

VIJAYAN

V.

SADANANDAN K. & ANR.

Special Leave Petition (Crl.) No. 3220 of 2008

MAY 5, 2009

(ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.)

CODE OF CRIMINAL PROCEDURE, 1973:

ss. 357(3) and 431 – Order to pay compensation – Power of court to pass default sentence – Held: Provisions of ss. 357(3) and 431 CrPC. r/w s. 64 IPC, empower the court, while making an order for payment of compensation, also to include a default sentence in case of non-payment of the same – Penal Code, 1860 – s. 64.

Constitution of India, 1950 – Article 141 – Law laid down by Supreme Court – Binding effect of – HELD: When decision of the Supreme Court was holding the field, High Court erred in relying on a decision of another High Court.

In the instant special leave petition, filed by the accused, the question for consideration before the Court was: whether a default sentence could be imposed when compensation was awarded under sub-s. (3) of s. 357 of the Code of Criminal Procedure, 1973.

Dismissing the petition, the Court

HELD: 1.1 The power to impose a default sentence in case of non-payment of compensation u/s 357(3) Cr.P.C. has been duly recognized by this Court. While awarding compensation u/s 357(3), the court is within its jurisdiction to add a default sentence of imprisonment. The provision for grant of compensation u/s 357(3), and the recovery thereof makes it necessary for imposition of a default sentence as has been held by this Court in *Hari Singh** and *Sugnathi Suresh Kumar*. The law has been

A correctly stated in the said two decisions. When the decision of this Court in *Hari Singh* was holding the field, the Single Judge of the High Court wrongly relied on the decision of the Kerala High Court in *Rajendran's case***.

[para 19 and 23] [472-F-G; 474-F-G]

B **Hari Singh v. Sukhbir Singh*(1998) 4 SCC 551; *Sugnathi Suresh Kumar v. Jaagdeeshan* (2002) 2 SCC 420; *Shantilal v. State of Madhya Pradesh* (2007) 11 SCC 243 and *Kuldip Kaur v. Surinder Singh* (1989) 1 SCC 405 – relied on.

C ***Rajendran V. Jose* (2002) 1 Crimes 653 - overruled.

Dilip S. Dahanukar V. Kotak Mahindra Co.Ltd. & Anr. (2007) 6 SCC 528 – held inapplicable.

D 1.2 Section 357 Cr.P.C. bears the heading “Order to pay compensation”. It includes in sub-s. (1) the power of the court to utilize a portion of the fine imposed for the purpose of compensating any person for any loss or injury caused by the offence. In addition, sub-s.(3) provides that when a sentence is imposed by the court, of which fine does not form a part, the court may, while

E passing judgment, order the accused to pay by way of compensation such amount as may be specified in the order to the person who suffers any loss or injury by reason of the act for which the accused has been so

F sentenced. It is true that the said provision does not include the power to impose a default sentence, but read with s. 431 Cr.P.C. the said difficulty can be overcome by the Magistrate imposing the sentence. Section 431 makes it clear that any money other than a fine payable on account of an order passed under the Code shall be

G recoverable as if it were a fine. Section 64 IPC lays down that while imposing a sentence of fine, the court would be competent to include a default sentence to ensure payment of the same. [para 20-21] [473-B-E; 474-A]

H 1.3 Thus, the provisions of ss. 357(3) and 431 Cr.P.C.,

when read with s.64 IPC, empower the court, while making an order for payment of compensation, also to include a default sentence in case of non-payment of the same. If recourse can only be had to s.421 Cr.P.C. for enforcing the same, the very object of sub-s.(3) of s.357 would be frustrated and the relief contemplated therein would be rendered somewhat illusory. [para 22] [474-D-F]

Case Law Reference

(2002) 1 Crimes 653	overruled	para 8	
(2007) 6 SCC 528	held inapplicable	para 6	C
(1998) 4 SCC 551	relied on	para 10	
(2002) 2 SCC 420	relied on	para 10	
(2007) 11 SCC 243	relied on	para 13	D
(1989) 1 SCC 405	relied on	para 13	

CIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No. 3220 of 2008

From the Judgement and Order dated 28.05.2007 of the Hon'ble High Court of Kerala at Ernakulam in Revision Petition No. 1836 of 2007.

