

Satyendra Kumar Mehra @ Satendera Kumar ... vs The State Of Jharkhand on 23 March, 2018

Equivalent citations: AIR 2018 SUPREME COURT 1587, 2018 (15) SCC 139, AIR 2018 SC (CRIMINAL) 577, 2018 (2) AJR 839, (2018) 2 CRILR(RAJ) 356, (2018) 2 RECCRIR 530, (2018) 3 MAD LJ(CRI) 18, (2018) 1 NIJ 448, (2018) 70 OCR 818, (2018) 2 BOMCR(CRI) 557, (2018) 5 SCALE 109, (2018) 1 UC 551, 2019 (1) SCC (CRI) 831, (2018) 2 PAT LJR 260, 2018 CRILR(SC MAH GUJ) 356, (2018) 2 CURCRIR 96, (2018) 104 ALLCRIC 322, (2018) 2 ALLCRIR 1732, (2018) 2 CRIMES 302, (2018) 4 ALLCRILR 594, (2018) 187 ALLINDCAS 179 (SC), 2018 CRILR(SC&MP) 356, (2018) 2 JLJR 241, 2018 (2) KLT SN 43 (SC)

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Bench: Ashok Bhushan, A.K. Sikri

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REPORT

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.406 OF 2018
(ARISING OUT OF SLP(CRL.)NO.1994 OF 2018)

SATYENDRA KUMAR MEHRA
@ SATENDERA KUMAR MEHRA

... PETITIONER

VERSUS

THE STATE OF JHARKHAND

... RESPONDENT

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed against an order of the High Court of Jharkhand at Ranchi in Criminal Appeal NO.176 of 2018 by which High Court by allowing I.A.No. 892 of 2018 filed by the appellant, has directed to grant suspension of sentence of the appellant. The High Court further directed that the appellant should also deposit the fine amount awarded before the court below. The appellant is aggrieved only against that

part of the order by which the High Court directed the deposit of fine amount.

2. The appellant was an accused in R.C. Case No.68(A) of 1996□ State (through CBI) vs. Lalu Prasad @ Lalu Prasad Yadav and others. Accused were tried for the offence punishable under Sections 120□B/ read with 409, 420, 467, 468, 471 and 477□ A of the IPC read with Section 13(1)(c) & (d) and 13(2) of Prevention of Corruption Act, 1988. The trial court by order dated 24.01.2018 convicted the accused and awarded sentence. The appellant, who was one of the accused, was awarded the following sentence by the trial court:

"44. Satyendra Kumar Mehra convicted for offence punishable U/s 120□ B/420, 120□B/467, 120□B/468 and 120□B/471 IPC:

U/s 120□B/420 IPC R.I. of Five(05) Years with fine of Rs.25,000/□ and in default of payment of fine S.I. for Three (03) Months. U/s 120□B/467 IPC R.I. of Five (05) Years with fine of Rs.25,000/□ and in default of payment of fine S.I. for Three (03) Months. U/s 120□ B/468 IPC R.I. of Five(05) Years with fine of Rs.25,000/□and in default of payment of fine S.I. for Three (03) Months. U/s 120□B/471 IPC R.I. of Five(05) Years with fine of Rs.25,000/□and in default of payment of fine S.I. for Three (03) Months. All the sentences shall run concurrently and the period undergone shall be set off."

3. Aggrieved against the above conviction and sentence order the appellant filed Criminal Appeal No.176 of 2018 before the High Court. The appellant also filed application praying suspension of sentence. After hearing, the High Court allowed the application granting the privilege of suspension of sentence to the appellant and directing the appellant be released on bail on furnishing bail bond of Rs.50,000/□with two sureties. However, while allowing the application the High Court passed the following direction:

"Appellant should also deposit the fine amount awarded before court below."

4. The appellant aggrieved by the aforesaid direction of the High Court to deposit the fine amount awarded by the court below has come up in this appeal.

5. We have heard Shri Sunil Kumar, learned senior counsel appearing for the appellant and Shri Aman Lekhi, learned Additional Solicitor General for India appearing for the respondent□State.

6. Learned counsel for the appellant relying on Section 357 sub□ Section (2) of Criminal Procedure Code submits that since the appellant has already filed an appeal before the High Court, the amount of fine imposed by the trial court automatically stands stayed till the decision of the appeal. He submits that in the present case sentence of fine was also

imposed by the trial court which is the subject of the appeal, hence Section 357(2) Cr.P.C. is attracted in the present case and the High Court should not have directed the appellant to deposit the fine amount awarded by the trial court which direction is in the teeth of provisions of Section 357(2) Cr.P.C. Learned counsel for the appellant in support of his submission placed reliance on the judgment of this Court reported in Dilip S. Dahanukar vs. Kotak Mahindra Co.Ltd. And another, (2007) 6 SCC 528.

