

(2002) 11 KAR CK 0049

In the Karnataka High Court

Case No : Civil Revision Petition No. 4671 of 2001

Smt. Gayathri

APPELLANT

Vs

Smt. Clement Mary

RESPONDENT

Date of Decision : 25-11-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357 (5)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2003) 2 ALD(Cri) 175 : (2003) 2 BC 252 : (2003) 2 KarLJ 120 :
(2003) 1 KCCR 404

Hon'ble Judges : S.B. Majage, J

Bench : Single Bench

Advocate : A. Keshava Bhat and K. Mr. Krishna, for the Appellant; J. Imayan, for the Respondent

Final Decision : Allowed

Judgement

S.B. Majage, J.—Based on bouncing of a cheque issued in her favour for a sum of Rs. 11,280/-, the petitioner had initiated proceedings under civil law and filed suit in S.C. No. 3589 of 1995 in the Court of Small Causes at Bangalore, for a sum of Rs. 16,610A against the original judgment-debt- or namely, George, husband of the present respondent. It was decreed on 28-9-1996. So also, in the proceedings initiated under criminal law, in a private complaint filed by her and registered as C.C. No. 16707 of 1993 on the file of the Court of VII Additional Chief Metropolitan Magistrate at Bangalore, for the offence punishable u/s 138 of the Negotiable Instruments Act, the judgment-debtor, was convicted on 8-11-1996 and sentenced to pay a fine of Rs. 22,000/- and in default, to undergo simple imprisonment for 3 months and out of said fine amount, a sum of Rs. 11,280/-, being the cheque amount was ordered to be paid to the complainant i.e., petitioner herein. Thereafter, to execute the decree passed in her favour in S.C. No. 3589 of 1995, she filed Ex. Case No. 272 of 1997 for the recovery of a sum of Rs. 18,682/-. In that execution, attachment of salary was taken and when amount attached was received, she was paid a sum of Rs.

9,992/- totally, i.e., paid a sum of Rs. 2,282/- on 3-4-1998, a sum of Rs. 6,252/- on 16-4-1999 and a further sum of Rs. 1,458/- on 23-9-1999. It was at that stage, in view of memo of calculations filed, after taking note of the fact that the petitioner was paid Rs. 11,280/- in the criminal case, the executing Court passed the impugned order, closing the said execution case with a direction to the petitioner to refund Rs. 3,596/-, said to have been received by her in excess, to the respondent. It is against the said order, the present petition is filed by the petitioner.

2. Heard both sides and perused the record. It is submitted for the petitioner that in the execution proceedings, there cannot be any adjustment of the amount paid to the petitioner in criminal proceedings and hence, question of refund does not arise. However, the learned Counsel for the respondent-legal representative of judgment-debtor submitted that in view of the specific order and payment of Rs. 11,280/- as cheque amount to the petitioner, that amount could be adjusted in the execution case as petitioner cannot have double benefit, one under criminal law and another under civil law, and the executing Court has rightly ordered for the refund of amount received in excess by petitioner.

3. So, the point for consideration is:

""Whether the amount received out of fine amount imposed in a criminal case can be adjusted or taken into account in the execution of a decree passed in a suit for money?"

4. The facts are not at all in dispute. So also, as submitted for the petitioner, relying on the decisions in Satishkumar Jain Vs. Krishnagopal Sarda, , that Civil and criminal proceedings are not only different, even they are independent from each other. No provision of law or authority under which, adjustment is made or possible has been brought to the notice of this Court. However, reference can be had to Section 357(5) of the Cr. P.C. As per Section 357(5) of the Cr. P.C., 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 that section. So, at the time of awarding compensation only and not at any other time, the amount paid/received as compensation under that section, can be taken into consideration. Admittedly, in the present case, no compensation has been awarded nor question of compensation was involved in the suit, which ended earlier to the criminal case.

