

K.A.Abbas H.S.A vs Sabu Joseph & Anr on 11 May, 2010

Equivalent citations: 2010 AIR SCW 3398, 2010 (6) SCC 230, AIR 2011 SC (CRIMINAL) 1093, 2011 ACD 336 (SC), (2010) 3 RECCRIR 154, (2010) 2 ALLCRIR 1885, (2010) 3 CGLJ 191, (2010) 2 UC 695, (2010) 2 MADLW(CRI) 908, (2010) 1 CRILR(RAJ) 434, (2010) 3 CHANDCRIC 162, (2010) 2 CURCRIR 446, 2010 CRILR(SC MAH GUJ) 434, (2010) 2 BANKCAS 675, (2010) 3 CRIMES 15, (2010) 4 MAD LJ(CRI) 236, (2010) 5 SCALE 754, (2010) 91 ALLINDCAS 118 (SC), (2010) 3 MH LJ (CRI) 562, (2010) 70 ALLCRIC 207, 2010 CALCRILR 2 785, (2010) 3 CIVILCOURTC 154, (2010) 2 KER LT 943, (2010) 46 OCR 548, (2010) 3 RECCIVR 187, (2010) 2 DLT(CRL) 715, (2010) 2 CAL LJ 219, 2010 CRILR(SC&MP) 434, (2010) 3 ALLCRILR 82, 2010 (3) SCC (CRI) 127, 2010 (2) NIJ 1 NOC

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Bench: H.L. Dattu, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1052 OF 2010
(Arising out of SLP (Crl.) No. 334 of 2008)

K.A. Abbas H.S.A.

Versus

.....Appellant

Sabu Joseph & Anr.

.....Respondents

WITH

CRIMINAL APPEAL NO. 1053 OF 2010
(Arising out of SLP (Crl) No. 4099 of 2008)

Sabu Joseph

Versus

.....Appellant

K.A. Abbas & Anr.

.....Respondents

JUDGMENT

H.L. Dattu, J.

Leave granted in both the special leave petitions.

2) These two appeals are directed against the judgment and order of the High Court of Kerala in Crl. Rev. Petition No.1387 of 2006 dated 03.10.2007.

3) Since parties are common and the legal issues are identical, they are heard together and disposed of by this common order.

4) The factual matrix in brief is as under:- The facts in criminal revision petition No.1387 of 2006 may be noticed for the purpose of disposal of the appeals. The appellant (accused) and the respondent (complainant) are employed as High School assistants in SSHSS school in Moorkanand. The respondent has filed a complaint against the appellant before the learned Magistrate for an offence under Section 138 of the Negotiable Instruments Act (the 'Act' for short). The complainant's case is that the appellant, who was due in a sum of Rs.5,00,000/-, issued a cheque dated 16.06.2003 in respect of that liability, and when the cheque was presented for encashment, the same was returned with an endorsement of "insufficiency of funds."

5) The complainant, through his Advocate, had issued notice to the appellant demanding the payment and that in spite of the service of notice, the appellant failed to pay the amount covered by the cheque and thus has committed an offence under Section 138 of the Act and, accordingly, has approached the learned Magistrate for appropriate reliefs.

6) The learned Magistrate after taking cognizance of the offence and after recording the evidence of the parties and after analyzing the same, has found the accused guilty of the offence punishable under Section 138 of the Act and sentenced to simple imprisonment for one year. In addition to that he had directed to pay a compensation of Rs. 5 lakhs to the complainant under Section 357(3) of the Cr.PC, and in default, to undergo simple imprisonment for a further period of two months.

7) The accused filed appeal before the Sessions Court, Manjeri being Criminal Appeal No. 59 of 2004. The Sessions Court while entertaining the appeal had directed the petitioner to deposit Rs. one lakh within one month being a part of the compensation amount. The appellant has complied with that order by depositing the amount as directed before the Judicial 1st Class Magistrate, Manjeri. Eventually, the Sessions Judge by his order dated 21.03.2006 confirmed the judgment of conviction and sentence passed by learned Magistrate.