7. Shri Aman Lekhi, learned Additional Solicitor General for India refuting the submission of learned counsel for the appellant contends that the High Court did not commit error in directing the appellant to deposit the fine amount awarded by the court below. He submits that provisions of Section 357(2) Cr.P.C. is not attracted in the present case. He submits that what is contemplated by sub-Section (2) of Section 357 Cr.P.C. is "payment of the compensation as envisaged in Section 357(1) Cr.P.C.". He submits that stay of payment of compensation is entirely different from the stay of fine which is a part of sentence imposed on accused.

8. He submits that this Court in Stanny Felix Pinto vs. Jangid Builders Pvt. Ltd. and another, (2001) 2 SCC 416, has also upheld a similar order passed by the High Court where the High Court directed payment of rupees four lakhs as a condition to suspend the sentence which was part of the fine imposed as part of sentence.

9. Learned counsel for the appellant submits that judgment of this Court in Stanny Felix Pinto (supra) cannot be pressed into service with regard to interpretation of Section 357(2) Cr.P.C. which section is neither referred to nor adverted to by this Court in above case.

10. We have considered the submissions of the learned counsel for the parties and perused the records. From the facts brought on record, it is clear that the sentence awarded to the appellant was a sentence of R.I. of five years with payment of fine of Rs.25,000/□ and in default S.I. of three months. The said sentence was recorded in four cases and all sentences were to run concurrently. Thus, the fine was part of the sentence. The question which is to be answered in the present case is as to whether by virtue of Section 357(2) Cr.P.C., the said fine which was part of sentence automatically was stayed till the decision of the appeal and would not have been directed by the High Court to be deposited by the appellant.

11. For answering the question we need to reflect upon the statutory scheme as delineated by Section 357(2) Cr.P.C. Section 357(2) Cr.P.C. is part of Chapter XXVII□ "THE JUDGMENT" of the Criminal Procedure Code, 1973. Section 353 deals about the judgment, its pronouncement, signatures, delivery and other aspects. Section 354 deals with language and contents of judgment. Section 355 refers to Metropolitan Magistrate's judgment. Section 356 deals with order for notifying address of previously convicted

offender and then Section 357 bears heading “Order to pay compensation”. Order to pay compensation, thus, is a part of judgment where Court directs payment for compensation.

12. Section 357(1) Cr.P.C. contemplates that when a Court imposes a sentence of fine or a sentence of which fine forms a part, the Court may, while passing judgment, order the whole or any part of the fine recovered to be applied. Section 357 is to the following effect: □
“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 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.

(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.”

13. All the circumstances in sub-Section (1) of Section 357 refer to direction to pay compensation out of the fine imposed. Thus, all the circumstances are circumstances where fine imposed and recovered is to be applied in the above circumstances.

14. The fine is thus contemplated to be utilised for compensating different circumstances as enumerated in Section 357(1) Cr.P.C. Sub-Section (2) of Section 357 Cr.P.C. has been engrafted in reference to what was stated in sub-Section (1) of Section 357 Cr.P.C. Crucial words used in sub-Section (2) of Section 357 Cr.P.C. are “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”. Thus, what is prohibited under Section 357(2) Cr.P.C. is that payment of compensation utilising the fine be not paid till the period allowed for presenting the appeal has elapsed, or if an appeal is filed then before the decision of the appeal. It does not involve any concept of stay of sentence.

