

(2003) 04 KAR CK 0029

In the Karnataka High Court

Case No : Criminal P. No. 672 of 2003 and C/W 673 of 2003

M.R. Patel

APPELLANT

Vs

R.K. Synthetics and Fibres Private Limited

RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357, 386, 386 (3), 389, 389 (1)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2003) 3 BC 569 : (2003) CriLJ 3218 : (2003) ILR (Kar) 2937 :
(2003) 4 KCCR 415 SN : (2003) 4 RCR(Criminal) 291

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : K.A. Ariga, for the Appellant; B.V. Shankaranarayana, for the Respondent

Final Decision : Dismissed

Judgement

Sreedhar Rao, J.—Both the petitions are considered together as they involve similar question of law and facts.

2. The petitioner is common in both the cases. He is convicted for committing the offence punishable u/s 138 of N.I. Act in C.C.No. 32920/2000 and 32720/2000 on the file of the 15th A.C.M.M., Bangalore. He has been directed to pay a fine of Rs. 3,28,000/- and Rs. 2,40,000/- respectively in both the cases. Out of the said fine amount, the Trial Court has granted a compensation of Rs. 3,24,000/- in both cases. The balance of amount is directed to be deposited towards the prosecution expenses. In the appeal, the Sessions Judge has conditionally stayed the sentence directing the petitioner to deposit 25% of the fine amount in each case. Aggrieved by the said direction, the present petitions are filed.

3. It is the contention of the petitioner that in view of the provision of sub-sections (1) and (2) of Section 389 and sub-sections (1) and (2) of Section 357 of Cr.P.C., it was impermissible for the Appellate Court to have imposed condition of deposit of a portion of the fine amount levied.

4. For convenient reference, the provisions of the said Sections are extracted hereunder:-

"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 and where the person against whom an offence is committed belongs to a Scheduled Caste or a Scheduled Tribes as defined in Clauses (24) and (25) of Article 366 of the Constitution and the accused person does not belong to a Scheduled Caste or a Scheduled Tribe the Court shall 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 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 of 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, 1855 (13 of 1855) entitled to recover damages from the person sentenced for the loss 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 bonafide 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 be presented, before the decision of the appeal."

"389. Suspension of sentence pending the appeal; release of appellant on bail -

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and also if he is in confinement, that he be released on bail, or on his own bond;

(2) The power conferred by this Section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court sub-ordinate thereto."

5. The learned Counsel for the petitioner contends that under the provisions of Section 389, there is no express provision empowering the Court to insist deposit

of fine amount. The learned Counsel further contends that in default of deposit of fine amount additional sentence of imprisonment is imposed. If the fine amount is not deposited as directed, automatically the additional sentence of imprisonment gets attracted. Thus under the provision of subsection (1) of Section 389, the entire sentence of imprisonment requires to be suspended and that the Appellate Court has no jurisdiction to insist deposit of the fine amount or portion of it in any manner. To buttress the said contention, the counsel relied upon the provisions of sub-section (2) of Section 357 to contend that where fine is imposed on a conviction and appeal is filed, no payment shall be made until the period allowed for presenting the appeal expires and if appeal is presented, no payment need be made until appeal is disposed of. In view of the said provisions, the Counsel contends that on presentation of the appeal, whatever liability to pay fine, gets automatically suspended. Thus contends that the impugned order of insisting deposit of 25% of fine amount is illegal.

6. Per contra, the counsel for the respondent relied on the ruling of the Patna High Court in JALLALUDDIN SHAH AND OTHERS vs. STATE OF BIHAR 1989 (095) Cri.L.J. 1104. The relevant observations in para 8 are extracted hereunder:-

"8. Apart from the aforesaid provision discussed above, it appears that u/s 386 Cr.P.C., Appellate Court has been given and vested with various powers to pass any appropriate order in case of an appeal from conviction while disposing of the same, u/s 386(e) Cr.P.C. a Court has been conferred with the power to make any amendment or any consequential or incidental order that may be just and proper. This provision is applicable in case of an order of conviction passed against any appellant accused. In a ruling reported in 1970 B.B.C.J.6, it has been held by a Division Bench of this Court that in a proceeding u/s 107 Cr.P.C. a person against whom the proceeding has been initiated be deemed to be an accused and as such the provision u/s 313 Cr.P.C. applies in such a case. If these prepositions are accepted then these petitioners can be deemed to be accused and all the provisions made for preferring an appeal from an order of conviction passed against the accused, as provided u/s 386 and 387 Cr.P.C. shall also be made applicable to the case of these petitioners. And if these two provisions of the Cr.P.C. are made applicable in the case of the petitioners then admittedly the Court has explicit power conferred under these two Sections to grant necessary reliefs in the shape of stay of the execution bond."

7. On carefully going through the submissions made at the Bar and the relevant citation cited, I am of the view that powers of the Appellate Court under sub-section (1) of Section 389 have to be interpreted and understood in a broader sense. There may not be an express provision for empowering the Appellate Court to pass any conditional order regarding depositing of fine amount. Nonetheless, the power of suspension u/s 389 is a discretionary power and has to be exercised judiciously. The provision of Section 389 and the powers of the Appellate Court u/s 386(3) have to be read conjointly and the residuary powers u/s (3) of Section 386 makes it amply clear that the Appellate Court can make

any amendment or consequential or incidental order that may be just and proper and the said order need not be a final order. Even an interim order is an appeal is also within the purview of sub-section (3) of Section 386 and I am in respectful agreement with the view of the Patna High Court in this regard. There is no statutory right conferred on a convicted accused to have the sentence imposed suspended pending hearing of the appeal. It is only a matter of discretion on the part of the appellate Court and while exercising the discretion, it is permissible for the Appellate Court to impose any equitable conditions as it thinks just and proper. Therefore the condition to insist deposit of payment of fine amount or part thereof cannot be assailed as illegal.

8. The contention of the counsel for the petitioner that the fine amount is not paid, ultimately it results in the additional sentence of imprisonment, is not a ground to hold that the Appellate Court has no jurisdiction to insist deposit of full or part of fine amount. Serving of additional sentence imposed for default of fine does not automatically result in exoneration of liability of pay fine. The provisions of Section 421(1) read 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 u/s 357."

The offender as a matter of right cannot escape the liability to pay fine on serving additional imprisonment imposed for default of fine. When an order is made u/s 357 for payment of compensation or expenses out of fine amount notwithstanding the fact that additional sentence of imprisonment is served, the offender is liable to pay the fine amount and fine levy warrant can be issued. Further, even in the absence of specific order for payment of compensation or expenses u/s 357, it is in the discretion of the Court to recover the fine imposed by issuance of fine levy warrant. However, the Court can do so for special reasons to be recorded in writing.

9. On the interpretation of sub-section (2) of Section 357, I find that with the key words " no such payment shall be made" have to be understood in the

context of the preceding provision in sub-section (1) of Section 357. The provision of Section 357 lay us out the manner in which the fine imposed is to be dealt with. It is permissible for the Court to award a portion of the fine amount as compensation to the victim. The purport of sub-section (2) declares that from the fine amount deposited, no payment of compensation shall be payable to the victim or to the person directed, until the expiry of appeal period or until the appeal is disposed of after its filing. The said provisions cannot be construed to mean that the liability to deposit the fine amount gets automatically suspended. The bar under subsection (2) is only against making payment of compensation amount to the victim and it does not mean that the Court has no jurisdiction to insist the deposit of the fine amount. In that view of the matter I find no merit in the petitions.

12. Accordingly the petitions are dismissed. The petitioner is granted a month's time to deposit 25% of fine amount as directed by the Appellate Court.