8) The accused preferred revision petition being Criminal Revision Petition No. 1387 of 2006 before the High Court of Kerala at Ernakulam. The High Court passed an interim order directing the petitioner to deposit an amount of Rs. 1 lakh before the Judicial Magistrate and, accordingly, the said amount was also deposited. The High Court while disposing of the Revision Petition has observed that the courts below had appreciated the facts correctly and there is no error, illegality or impropriety in the finding recorded by the courts below to set aside the conviction and sentence. The High court has further stated that the only question which requires to be answered is, whether a

proper sentence has been imposed on the accused by the courts below. The court after taking into consideration the peculiar facts and circumstances of the case has modified the sentence imposed on the accused to the extent, that, if the petitioner pays the compensation amount of Rs. 4 lakhs (keeping in mind that the petitioner had deposited an amount of Rs. 1 lakh before the trial court towards the compensation amount) within a period of five months, then he needs to undergo imprisonment only till the rising of the court and if the petitioner commits default in making the payment aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

9) Being aggrieved, the accused is before this court by way of Criminal Appeal arising out of SLP (Crl.) No. 334 of 2008. The main contention of the accused is that this court in Criminal Appeal No. 1013 of 2007 has held, that, while exercising jurisdiction under Section 357(3) of the Cr.PC, no direction can be issued that in default of payment of compensation, the accused shall suffer simple imprisonment. In effect the Supreme Court has confirmed the judgment passed in the case of Radhakrishna Nair v. Padmanabhan [(2000) 2 KLT 349], wherein the Kerala High Court had given a similar finding. The accused also contends, that, there is a factual error in the judgment of the High court to the effect that the accused had already deposited Rs. 2 lakhs towards paying the compensation amount pursuant to interim orders of the Sessions Court and the High Court respectively, instead the High Court has observed that only Rs. 1 lakh has been deposited.

10) The complainant being aggrieved by the sentence imposed on the accused has filed SLP (Crl) No. 4099 of 2008. The contention of the complainant is that, the sentence imposed is very minimal and will defeat the very purpose of Section 138 of N.I Act and if for any reason the default sentence is deleted then there is no chance of the accused paying the compensation . In this regard, the complainant relies on the observation of this court in the case of Suganthi Suresh Kumar v. Jagdeeshan, [(2002) 2 SCC 420].

11) Heard learned counsel for both sides. The learned counsel for the accused submits, that, the default sentence imposed by the learned Judge of the High Court is against the dicta of this Court in the case of ETTAPPADAN AHAMMED KUTTY @ KUNHAPPU VS. E.P. ABDULLAKEYA @ KUNHI BAPPU AND ANOTHER (Criminal Appeal No. 1031 of 2007). Per contra, the learned counsel for the respondent ably justifies the impugned judgment. The learned counsel also relies on the observations made by this Court in the case of Suganthi Suresh Kumar Vs. Jagdeeshan, [(2002) 2 SCC 420].

12) The main question that requires to be considered and decided is, whether in default of payment of compensation ordered under Section 357 (3) of the Cr.P.C., a default sentence can be imposed ?

13) Let us now look at the relevant provisions and the decision of this court on which reliance is placed by learned counsel.

14) Section 357 of Cr.PC reads:-

"(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 shelf all offence, in paying in, 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 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 his elapsed, or if an, appeal be 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 his been so sentenced.

(4) An order under this section may also be made by all 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."

15) Essentially the section empowers the courts, not to just impose a fine alone or fine along with the sentence of imprisonment, but also when the situation arises, direct the accused to pay compensation to the person who has suffered any loss or injury by reason of the act for which the accused person has been sentenced.

16) The above view we have taken is supported by the decisions of this Court, to which we presently refer.