15. Chapter XXIX deals with the appeals. In the said Chapter Section 389 deals with the subject “suspension of sentence pending the appeal; release of appellant on bail”. Section 389(1) Cr.P.C. empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail. Thus, the power of suspension of sentence emanates from Section 389 Cr.P.C. where Appellate Court is empowered to pass such an order. Sections 357 and 389 Cr.P.C. operate in two different fields. Section 357 Cr.P.C. contains an embargo that on passing a judgment of sentence of fine, the fine be not utilised for payment of compensation till contingency as mentioned therein does not occur. The sentence awarded by the Court including sentence of fine is in no way affected by embargo contained in Section 357(2) Cr.P.C. The operation of Section 357(2) Cr.P.C. is restricted to payment of compensation as contemplated by Section 357(1) and (3) Cr.P.C. The heading of the Section 357 Cr.P.C. i.e. “Order to pay compensation” as well as contents of the Section lead to only one conclusion that the entire provision has been engrafted regarding payment of compensation out of the fine imposed or when Court imposes sentence the fine is not part of which, the Court may by way of compensation direct payment of such amount to a person who has suffered the injury. We, thus, are of the view that Section 357 Cr.P.C. has nothing to do with suspension of sentence awarded by the trial court and the sentence of fine imposed on the accused is in no way affected by Section 357(2) Cr.P.C. The present is not a case where trial court has directed payment of any compensation to anyone out of fine imposed. There is no direction for payment of compensation in the order of the trial court nor present case is covered by the circumstances mentioned in sub-clauses (a)

to (d) of Section 357(1) Cr.P.C. Present is also not a case of Section 357(3) Cr.P.C. Hence, there is no question of applicability of Section 357(2) Cr.P.C. The heading of Section 357 Cr. P.C. throws considerable light in finding the object and purpose of the Section. Section 357 Cr.P.C. is only attracted when Court orders for payment of compensation. Section 357 is not attracted in any other case. It is well settled that heading of the Section plays a role when there is any doubt in interpretation of the Section. This Court in Bhinka and others vs. Charan Singh, AIR 1959 SC 960, while examining the role of a heading of section while interpreting a section noticed the following principle;

“15.....Section 180 provides for the eviction of a person who but for the eviction would become a hereditary tenant by efflux of the prescribed time. If there is any ambiguity — we find none — it is dispelled by the heading given to the section and also the description of the nature of the suit given in the Schedule. The heading reads thus:

“Ejectment of person occupying land without title.”
“Maxwell On Interpretation of Statutes, 10th Edn., gives the scope of the use of such a heading in the interpretation of a section thus, at p. 50:

“The headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words.” If there is any doubt in the interpretation of the words in the section, the heading certainly helps us to resolve that doubt.....”

16. The similar proposition was again reiterated by three Judge Bench of this Court in N.C. Dhoundial vs. Union of India and others, (2004) 2 SCC 579, where in paragraph 15 following has been held:

“15.....The language employed in the marginal heading is another indicator that it is a jurisdictional limitation. It is a settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent (vide Uttam Das Chela Sunder Das v. Shiromani Gurdwara Parbandhak Committee, (1996) 5 SCC 71 and Bhinka v. Charan Singh, AIR 1959 SC

960).”

17. Now we come to the judgment which has been relied on by the learned counsel for the appellant, i.e., Dilip S. Dahanukar (supra). In the above case this Court had occasion to interpret Section 357 Cr.P.C. The appellant therein was accused No.2, who was directed to pay compensation to the complainant of Rs.15 lakh apart from the simple imprisonment.

The facts have been noted in paragraph 3 of the judgment which is to the following effect:

“3. Accused 1, M/s Goodvalue Marketing Co. Ltd., a company registered and incorporated under the Companies Act, 1956 and Accused 2, the appellant herein were convicted for commission of an offence involving Section 138 of the Act by a judgment of conviction and sentence dated 23rd 2006 holding:

“Accused 1 company, M/s Goodvalue Marketing Co. Ltd. stands convicted for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act.

Accused 1 company is sentenced to pay a fine of Rs 25,000 (Rupees twenty^{five} thousand only). In default of payment of fine, Accused 2 Mr Dilip Dahanukar, the Chairman of Accused 1 and representative at the trial, shall suffer SI for 1 month.

Accused 2 Mr Dilip S. Dahanukar, stands convicted for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881.

Accused 2 is sentenced to suffer SI for 1 month.

Accused 2 is also directed to pay compensation to the complainant, quantified (sic) at Rs 15,00,000 (Rupees fifteen lakhs only), under Section 357(3) CrPC. Accused 2 is entitled to pay the amount of compensation in two equal monthly instalments of Rs 7,50,000 each. The first instalment of Rs 7,50,000 shall be paid on or before 23rd 2006 and the second instalment of Rs 7,50,000 shall be paid on or before 24th 2006; in default of payment of the amount of compensation Accused 2 shall suffer further SI for 2 months.”