Dr. Kailasahnatha Pillay, R.K. Pandey, Vijay Kumar, for the Appellant.

Raghenth Basant, Liz Mathew, P.V. Dinesh, for the Respondent.

The Judgement of the Court was delivered by

ALTAMAS KABIR, J.

1. In this Special Leave Petition we are called upon to consider whether a default sentence can be imposed when compensation is awarded under Sub-Section (3) of Section 357 of the Code of Criminal Procedure.

A 2. In the instant case, the petitioner stood convicted by the
Judicial Magistrate, First Class, Court-II, Pathanamthitta, of an
offence under Section 138 of the Negotiable Instruments Act,
1881, and sentenced to undergo simple imprisonment for one
year and to pay a sum of Rs.8,25,000/- as compensation to the
B complainant/Respondent No.1 herein under Section 357(3) of
the Code of Criminal Procedure, (Cr.P.C.in short) and in default
to undergo simple imprisonment for a further period of six
months. On appeal (Criminal Appeal no.41/2006), the
Additional District and Sessions Judge by her order dated 27th
C March, 2007 confirmed the judgment of conviction and sentence
passed by the learned Magistrate. In revision, being Criminal
Revision Petition No.1836 of 2007-D, the Kerala High Court by
its judgment dated 28th May, 2007, while upholding the
conviction, modified the sentence from imprisonment for a year
D to imprisonment till the rising of the Court and to pay a
compensation of Rs.8,25,000/- to the complainant under
Section 357(3) Cr.P.C. and in default to undergo Simple
Imprisonment for six months.

E 3. It is the said order of the Kerala High, which has been
impugned in the instant Special Leave Petition.

F 4. Dr. K.P. Kailasanatha Pillay, learned Advocate for the
petitioner, questioned the judgment of the High Court mainly on
the ground that the High Court had erred in law in confirming the
default clause made by the Trial Court while directing
compensation to be paid under Section 357(3) Cr.P.C.
According to Dr. Pillay, though Section 357(1) Cr.P.C., *inter alia*,
provides for the disbursement of fine imposed by way of
compensation, Sub-Section (3), merely empowers the Court
when it imposes a sentence of which fine does not form a part,
G to 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. Dr. Pillay submitted
that in the absence of any specific provision with regard to
H default in payment of compensation which was distinctly different

from imposition of fine by way of a penalty, the High court had wrongly confirmed the default sentence imposed by the learned Magistrate and upheld by the learned Sessions Judge.

5. Dr. Pillay submitted that according to the scheme of the Criminal Procedure Code, if any amount is to be recovered on account of default in payment of fine, it would have to be done in accordance with the provisions of Section 421 Cr.P.C. which provides for issue of warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender and in the alternative, by issuance of warrant to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property or both, of the defaulter. Dr. Pillay also urged that the provisions of Section 431, which is another mode for recovery of amounts payable as fine, does not, however, cover cases involving the recovery of compensation payable under Section 357(3) and therefore, the only mode available to the Court to recover any defaulted amount by way of compensation is to take recourse to the provisions of Section 421 Cr.P.C.

