

(1995) 03 MP CK 0055

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 191 of 1992

State of Madhya Pradesh

APPELLANT

Vs

Mangu @ Mangilal and Others

RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

Constitution of India, 1950 — Article 21, 39, 41, 43, 45

Criminal Procedure Code, 1973 (CrPC) — Section 357

Penal Code, 1860 (IPC) — Section 302, 307, 323, 34

Citation : (1995) 1 MPJR 255 : (1995) 40 MPLJ 567 : (1995) MPLJ 567

Hon'ble Judges : U.L. Bhat, C.J

Bench : Single Bench

Advocate : K.N. Gupta, for the Appellant;

Final Decision : Allowed

Judgement

U.L. Bhat, C.J.

State has filed .the revision against certain directions issued by the Sessions Judge, Guna in Sessions Trial Case No. 166 of 1991.

Learned Sessions Judge tried four accused on charges under Sections 302, 302 read with Sections 34, 307 and 307 read with Section 34 of the Indian Penal Code and convicted first accused u/s 302, Indian Penal Code and imposed sentence of imprisonment for life on him and convicted third accused u/s 323, Indian Penal Code and imposed sentence of simple imprisonment of three months on him. Other accused were acquitted of all charges. Third accused was acquitted of other charges. Learned Sessions Judge further directed -

(i) that first accused shall pay compensation of Rs. 25,000/- to the 18 year old widow of the victim Kalyan and since recovery may be delayed or may not be possible for the present, the State shall pay this amount to her and recover it from the properties of the first accused;

(ii) The State shall also ensure free education to the children of deceased Shri

Kalyan;

(iii) As long as first accused is undergoing sentence State shall pay Rs. 300/- per month to the 22 year old wife of first accused and their children.

The legality of these directions is challenged by the State.

Learned Sessions Judge placed reliance on decision in *British India General Insurance Company Limited v. Maya Banerjee and others*, 1986 ACJ 946. Learned Judge observed that human life has become very risky on account of increasing crime, acts of terrorism and motor vehicle accidents and noticed that u/s 140 of the Motor Vehicles Act, compensation of Rs. 25,000/- has to be paid to the dependants of the victims of accidents on the basis of "no fault liability" and the Act also provides for scheme of compensation to victims in hit and run cases, but there is no similar provision made in the Indian Penal Code or Code of Criminal Procedure. Every citizen is entitled to have his life and property protected by the State which has taken away right to retain fire arms for self defence except with the permission granted by the District Magistrate. Hence the responsibility of the State to safeguard life is onerous. Where life is taken on account of failure of the State to provide protection the State must assume responsibility in regard to the dependants of the victim. So also, according to the learned Judge, the State must assume some responsibility in regard to the helpless dependants of the accused who is sentenced to undergo imprisonment where they have no means of subsistence.

Learned Government Advocate contended that while the sentiments expressed by the learned Sessions Judge are certainly laudable, it is for the Legislature to enact appropriate law in this behalf and as long as there is no sanction of law, the Sessions Judge, while disposing of the Sessions case, has no jurisdiction to issue directions of the nature issued by him. Learned counsel for the respondents as well as several members of the Bar who were invited by me to address arguments in this behalf sought to justify the directions on the strength of certain decisions of the Supreme Court, Section 357 of the Code of Criminal Procedure and Article 21 of the Constitution of India.

The power of the Criminal Court to order payment of compensation was earlier traceable to Section 545 of the Criminal Procedure Code, 1898. The Act was amended by Act No. 18 of 1923 and by Act No. 26 of 1955 and the provision read as follows :

545. Power of Court to pay expenses or compensation out of fine. - (1) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise 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 -

(a) in defraying 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 substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(bb) when any person is convicted of any offence from 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 (XIII of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death.

(c) 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 bona fide 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.

The corresponding provision in the Criminal Procedure Code, 1973 is Section 357. It reads as follows :

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 -

(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 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 bona fide purchaser of 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 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.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(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.

The provision has been amended in Madhya Pradesh, the purpose of the amendment being to render the provision mandatory in the case of a person against whom an offence is committed who belongs to Scheduled Castes or Scheduled Tribes except when both the accused person and the victim belong to either such castes or tribes.

The purpose of the statutory provision is to ensure that the Court has an opportunity to compensate the victim of the offence or in case of death, persons who are under the Fatal Accidents Act, 1855 entitled to recover damages from the person sentenced, for the loss or injury caused by offence when compensation is recoverable by such person in a civil court. The statute provides for payment of whole or any part of the fine as compensation. Even where sentence of fine is not imposed, the statute enables the Court to order the accused to pay compensation to the person who has suffered loss or injury. The order can be passed by the trial court or the appellate Court or by the High Court.