18. An appeal was preferred against the conviction order. The Appellate Court while admitting the appeal directed the accused to deposit a sum of Rs.5 lakh each within four weeks from the said date. Writ petition was filed questioning the legality of the said order of the Appellate Court which was dismissed and thereafter the matter was taken to this Court. A submission was raised before this Court that having regard to the provisions of Section 357(2) of the Code, the impugned judgment is wholly unsustainable inasmuch as in terms thereof the amount of fine imposed would automatically be suspended.

19. In the above case this Court considered sub^{sections} (1), (2) and (3) of Section 357 of the Code and observed that sub^{section} (2) shall be applicable both in regard to compensation as well as direction under sub^{section} (3). In

paragraphs 43, 44 and 45 following has been laid down:

“43. It does not appeal to us that although a compensation payable out of the quantum of fine would remain stayed under sub-section (2) of Section 357 of the Code, if a compensation is directed to be paid under sub-section (3) thereof, the same would not attract the said provision. (See P. Suresh Kumar v. R. Shankar, [(2007) 4 SCC 752].)

44. Magistrates cannot award compensation in addition to fine. When a fine is imposed, however, the private party has no right to insist that compensation may be awarded to him out of the amount of fine. The power to award compensation under Section 357(3) is not an ancillary power. It is an additional power. (See Balraj v. State of U.P., [(1994) 4 SCC 29].)

45. Clause (b) of sub-section (1) of Section 357 and sub-section (1) of Section 357 and sub-section (3) of Section 357 seek to achieve the same purpose. What is necessary is to find out the intention of the lawmaker and the object sought to be achieved. Sub-section (2) of Section 357 uses the word “fine”. It does not say that what would be stayed i.e. application of fine. Sub-section (2) of Section 357, in our opinion, does not contemplate any other interpretation. Even assuming that Mr Lalit was correct in his submission, still then sub-section (3) would be squarely attracted.”

20. Referring to Section 389 Cr. P.C., this Court noticed that suspension of a sentence and enlarging an appellant on bail, who is convicted and realisation of fine has been dealt with by Parliament under different provisions of the Code. In paragraph 51 following has been laid down:

“51. Section 389 does not deal with exactly a similar situation. Section 389 of the Code is to be read with Section 387 thereof. Suspension of a sentence and enlarging an appellant on bail, who is convicted and realisation of fine has been dealt with by Parliament under different provisions of the Code. The power of the court, thus, to suspend a sentence in regard to realisation of compensation may be different from that of a direction in realisation of fine.”

21. This Court in the aforesaid case has noted the distinction between fine of Rs.25,000/- which was imposed on the Company and compensation of Rs.15 lakh which was directed to be paid by the Chairman of the Company. In paragraph 71 the aforesaid was mentioned to the following effect:

“71. We are prima facie of the opinion (without going into the merit of the appeal)

that the direction of the learned trial Judge appears to be somewhat unreasonable. The appellant herein has been sentenced to imprisonment. Only fine has been imposed on the Company. Thus, for all intent and purpose, the learned trial Judge has invoked both sub-sections (1) and (3) of Section 357 of the Code. The liability of the appellant herein was a vicarious one in terms of Section 141 of the Negotiable Instruments Act. The question may also have to be considered from the angle that the learned trial Judge thought it fit to impose a fine of Rs 25,000 only upon the Company. If that be so, a question would arise as to whether an amount of compensation for a sum of Rs 15 lakhs should have been directed to be paid by the Chairman of the Company. We feel that it is not.”

22. This Court ultimately directed the appellant to deposit rupees one lakh towards the compensation and recorded its conclusion in paragraph 72 which is to the following effect:

“72. We, therefore, are of the opinion:

(i) in a case of this nature, sub-section (2) of Section 357 of the Code of Criminal Procedure would be attracted even when the appellant was directed to pay compensation;

(ii) the appellate court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;

(iii) the amount of compensation must be a reasonable sum;

(iv) the court, while fixing such amount, must have regard to all relevant factors including the one referred to in sub-section (5) of Section 357 of the Code of Criminal Procedure;

(v) no unreasonable amount of compensation can be directed to be paid.”

23. This Court, in the above case, was dealing with the question of payment of compensation which was awarded by the Court under sub-section (3) of Section 357 Cr.P.C. The Court was not dealing with fine which was part of the sentence. The Court, thus, had no occasion to consider the issue which has arisen in the present case. We, in the present case, are not concerned with payment of any compensation or applicability of Section 357(2) Cr.P.C. with regard to payment of any such compensation.