6. In support of his submissions, Dr. Pillay referred to the decision of this Court in *Dilip S. Dahanukar v Kotak Mahindra Co. Ltd. & Anr.* [(2007) 6 SCC 528], wherein, while considering the difference between the provisions of Section 357(1)(b) and Section 357(3) Cr.P.C., i.e., the difference between "fine" and "compensation" this Court observed that the distinction between Sub-Sections (1) and (3) of Section 357 is apparent as Sub-Section (1) provides for application of an amount of fine towards the purposes indicated while imposing a sentence of which fine forms a part, whereas Sub-Section (3) is applicable in a situation where the Court imposes a sentence of which fine does not form a part of the sentence. This Court went on to observe that when fine is not imposed, compensation can be directed to be paid for loss or injury caused to the complainant by reason of commission of offence and while Sub-Section (1) of Section 357 provides for application of the amount of fine, Sub-Section (3) of Section 357 seeks to achieve the same purpose.

A 7. In this regard, Dr. Pillay also referred to and relied upon
a recent decision of this Court in *Ettappadan Ahammedkutty*
@ *Kunhappu v E.P. Abdullakoya @ Kunhi Bappu & Anr.* in
Criminal Appeal No.1013 of 2007, where the same question
as raised in this Special Leave Petition fell for consideration
B and the said appeal was disposed of by the following order:

“Compensation can be directed to be paid both in terms
of sub-section (1) of Section 357 of the Code of Criminal
Procedure as also sub-section (3) thereof. However, while
exercising jurisdiction under sub-section (3) of Section
C 357, no direction can be issued that in default to pay the
amount of compensation, the accused shall suffer simple
imprisonment. Such an order could have been passed
only in terms of sub-section (1) of Section 357. If the
D compensation directed to be paid by the Court in exercise
of its jurisdiction under sub-section (3) of Section 357
Cr.P.C. is not deposited, the same can be realised as fine
in terms of Section 421 of the Code. We are, therefore, of
the opinion that that part of the impugned order whereby
and whereunder the appellant has been directed to
E undergo imprisonment for a period of one month, in the
event of default to pay compensation under sub-section
(3) of Section 357, is set aside. Rest of the order of the
High Court is upheld.”

F 8. Dr. Pillay also referred to and relied on a Single Bench
decision of the Kerala High Court in *Rajendran v Jose* [2002
(1) Crimes 653], where it was held that in order to recover
compensation awarded if it remained unpaid, the Trial
Magistrate could take steps under Section 421 or under Section
431 Cr.P.C. to recover the compensation, but the order directing
G the petitioner to undergo imprisonment in case of default in
payment of compensation was unsustainable.

H 9. Dr. Pillay urged that in view of the law as laid down by
this Court in the case of *Ettappadan Ahammedkutty* (supra),
the High Court was clearly wrong in upholding the default

sentence in case of non-payment of the compensation amount directed to be paid. A

10. On behalf of the Respondent No.1, it was submitted by Mr. Raghenth Basant, learned Advocate, that the judgment of the High Court impugned in this Petition did not warrant any interference since the question involved had been settled by this Court as early as in 1998 in the case of *Hari Singh v Sukhbir Singh* [(1998) 4 SCC 551], wherein it was, inter alia, held that since the imposition of compensation under Section 357(3) Cr.P.C. was on account of social concern, the Court could enforce the same by imposing sentence in default, particularly when no mode had been prescribed in the Code for recovery of sums awarded as compensation in the event the same remained unpaid. Mr. Basant also referred to the decision of this Court in *Sugnathi Suresh Kumar v Jagdeeshan* [(2002) 2 SCC 420], where the aforesaid views were reiterated and it was stated in paragraph 11 of the said judgment as follows :- B C D

“11. When this Court pronounced in *Hari Singh v. Sukhbir Singh* (supra) that a Court may enforce an order to pay compensation “by imposing a sentence in default” it is open to all Courts in India to follow the said course. The said legal position would continue to hold good until it is overruled by a larger Bench of this Court. Hence learned Single Judge of High Court of Kerala has committed an impropriety by expressing that the said legal direction of this Court should not be followed by the subordinate Courts in Kerala. We express our disapproval of the course adopted by the said Judge in *Rajendran v. Jose* 2001 (3) Kerala Law Times 431. It is unfortunate that when the Sessions Judge has correctly done a course in accordance with the discipline the Single Judge of the High Court has incorrectly reversed it.” E F G