The Supreme Court in *Sarwan Singh and Others Vs. State of Punjab*, after tracing the history of the legislative provision" and referring to the report of the Joint Select Committee observed :

"The object of the section therefore, is to provide compensation payable to the persons who are entitled to recover damages from the person sentenced even though fine does not form part of the sentence. Though Section 545 enabled the court only to pay compensation out of the fine that would be imposed under the law, by Section 357(3) when a court imposes a sentence, of which fine does not form a part, the Court may direct the accused to pay compensation. In awarding compensation it is necessary for the court to decide whether the case is a fit one in which compensation has to be awarded. If it is found that compensation should be paid, then the capacity of the accused to pay a compensation has to be determined. In directing compensation, the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensation for, imposing a default

sentence for non-payment of fine would not achieve the object. If the accused is in a position to pay the compensation to the injured or his dependants to which they are entitled to, there could be no reason for the court not directing such compensation. When a person, who caused injury due to negligence or is made vicariously liable is bound to pay compensation it. is only appropriate to direct payment by the accused who is guilty of causing an injury with the necessary mens rea to pay compensation for the person who has suffered injury."

In *Hari Singh v. Sukhhir Singh* (1984) 4 SCC 551, the Supreme Court observed referring to sub-section (3) of Section 357 of the Code as under:

"It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay compensation to victim who has suffered by the action of accused. It may be noted that this power of courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so to meet the ends of justice in a better way.

Regarding quantum and the division of liability, the Supreme Court observed :

"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."

A reading of the statutory provision throws a flood of light on the legislative intention. The legislative intention is only that the Court may (in this State, the court shall, in certain cases) order the accused to pay by way of compensation the specified amount to the person who has suffered any loss or injury by reason of act for which the accused person is so sentenced. This, as observed by the Supreme Court in *Sarwan Singh's* case, can be done only on considering the capacity of the accused to pay compensation. No useful purpose would be served by directing payment of compensation whether the accused is not in a position to pay it. The. statutory liability is only on the. accused person who has caused loss or injury. The statute does not declare the liability of the State in this behalf in any manner or to any extent, however desirable it may be to have such a statutory provision. Emerging theories of viclimology support grant of aid and

assistance to the victim or the dependants of a victim in a case of homicide or accidental death. It is desirable that an enlightened State which has proceeded half-way by enacting statutory provisions in the Code of Criminal Procedure and Motor Vehicles Act shall devise ways and means of ensuring expeditious payment of the compensation. It is desirable that legislative exercise be conducted to incorporate such a provision in the Code. But till such a statutory provision is enacted, the criminal Court exercising jurisdiction u/s 357 of the Code cannot mulct the State with the liability to pay compensation to the victim either temporarily or otherwise. The statute does not enable the Court to direct the State to pay compensation in the first instance and subsequently recover it from the accused.

In the absence of a statutory provision, the criminal court can only look to its inherent power, if any, to pass such an order. It is well-settled that criminal courts (other than the High Courts) have no general inherent power. The High Court of course may exercise such power within well-established parameters. One of the well recognised parameters is that inherent power cannot be exercised in relation to a matter in respect of which statutory- provision has been made. The field of payment of compensation is covered by Section 357 of the Code and therefore, in regard to any related matter, inherent power cannot be exercised. Learned Sessions Judge has committed a grievous error in requiring the State to make payment initially and subsequently to recover it from the first accused, in requiring the State to assume responsibilities for the education of the children.

The position in regard to the direction to the State to pay Rs. 300/- per month to the wife and children of the first accused as long as he is in prison certainly does not stand on a better footing. The matter is not covered by any statutory provision. I am cognizant of the theory of penology which calls for protecting the dependants of a criminal who is incarcerated.

Undoubtedly during the incarceration of the accused person to whom the dependants look upon for livelihood, care and protection, they are put to serious difficulties. This again may be, at best, a matter for legislative intervention. As the law stands at present, the criminal court cannot seek to impose on the State any liability to maintain dependants of the convicted person. The reasons urged by the learned Sessions Judge to support the impugned directions are unsustainable in the absence of any power or jurisdiction in the criminal court to pass such an order. It is one thing to say that the Legislature should intervene; it is quite a different thing for the criminal court itself to assume jurisdiction in this behalf. One is left to wonder whether the Society in its present State will be prepared to accept the principle that the State should look after the dependants of a person punished for any crime including a crime punishable u/s 302, Indian Penal Code.

Judicial enthusiasm exhibited within the statutory parameters and reasonable limits is a positive and welcome feature; but when judicial enthusiasm ignores

the statutory parameters and the limitations on the powers of the criminal courts, it reflects on maturity of the judicial thinking. It may be, as suggested by the learned Sessions Judge, that the Supreme Court in certain cases has ordered payment of compensation but for a criminal court to assume the jurisdiction which has been exercised by the Supreme Court, in the absence of declaration of law by the Supreme Court that the power inheres in a criminal court, is certainly erroneous. Learned Sessions Judge has placed reliance on Article 21 of the Constitution which provides against deprivation of life or liberty except according to procedure established by law. There is no contention that the liberty of the accused has been taken away without following the procedure established by law or that the established procedure violates the expanding horizons of the constitutional provision. There is nothing in the facts proved in the case to show any failure or negligence on the part of the State as leading to the commission of the crime. Even assuming it to be otherwise, in the absence of a statutory provision the Criminal Court, which is not a writ Court or a Civil Court, is not invested with jurisdiction to issue such directions in enforcement of Article 21 of the Constitution read in the light of Articles 39(a), 41, 43, 45 or 47 of the Constitution. Nor can such power or jurisdiction be read into any provisions of the Code.

In the result, both the impugned directions issued by the learned Sessions Judge against the State are set aside. Revision is allowed.