to him. It is not possible to accept this submission. We have carefully examined Ex-D1. Several chit transactions are noted in Ex-D1. As stated by the complainant in his evidence, he has been carrying on several businesses since 1990. The accused had borrowed various amounts from him on different occasions and he had repaid those amounts except the amount involved in the transaction in question. The complainant has stated that he finances people and collects interest at 18% per annum. The reference to 'chit' in Ex-D1 indicates that he was running a chit fund scheme. The entries in Ex-D1 appear to be entries in connection with the said chit fund scheme. The transaction reflected in Ex-D1 cannot be confused with the loan of Rs.5 lakhs given by the complainant to the accused evidenced by promissory note (Ex-P1) and cheque (Ex-P2). The complainant's evidence is wholly satisfactory. By admitting that entry in Ex-D1 is in his handwriting, he comes out as a truthful witness. If he had dishonest motive he would have never admitted that the said entry was in his handwriting.

9. Moreover, if the case of the accused is that as of April, 2002, only an amount of Rs.90,101/- was due from him to the complainant, in his reply dated 24/5/2002, he should have said so. This statement is conspicuously absent in the said reply. It is pertinent to note that in order to satisfy itself, the High Court, while hearing the revision, directed the complainant to produce his Income-tax Returns of the relevant period. The High Court wanted to see whether the instant loan transaction is reflected in the complainant's Income-tax Returns. The complainant produced the Income-tax Returns. The High Court found that in the Assessment Year 2002¬2003 and also for the subsequent assessment years, there is an entry of a sum of Rs.5 lakhs as due from the accused to the complainant. The complainant could not have manufactured the Income-tax Returns. Thus, the promissory note (Ex-P1), the cheque (Ex-P2), reply dated 24/5/2002 sent by the accused to the complainant

(Ex- P8) and the Income-tax Returns to which a reference is made by the High Court lead us to concur with the High Court that the conviction and sentence awarded to the accused is perfectly justified and no interference is called for with the same.

10. That takes us to the legal question whether the court can award a sentence in default of payment of compensation. Under Section 357 of the Code the Court can pass order to pay compensation. Sub-Section (1) of Section 357 of the Code empowers the court to award compensation to the victim of offence out of the sentence of fine imposed on the accused. Section 357(3) is relevant. It reads thus:

> "357. Order to pay compensation. -
>
> (1) xxx xxx xxx
>
> (2) xxx xxx xxx
>
> (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. Thus, if a fine is not a part of the order of sentence, the court may order the accused to pay compensation to the person who has suffered any loss or injury because of the act of the accused for which he is sentenced."

11. In Hari Singh v. Sukhbir Singh Ors.[3], the accused were convicted and sentenced under Section 325 read with Section 149, Section 323 read with Section 149 and Section 148 of the IPC. They were released on probation of good conduct. Each of them was ordered to pay compensation of Rs.2,500/- to the injured. In default of payment of compensation, they were directed to serve their sentence. This court inter alia considered whether the compensation awarded to the injured could be legally sustained. This court observed that the power of the court under Section 357(3) to award compensation is not ancillary to other sentences, but it is in addition thereto and is intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. This court further observed that it is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. Describing it as a constructive approach to crime, this court recommended to all courts to exercise this power liberally so as to meet the ends of justice in a better way. It was clarified that the order to pay compensation may be enforced by awarding sentence in default. The relevant observations of this court may be advantageously quoted.

> "11. The payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circumstances of each case. The quantum

of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default."

12. While dealing with a case under Section 138 of the said Act in Suganthi Suresh Kumar, relying on Hari Singh, this court reiterated the same view and held that the court can impose a sentence of imprisonment on the accused in default of payment of compensation ordered under Section 357(3) of the Code.

13. Undoubtedly, there is no specific provision in the Code which enables the court to sentence a person who commits breach of the order of payment of compensation. Section 421 of the Code provides for the action which the court can take for the recovery of the fine where the accused has been sentenced to pay a fine. Proviso thereto states how to deal with a situation where default sentence is prescribed. Section 421 reads thus:

"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, authorising him to realise 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.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the court issues a warrant to the Collector under clause (b) of subsection (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

14. Section 431 of the Code provides for recovery of any money (other than a fine) payable by virtue of any order made under the Code and the recovery of which is not otherwise expressly provided for. Compensation awarded by a court can fall in this category. Section 431 says that such money shall be recoverable as if it were a fine. Section 431 of the Code reads thus:

"431. Money ordered to be paid recoverable as 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:

Provided that Section 421 shall, in its application to an order under Section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of Section 421, after the words and figures 'under Section 357', the words and figures 'or an order for payment of costs under Section 359' had been inserted."

Thus, one has to again fall back on section 421 of the Code for recovery of compensation directed to be paid by the court. For the purpose of mode of recovery, compensation is put on par with fine (See K.A. Abbas HSA.)

15. Section 64 of the IPC also needs to be quoted because it provides for sentence of imprisonment for non-payment of fine. It reads thus:

"64. Sentence of imprisonment for non-payment of fine.—In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence."

16. The above provisions were examined by this Court in Vijayan v. Sadanandan K. Anr.[4] After quoting them, this Court rejected the submission that where there is default in payment of compensation ordered by the court, recourse can only be had to Section 421 of the Code because there is no provision enabling the court to award a default sentence. This Court observed that if such a view is taken, the very object of sub-section (3) of Section 357 would be frustrated and the relief contemplated therein would be rendered somewhat illusory.

17. We respectfully concur with this view. In K. Bhaskaran v. Sankaran Vaidhyan Balan[5] while considering Section 357 (3) of the Code this Court expressed that if the Judicial Magistrate of the First Class were to order compensation to be paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of rupees five thousand because Judicial Magistrate First Class can as per Section 29 (2) of the Code pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding Rs. 5,000/-, or of both (the said amount is now increased to Rs. 10,000/-). This Court clarified that in such cases the Magistrate can alleviate the grievance of the complainant by taking resort to Section 357(3) of the Code.

18. The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3) compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order, directing compensation, is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non- observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. Order under Section 357 (3) must have potentiality to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid by the court on par with fine so far as mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation as it can be done in case of default in payment of fine under Section 64 of the IPC. It is obvious that in view of this, in Vijayan, this court stated that the above mentioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in Hari Singh are as important today as they were when they were made. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding sentence in default.

19. In view of the above, we find no illegality in the order passed by the learned Magistrate and confirmed by the Sessions Court in awarding sentence in default of payment of compensation. The High Court was in error in setting aside the sentence imposed in default of payment of compensation.

20. In the result, we dismiss the appeal arising out of Special Leave Petition (Crl.) No. 2299 of 2012 filed by the accused and allow the appeal arising out of Special Leave Petition (Crl.) No. 3327 of 2012 filed by the complainant. We set aside the impugned order of the High Court to the extent it quashes the sentence in default of payment of compensation. We restore the order passed by learned Magistrate dated 16/4/2004 awarding two months simple imprisonment in default of payment of compensation of Rs.5 lakhs under Section 357(3) of the Code. We grant two months' time to the accused to pay the said amount of compensation to the complainant from the date of receipt of this order.

Judgment Referred

[1] 2002 2 SCC 0420
[2] 2010 6 SCC 0230
[3] (1988) 4 SCC 0551
[4] (2009) 6 SCC 0652
[5] (1997) 7 SCC 0510