5. Even otherwise, the words "shall take into account" appearing in Section 357(5) of the Cr. P.C. cannot be read as "shall be adjusted" as held in the decision in the case of William Nicholas Love v. William John Hume Ainsworth, Overseer to the Municipality of Howrah (1874)22 W.R. 336. Of course, if it had been brought to the notice of the Criminal Court by respondent that already a decree has been passed against him in the small cause suit, it was open to the learned Magistrate then to take that into account/consider while ordering/imposing punishment and considering fine amount and also whether or not any

amount be paid or how much amount be paid to the petitioner in the fine amount. After that stage has gone long back, was it open to the executing Court, which could not have gone behind decree, to adjust the amount (part of fine amount) received by the petitioner as per the order passed in criminal case, is the point.

6. Simply because a suit has been decreed in such a case, that ipso facto does not decide criminal proceedings and vice versa. It is so for the reason that in such matter in criminal proceedings, relief would be for punishing a person for the offence committed whereas, in civil proceedings, the relief would be for the amount of the bounced cheque and thus, for the same matter, the remedies/reliefs under civil law and criminal law are different and independent. Further, it is important to note that in a criminal case relating to bounced cheque, while imposing fine, Criminal Court may or may not award any part of fine amount to complainant.

7. In the present case, it may also be noted that the payment or deposit made by respondent in the criminal case was fine amount; though, out of that, a part of it was ordered to be paid to petitioner. So, out of Rs. 22,000/- imposed as fine, if Rs. 11,280/- had not been ordered to be paid to the petitioner in the criminal case, that amount would have gone to the State as fiat amount and not that, that amount would have remained with the respondent. Further, the said payment of Rs. 11,280/- was made in that Court as part of fine amount in pursuance of order of sentence passed in criminal proceedings for the offence committed by respondent and not towards the liability arising under civil law or sought to be enforced against him by petitioner in execution proceedings. In other words, payment or satisfaction of decree passed in S.C. No. 3589 of 1995 would not have come to the aid of respondent for avoiding the consequence of default in the payment of entire or any part of fine amount ordered in criminal case. Similarly, payment of fine amount in the criminal case, would not have discharged the respondent from his liability to pay the amount claimed in civil proceedings.

8. At this juncture, reference can be had to Section 250(5) of the Cr. P.C. which has a proviso in pari materia i.e., identical to one contained in Section 357(5) of the Cr. P.C. As per Section 250(5) of the Cr. P.C., a person, who has been directed to pay compensation u/s 250 of the Cr. P.C. shall by reason of such order (of compensation) is not exempted from any civil or criminal liability in respect of complaint made or information given by him. This also shows that payment of compensation has no effect on the liability, but requires to be taken into account if compensation is to be awarded again. Further, in the case of *N.K. Gupta v. Vijay Kumar Madan* 2001(3) L.C.C. 120 relied on for the petitioner also it is held that the amount, which may be imposed as fine, would not be adjustable against a decree that may be ultimately passed in the Civil Court. Even reference can be had to the case of *William Nicholas Love*, supra, wherein the words "shall taken into consideration" have been interpreted. So, viewed

from any angle, payment made by respondent in the criminal case towards fine amount, part of which was received by the petitioner, does not enure to the benefit of respondent in discharging his liability under decree.

9. In view of the above, it was not open to the Civil Court, that too, an executing Court (in the execution of a decree) to take into account the payment ordered by the Criminal Court and paid to the petitioner. In spite of that, the executing Court has taken into account receipt of Rs. 11,280/- by the petitioner-decree holder in the criminal case and calculated the amount due under the decree as if the payment made by respondent in the criminal case was not towards fine amount but it was towards satisfaction of decree or his liability under civil law. So, adjustment of that amount paid to the petitioner out of fine amount in a criminal case would not have been made in the amount sought to be recovered under execution. Accordingly, point raised is answered in negative.

10. Lastly, it may be noted that there is controversy between parties as to whether the petitioner received a sum of Rs. 9,992/- only or Rs. 10,915/- noted by the executing Court. There is no material or record to show that the petitioner has received any amount in excess of Rs. 9,992/- in the execution proceedings. However, as the matter is being remitted to the executing Court, it can also be very well-considered and determined with reference to the record.

In the result, the petition is allowed and the impugned order dated 4-10-2001 is set aside and the matter remitted to the executing Court with a direction to proceed with execution in accordance with law bearing in mind the observations made during the course of this order. However, in the circumstances, parties are directed to bear their respective cost.