
(2008) 06 AP CK 0083

In the Andhra Pradesh High Court

Case No : Criminal R.C. M.P. No. 1075 of 2008 in Criminal R.C. No. 134 of 2008

Swathi Drug Agencies (Pvt.) Limited

APPELLANT

Vs

Ramesh Jaichand Shah

RESPONDENT

Date of Decision : 13-06-2008

Acts Referred:

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

Citation : (2008) 2 ALD(Cri) 690 : (2008) 3 ALT(Cri) 8

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : G. Narender Raj, for the Appellant; P. Krishna Prakash, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This M.P. has been filed by the complainant in C.C. No. 1350 of 2001 filed u/s 138 of the Negotiable Instruments Act. The trial Court convicted the accused for the offences u/s 138 of the Negotiable Instruments Act and sentenced to undergo Simple Imprisonment for one year and also payment of a fine of Rs. 1,000/-, in default to undergo Simple Imprisonment for ten days. The accused was also directed to pay compensation of Rs. 2,50,096/- u/s 357(3) of the Code of the Criminal Procedure and further mentioned that the complainant is entitled for compensation amount after the appeal time. The accused being aggrieved by the judgment of the trial Court preferred Criminal Appeal No. 97 of 2006 and the appellate Court after considering the evidence and the judgment of the trial Court dismissed the appeal by confirming the conviction and the sentence imposed by the trial Court.

2. The accused being aggrieved by the judgment of the lower appellate Court, preferred the present revision case. During the pendency of the revision case, the complainant filed Criminal M.P. No. 1075 of 2008 praying this Court to grant leave to the complainant to take appropriate steps available under law for

realization of the compensation amount of Rs. 2,50,096/- from the properties of the accused.

3. The revision petitioner opposed the application by contending that the order of compensation passed by the trial Court and confirmed by the appellate Court is illegal, as it is not in accordance with provision 357(3) of the Code of Criminal Procedure, therefore, the complainant shall not be granted any leave for realization of the amount till the disposal of the revision case.

4. In the light of the above contentions, the point for consideration is Whether the complainant can be permitted to realize the amount as directed by the trial Court that the complainant can realize the amount after the disposal of the appeal Section 357 of the Code of Criminal Procedure reads as follows:

Section 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 (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 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 is 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.

(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.

5. The learned Counsel for the revision petitioner contended that the power under Sub-Section (3) of Section 357 of the Code can be exercised in a case where fine does not form part of a sentence which is imposed and in the case on hand fine of Rs. 1,000/- has already been imposed, therefore the Court could not have exercised power u/s 357(3) for awarding compensation.

6. The learned Counsel for the revision petitioner in support of his contention relied on a judgment rendered by the Supreme Court in *Siva Suriyan v. Thangavelu* (2004) 13 SCC 795 wherein the Supreme Court dealt with the power of the Court u/s 357(3) of Cr.P.C. and held that the power u/s 357(3) cannot be exercised to enhance a fine already imposed as part of the sentence and when the accused is sentenced to imprisonment and fine. The direction of the High Court for payment of Rs. 1,00,000/- by the accused as compensation to the complainant cannot be imposed.

7. In the case covered by the above decision, the learned Counsel for the complainant submitted that by keeping in view the nature of the accusation in question and by taking into consideration the facts and circumstances of the case, the Court was justified in entering into the sufficiency of the sentence and directing award of compensation. The Supreme Court while referring to Section 357(3) of Cr.P.C. held that "On a plain reading of the aforesaid provision, it is crystal clear that the power can be exercised only when the court imposes sentence by which fine does not form a part" and accordingly compensation of Rs. 1,00,000/- imposed on the accused by the High Court is set aside.

8. In the present case, the accused was sentenced to undergo Simple Imprisonment for one year and also payment of fine of Rs. 1,000/-, in default to undergo simple imprisonment for ten days. In addition to that, the lower Court also granted compensation of Rs. 2,50,096/- u/s 357(3) of Cr.P.C. According to the decision of the Supreme Court referred above, it appears that the imposition of compensation in addition to sentence of imprisonment and fine is illegal, therefore, I am not inclined to grant leave to the complainant for realization of the compensation amount from the properties of the accused.

9. CrI. R.C. M.P. is accordingly dismissed.