17) In the case of Sarwan Singh and ors. v. State of Punjab (AIR 1978 SC 1525), this court has noticed the object and genesis of the section.

"10. The law which enables the Court to direct compensation to be paid to the dependants is found in Section 357 of the CrPC (Act 2 of 1974). The corresponding provision in the 1898 Code was Section

545. Section 545 of the CrPC (Act 5 of 1898) was amended by Act 18 of 1923 and by Act 26 of 1955. The amendment which is relevant for the purpose of our discussion is 545(1)(bb) which, for the first time was inserted by Act 26 of 1955. By this amendment the court is enabled to direct the accused, who caused the death of another person, to pay compensation to the persons who are, under the Fatal Accidents Act, entitled to recover damages from the persons sentenced, for the loss resulting to them from such death. In introducing the amendment, the Joint Select Committee stated "when death has been caused to a person, it is but proper that his heirs and dependants should be compensated, in suitable cases, for the loss resulting to them from such death, by the person who was responsible for it. The Committee proceeded to state that though Section 545 of the Code as amended in 1923 was intended to cover such cases, the intention was not however very clearly brought out and therefore in order to focus the attention of the courts on this aspect of the question, the Committee have amended Section 545 and it has been made clear that a fine may form a part of any sentence including a sentence of death and it has also been provided that the persons who are entitled under the Fatal Accidents Act, 1855, to recover damages from the person sentenced may be compensated out of the fine imposed. It also expressed its full agreement with the suggestion that at the time of awarding judgment in a case where death has resulted from homicide, the court should award compensation to the heirs of the deceased. The Committee felt that this will result in settling the claim once for all by doing away with the need for a further claim to a civil Court, and avoid needless worry and expense to both sides. The Committee further agreed that in cases where the death is the result of negligence of the offender, appropriate compensation should be awarded to the heirs. By the introduction of Clause (bb) to Section 545(1), the intention of the legislature was made clear that, in suitable cases, the heirs and dependents should be compensated for the loss that resulted to them from the death, from a person who was responsible for it. The view was also expressed that the court should award compensation to the heir of the deceased so that their claims would be settled finally. This object is sought to be given effect to by Section 357 of the new Code (Act 2 of 1973). Section 357(3) provides that 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. 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 of 1898 Code 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 dependents 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."

18) In *Balraj v. State of UP* (AIR 1995 SC 1935), this court has held, that, Section 357(3) Cr. P.C. provides for ordering of payment by way of compensation to the victim by the accused. It is an important provision and it must also be noted that power to award compensation is not ancillary to other sentences but it is in addition thereto.

19) In *Hari Kishan v. Sukhbir Singh and ors.* (AIR 1988 SC 2127), this court has observed that, Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with Sub-section (1). We are concerned only with Sub-section (3). It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. 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 some amount by way of 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 as to meet the ends of justice in a better way.

20) In *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr.*, [(2007) 6 SCC 528], this court differentiated between fine and compensation, and while doing so, has stated that the distinction between Sub-Sections (1) and (3) of Section 357 is apparent. Sub- section (1) provides for application of an amount of fine while imposing a sentence of which fine forms a part; whereas Sub-Section (3) calls for a situation where a Court imposes a sentence of which fine does not form a part of the sentence. The court further observed:-

"19. Compensation is awarded towards sufferance of any loss or injury by reason of an act for which an accused person is sentenced. Although it provides for a criminal liability, the amount which has been awarded as compensation is considered to be

recourse of the victim in the same manner which may be granted in a civil suit."

Finally the court summed up:-

"22. We must, however, observe that there exists a distinction between fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a 'fine' but the legal fiction raised in relation to recovery of fine only, it is in that sense 'fine' stands on a higher footing than compensation awarded by the Court."