11. It was also urged that the decision in *Dilip S. Dahanukar's* case (supra), referred to on behalf of the petitioner, had no application to the issues involved in the present case since in the said case the issue was whether Sub-Section (2) H

A of Section 357 could be applied in cases where compensation
is awarded under Sub-Section (3) thereof and it was urged that
the provisions of Sub-Section (2) would be applicable even in
cases where compensation is awarded under Section 357(3).
B It was submitted that the said decision was not an authority for
the proposition that default sentence could be imposed where
compensation is awarded under Section 357(3) Cr.P.C.

12. As far as two other decisions in *Ettappadan*
Ahamedkutty's case (supra) and *Balraj's* case (supra), relied
on by learned counsel for the Petitioner, the same did not also
C deal with the question as to whether a default sentence can be
imposed when compensation is awarded under Section 357(3)
Cr.P.C., which is the focal question as far as this case is
concerned.

13. Mr. Basant submitted that Section 431 Cr.P.C. provides
D that any money (other than a fine) payable by virtue of any order
made under the Code and the method of recovery of which is
not otherwise expressly provided for, shall be recoverable as if
it were a fine. Mr. Basant submitted that in that view of the matter,
E compensation awarded under Section 357(3) Cr.P.C. could also
be recovered under Section 431 Cr.P.C. read with Section 421
Cr.P.C., which provides the methods for recovery of fine imposed
by the Court from the accused. In this connection, reference was
also made to Sections 64 to 70 of the Indian Penal Code (IPC),
which empower the Court to impose a default sentence in case
F of non-payment of fine. It was submitted that default sentence is
not a substantive sentence under the IPC and it comes to an
end the moment fine is paid by the accused. It was submitted
that Section 53 IPC deals with various punishments that can be
imposed on the accused, but default sentence is not one of the
sentences mentioned in Section 53. Mr. Basant added that
G Section 30 Cr.P.C. also recognizes the power of the Court to
impose a default sentence on non-payment of fine. Referring to
the decision of this Court in *Shantilal v State of Madhya*
Pradesh [(2007) 11 SCC 243], Mr. Basant submitted that it had
been held in the said case that a default sentence is not a
H sentence as such, but a penalty which a person incurs on non-

payment of fine. Special reference was made to paragraph 31 of the judgment which reads as follows :- A

“31. The next submission of the learned counsel for the appellant, however, has substance. The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or ‘otherwise’. A terms of imprisonment ordered in default of payment of fine stands on a different footing.” B C

The same view was expressed earlier by this Court in *Kuldip Kaur v Surinder Singh* [(1989) 1 SCC 405], where it was held that a default sentence is a mode of enforcing recovery of amount imposed by way of compensation. D

14. It was submitted that if default sentence is taken to be a mode of recovery, then Sections 64 to 70 IPC would be applicable even in cases where compensation is awarded to the victim under Section 357(3) Cr.P.C. It was further submitted that while Section 431 states that an amount other than a fine is recoverable as if it were a fine, a fine could also be recoverable either under Section 421 Cr.P.C. by attachment of movable and immovable property or under Sections 64 to 70 IPC and Section 30 Cr.P.C. It was submitted that the said modes of enforcement were also available in respect of compensation directed to be paid under Section 357(3) Cr.P.C. in the light of the provisions of Section 431 thereof. E F

15. Mr. Basant concluded on the note that since the powers of the Magistrate were restricted to awarding a maximum fine of Rs.5,000/-, which was subsequently enhanced to Rs.10,000/- in 2005, the maximum fine that can be imposed by a Magistrate is only Rs.10,000/-. However, in view of the provisions for awarding compensation under Section 357(3) Cr.P.C., where the power to award compensation is unlimited, the Magistrate G H

A can take recourse to the provisions of Section 357(3) Cr.P.C. to meet a particular situation to ensure that justice is done to the parties.