24. We also need to notice the judgment of this Court in Stanny Felix Pinto (supra). In the above case along with sentence of imprisonment, fine was also imposed under Section 138 of the Negotiable Instruments Act. The High Court while entertaining the revision granted suspension of the sentence by imposing a condition that part of the fine shall be remitted in court within a specified time which direction was challenged in this Court. This Court upheld the said direction. Following was held in paragraph 2:

“ 2 . When a person was convicted under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment and fine he moved the superior court for suspension of the sentence. The High Court while entertaining his revision granted suspension of the sentence by imposing a condition that part of the fine shall be remitted in court within a specified time. It is against the said direction that this petition has been filed. In our view the High Court has done it correctly and in the interest of justice. We feel that while suspending the sentence for the offence under Section 138 of the Negotiable Instruments Act it is advisable that the court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal. In this case the grievance of the appellant is that he is required by the High Court to remit a huge amount of rupees four lakhs as a condition to suspend the sentence. When considering the total amount of fine imposed by the trial court (twenty lakhs of rupees) there is nothing unjust or unconscionable in imposing such a condition. Hence, there is no need to interfere with the impugned order. As such no notice need be issued to the respondent. Appeal is accordingly dismissed.”

25. It is true that this Court while deciding the said case did not consider Section 357(2) Cr.P.C. Learned counsel for the appellant is right in his submission that the above judgment cannot be held to be laying down any ratio on applicability of Section 357(2) Cr.P.C.

26. We may also refer to a judgment of Karnataka High Court in Irrigation Engineering Company (India) Private Limited and Anr. vs. The Small Scale Industrial Development Bank of India (SIDBI), 2003 (6) KarLJ 387, where while interpreting Section 357(2) Cr.P.C., Karnataka High Court had observed that word “payment” found in Section 357(2) Cr.P.C. does not refer to the 'deposit' of compensation or fine amount by the accused.

In the case before the High Court appellant was convicted with sentence of fine. In appeal the High Court directed suspension

of sentence on the condition that the appellant shall deposit 20% of the total fine which was challenged before the High Court on the ground that in view of Section 357(2) Cr.P.C., Appellate Court was not right in asking them to deposit 20% of the total fine. In paragraphs 8,9 and 10 following was stated:

“8. What Section 357(2) of the Cr. P.C. says is as under:

"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".

Nowhere it says that the Court of Appeal, while suspending sentence imposed on an accused, cannot impose a condition of depositing a part of fine amount. It is true that as per the decision relied on for the petitioners, stay engrafted under the said provision of law equally applies to the compensation granted under Sub-Section (3) of Section 357 of the Code, but it cannot be taken to hold or read that the Appellate Court cannot pass a conditional order for suspending a sentence.

9. According to me, the word "payment" found in Section 357(2) of the Cr. P.C., does not refer to the 'deposit' of compensation or fine amount by an accused in pursuance of an order passed by Appellate Court while suspending sentence imposed on an accused since, to my mind, the word "payment" refers to payment to be made to the person, who is ordered to be paid compensation and not the fine amount, inclusive of compensation amount to be 'deposited' by accused. The stay engrafted into the said provision of law is with reference to the 'payment' of such amount earlier to the expiry of the appeal period or, where appeal has been preferred, during the pendency of such appeal. So, Section 357 need not and cannot be read with Section 389 of the Cr. P.C. In fact, neither the petitioners/appellants applied for, nor the Appellate Court ordered suspension of the sentence relating to compensation of Rs. 16 lakhs only. On the other hand, when the suspension of impugned sentence passed against them is seen with the power given to the Appellate Court under Section 389 of the Cr. P.C., besides the ambit or scope of Section 357 of the Cr. P.C., there will not be any difficulty in holding that there is no error of record or infirmity or irregularity or illegality in the impugned order passed by the Court of Sessions suspending the sentence on condition of depositing 20% of the total fine amount imposed on them (petitioners).