21) Moving over to the question, whether a default sentence can be imposed on default of payment of compensation, this court in the case of Hari Singh v. Sukhbir Singh and in Balraj v. State of U.P, has held that it was open to all courts in India to impose a sentence on default of payment of compensation under sub-section (3) of Section 357. In Hari Singh v. Sukhbir Singh (supra), this court has noticed certain factors which requires to be taken into consideration while passing an order under the section:-

"11. 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."

22) This position also finds support in the case of R v. Oliver John Huish; [1985] 7 Cr. App. R.(S.) 272. The Lord Justice Croom - Johnson speaking for the Bench has observed:

"When compensation orders may possibly be made the most careful examination is required. Documents should be obtained and evidence either on affidavit or orally should be given. The proceedings should, if necessary, be adjourned, in order to arrive at the true state of the defendant's affairs.

Very often a compensation order is made and a very light sentence of imprisonment is imposed, because the court recognizes that if the defendant is to have an opportunity of paying the compensation he must be enabled to earn the money with which to do so. The result is therefore an extremely light sentence of imprisonment. If the compensation order turns out to be virtually worthless, the defendant has got off with a very light sentence of imprisonment as well as no order of compensation. In other words, generally speaking, he has got off with everything."

23) The law laid down in Hari Singh v. Sukhbir Singh (supra) was reiterated by this court in the case of Suganthi Suresh Kumar v. Jagdeeshan, [(2002) 2 SCC 420]. The court observed:-

"5. In the said decision this Court reminded all concerned that it is well to remember the emphasis laid on the need for making liberal use of Section 357(3) of the Code. This was observed by reference to a decision of this Court in 1989 Cri LJ 116 Hari Singh Vs. Sukhbir Singh. In the said decision this Court held as follows:-

"The quantum of compensation may be determined by taking into account the nature of crime, the justness of the 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."

(emphasis supplied) "10. That apart, Section 431 of the Code has only prescribed that any money (other than fine) payable by virtue of an order made under the Code shall be recoverable "as if it were a fine". Two modes of recovery of the fine have been indicated in Section 421(1) of the Code. The proviso to the Sub-section says 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 for levy of the amount." The court further held:-

"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) KLT 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."

24) In order to set at rest the divergent opinion expressed in Kunhappu's case (supra), this Court in the case of Vijayan v. Sadanandan K. and Anr., [(2009) 6 SCC 652], after noticing the provision of Section 421 and 431 of Cr.PC, which dealt with mode of recovery of fine and Section 64 of IPC, which empowered the courts to provide for a sentence of imprisonment on default of payment of fine, the Court stated:

"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, 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."

The court further held:-

"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."

25) In *Shantilal v. State of M.P.*, [(2007) 11 SCC 243], it is stated, that, the sentence of imprisonment for default in payment of a fine or compensation is different from a normal sentence of imprisonment. The court also delved into the factors to be taken into consideration while passing an order under Section 357(3) of the Cr.PC. This court stated:-

"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 term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but the duty of the court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine."

26) In *Kuldip Kaur v. Surinder Singh and anr.* (AIR 1989 SC 232), in the context of Section 125 Cr.PC observed that sentencing a person to jail is sometimes a mode of enforcement. In this regard the court stated:-

"6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a 'mode of enforcement'. It is not a 'mode of satisfaction' of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to

oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Be it also realised that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who 'without reasonable cause' refuses to comply with the order of the Court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. A sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears."

27) From the above line of cases, it becomes very clear, that, a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) of Cr.PC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose is served by keeping a person behind bars. Instead directing the accused to pay an amount of compensation to the victim or affected party can ensure delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person behind bars or in addition to a very light sentence of imprisonment. Hence on default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation and imposing another fine would be impractical as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above, otherwise the very purpose of granting an order of compensation would stand defeated.

28) Section 421 of Cr.PC reads:-

"421. Warrant for levy of fine.

(1) When an offender has been sentenced to pay a the court passing the sentence make 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, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both of the defaulters;

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 under section 357. (2) The State Government may make rules regulating the manner in

which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realize the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

Section 431 of Cr.PC reads:-

"431. Money ordered to be paid recoverable as a 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."