B 16. It was submitted that in view of what has been stated hereinbefore, in appropriate cases the Courts are competent to impose a default sentence where compensation is awarded under Section 357(3) Cr.P.C.

C 17. We have carefully considered the submissions made on behalf of the respective parties. Since a decision on the question raised in this petition is still in a nebulous state, there appear to be two views as to whether a default sentence on imprisonment can be imposed in cases where compensation is awarded to the complainant under Section 357(3) Cr.P.C. As pointed out by Mr. Basant in *Dilip S. Dahanukar's* case (supra), the distinction between a fine and compensation as understood under Section 357(1)(b) and Section 357(3) Cr.P.C. had been explained, but the question as to whether a default sentence clause could be made in respect of compensation payable under Section 357(3) Cr.P.C, which is central to the decision in this case, had not been considered.

E 18. In the decision in *Rajendran's* case (supra), the learned Single Judge of the Kerala High Court had held that in order to recover compensation which remains unpaid, the Trial Magistrate could take steps under Section 421 or Section 431 Cr.P.C. to recover the same, though ultimately it was held that F imprisonment in case of default of such payment was not sustainable.

G 19. In our view, the provision for grant of compensation under Section 357(3) Cr.P.C. and the recovery thereof makes it necessary for the imposition of a default sentence as was held by this Court firstly in *Hari Singh's* case (supra) and thereafter in *Sugnathi Suresh Kumar's* case (supra). In our view, the law has been correctly stated in the said two decisions. As we have mentioned hereinbefore, when the decision of this Court in *Hari Singh's* case (supra) was holding the field, the learned Single H Judge of the High Court had wrongly relied on the decision of

the Kerala High Court in *Rajendran's* case (supra). The power to impose a default sentence in case of non-payment of compensation under Section 357(3) Cr.P.C. has been duly recognized by this Court and the arguments advanced to the contrary on behalf of the Petitioner must, therefore, be rejected.

20. Section 357 Cr.P.C. bears the heading "Order To Pay Compensation". It includes in sub-Section (1) the power of the Court to utilize a portion of the fine imposed for the purpose of compensating any person for any loss or injury caused by the offence. In addition, Sub-Section (3) provides that when a sentence is imposed by the Court, of which fine does not form a part, the Court may, while 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 suffers any loss or injury by reason of the act for which the accused person has been so sentenced. It is true that the said provision does not include the power to impose a default sentence, but read with Section 431 Cr.P.C. the said difficulty can be overcome by the Magistrate imposing the sentence. To appreciate the said legal position, the provisions of Section 431 are set out hereinbelow:-

"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."

Section 431 makes it clear that any money *other than a fine* payable on account of an order passed under the Code shall be recoverable as if it were a fine which takes us to Section 64 I.P.C.

21. Section 64 IPC makes it clear that while imposing a

A sentence of fine, the Court would be competent to include a default sentence to ensure payment of the same. For the sake of reference, Section 64 IPC is set out hereinbelow:-

B “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, in 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.”

22. The provisions of Sections 357(3) and 431 Cr.P.C., when read with Section 64 IPC, empower the Court, while making an order for payment of compensation, to also include a default sentence in case of non-payment of the same. The observations made by this Court in *Hari Singh's* case (supra) are as important today as they were when they were made and if, as submitted by Dr. Pillay, recourse can only be had to Section 421 Cr.P.C. for enforcing the same, the very object of Sub-Section (3) of Section 357 would be frustrated and the relief contemplated therein would be rendered somewhat illusory.

23. Having regard to the views expressed hereinabove, we hold that while awarding compensation under Section 357(3) Cr.P.C., the Court is within its jurisdiction to add a default sentence of imprisonment as was held in *Hari Singh's* case (supra).

24. The Special Leave Petition is accordingly dismissed.

25. The time for making the deposit is extended by three months from today.