29) Section 431 clearly provides that an order of compensation under Section 357 (3) will be recoverable in the same way as if it were a fine. Section 421 further provides the mode of recovery of a fine and the section clearly provides that a person can be imprisoned for non-payment of fine. Therefore, going by the provisions of the code, the intention of the legislature is clearly to ensure that mode of recovery of a fine and compensation is on the same footing. In light of the aforesaid reasoning, the contention of the accused that there can be no sentence of imprisonment for default in payment of compensation under Section 357 (3) should fail.

30) A similar position is also prevalent in other countries. In the United Kingdom, Section 82 (3) of Magistrates' Courts Act, 1980 allows for a sentence of imprisonment for default in payment of a fine or any financial order. The Section reads:-

"Where on the occasion of the offender's conviction a magistrates' court does not issue a warrant of commitment for a default in paying any such sum as aforesaid or fix a term of imprisonment under the said Section 77(2) which is to be served by him in the event of any such default, it shall not thereafter issue a warrant of commitment for any such default or for want of sufficient distress to satisfy such a sum unless:-

(a) he is already serving a sentence of custody for life, or a term of imprisonment, detention in a young offender institution, or detention under Section 9 of the Criminal Justice Act, 1982; or

(b) the court has since the conviction inquired into his means in his presence on at least one occasion."

31) In Australia, under Section 4 of the Sentencing Act, 1997 the definition of "fine" includes a compensation order. Procedure for enforcement of fines is provided for in Section 47(7) of the Act and provides for a sentence of imprisonment or default in payment of fine.

32) The Learned Counsel for the accused has placed reliance on the decision of this court in the case of Ettappadan Ahammedakutty v. E.P Abdullakeya (Criminal Appeal no. 1013 of 2007), which reiterated the position taken by the Kerala High Court in a case reported in 2000 (2) KLT 349; wherein it was held that no sentence of imprisonment can be passed on default of paying compensation awarded under Section 357(3). But in light of several decisions reiterating the opposite stand, this case needs to be viewed in isolation and cannot be taken to be against the established position preferred by the Supreme Court on this issue over a period of two decades.

33) The complainant in the Civil Appeal arising out of S.L.P.(Crl.) No.4099 of 2008 has contended that the sentence imposed for default in payment of the compensation amount is very minimal and, therefore, the sentence imposed by the High Court requires to be enhanced. In our considered view, looking into the facts and circumstances of the case and the nature of the offence, we find no good reason to interfere with the quantum of sentence imposed.

34) The contention of the accused as regards a factual error made by the High Court, wherein the High Court stated that the accused had deposited Rs. 1 lakh towards the compensation amount requires to be accepted. It is to be noted that the accused has already deposited Rs.2 lakhs towards the compensation amount of Rs. 5 lakhs, before the Judicial Magistrate in pursuance of orders passed by the Sessions Court and the High Court. Therefore, the appeal of the accused, i.e. Criminal Appeal arising out of Special Leave Petition (Crl.) No.334 of 2008 is allowed to the extent that he needs to pay a further amount of Rs. 3 lakhs towards the compensation amount of Rs. 5 lakhs. The remaining part of the sentence passed by the High Court requires to be confirmed.

35) In the result, the conviction and sentence passed against the accused in Criminal Appeal arising out of S.L.P.(Crl.) No.334 of 2008 are confirmed with the modification, as observed in the earlier paragraph. Criminal Appeal arising out of S.L.P.(Crl.) No.334 of 2008 is, accordingly, partly allowed. Since, we are of the opinion that modification of the sentence is not warranted in the facts and circumstances of the case, Criminal Appeal arising out of Special Leave Petition (Crl.) No. 4099 of 2008 filed by the complainant is dismissed.

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.....J. [P. SATHASIVAM]J. [H.L. DATTU] New Delhi, May 11, 2010