10. In this view of the matter, neither Section 357(2) of the Cr. P.C. nor the decision relied on for the petitioners is of any help to the petitioners.“

27. Learned Counsel for the appellant has relied on three judgments of High Courts, one of Punjab and Haryana High Court and two judgments of Patna High Court in support of his submissions. We need to refer to above judgments relied by the learned counsel for the appellant. The first judgment is judgment of Punjab and

Haryana High Court reported in 2006 (3) PLR 194, Kedar Nath versus State of Haryana. In the above case, the petitioner was convicted for offence under Section 138 of the Negotiable Instruments Act, 1881 for dishonour of several cheques amounting to Rs.1,50,000/-. The petitioner was sentenced to undergo rigorous imprisonment for period of one year and to pay a fine of Rs.3,00,000/-. It was also ordered that out of fine of Rs.3,00,000/- a sum of Rs.2,50,000/- be given to the complainant as compensation. An appeal was filed where Appellate Court suspended the sentence on the condition that petitioner will deposit an amount of Rs.1,50,000/- before the trial court. The aforesaid condition was challenged by the petitioner in the High Court. It was submitted that in accordance with Section 357 sub-section (2) Cr.P.C. petitioner was not liable to pay any amount of fine. The High Court accepted the submission relying on Section 357 sub-section (2) Cr.P.C.. In paragraph 8 of the judgment, following was held:

“8. Against the judgment of conviction and order to sentence, an appeal was preferred by the petitioner, which was admitted for hearing. While suspending the sentence, the Appellate Court imposed a condition for depositing an amount of Rs.1,50,000/- out of the amount of fine of Rs.3 lacs imposed by the trial Court. In my opinion, by imposing the said condition, the petitioner was compelled to pay the amount of fine, which according to sub-section (2) of Section 357 Cr.P.C., the accused is not liable to pay till the final adjudication of the appeal. Merely because out of the amount of fine of Rs.3 lacs, Rs.2,50,000/- was ordered to be paid to the complainant as compensation, in my opinion, does not change the nature of fine. The judgment of the trial court is very clear that a fine of Rs.3 lacs was imposed along with the sentence of one year. The facts of this case are squarely covered by the decision of the this Court in Sabita Behl's case(supra). Thus, in my opinion, the Appellate Court was not justified while imposing the impugned condition directing the petitioner to deposit an amount of Rs.1,50,000/- before the trial Court at the time of furnishing the bail bonds in view of the order of suspension of sentence passed by the Appellate Court.”

28. The above case is clearly distinguishable from the present case. In the above case, there was direction within the meaning of Section 357 sub-section (1) (b) Cr.P.C. for payment of compensation. Hence Section 357 sub-section (2) Cr.P.C. was relied by the Court. Present is not a case of payment of any compensation out of fine imposed on appellant. Thus, the above case in no manner helps the appellant.

29. Now we come to the second case relied by the appellant i.e. Division Bench Judgment of Patna High court in Bharat Mandal son of Sitaram Mandal & Ors. Vs. The State of Bihar, 2012 (2) PLJR 855. In the above case accused were convicted under Section 307/149 IPC and Section 27 of the Arms Act. They were sentenced for life imprisonment and further directed to pay a fine of Rs.20,000/□ each. The appeal was filed in which the Appellate Court declined to stay the payment of fine. The appellant pressed for stay of payment of fine which was considered by the High Court. High Court relied on Section 357 sub-section (2) Cr.P.C. and accepted the submission of the appellant that the fine was not to be paid. Following was held in paragraph 7:

“7. The argument of Mr. Yogesh Chandra Verma, learned counsel for the appellant is based squarely upon the literal interpretation from the Section. In our view, the submission as made by Sri Verma has to be accepted. On the plain reading of sub-section (2) of Section 357 of the Code of Criminal Procedure we find that there is absolutely no ambiguity in the provision as engrafted by the legislature, it clearly stipulates firstly, that no such payment shall be made before the period allowed for presenting the appeal has elapsed. Thus, this stops any court from enforcing payment, for the period in which appeal could be filed. It then secondly provides that the stay of action of realization or payment would continue if an appeal is presented till the decision of the appeal. “Decision of the Appeal” would only mean the final judgment in the appeal and not any order at any interlocutory stage because that would not be the decision of the appeal. Thus, on the plain reading of Section 357(2) of the Code of Criminal Procedure a fine imposed, would automatically get stayed firstly for the period which is available to file appeal and once the appeal is filed then till the decision of the appeal. That is the mandate of the legislature itself, clear and unambiguous. The situation would be different, if instead of awarding fine, in terms of Section 357(3) of the Code of Criminal Procedure compensation only is awarded. In such a case, the appellate court has judicial discretion to stay or, not to stay the compensation so awarded depending upon the facts of the case under consideration.”

30. From the facts noticed by the High Court it is not clear as to whether the amount of fine Rs.20,000/□ was directed to be paid to the victim. No such facts have been noticed in the judgment. If there was no direction to pay any compensation out of the fine imposed the facts of the said case are similar to the case in hand. We have taken the view that if there is no direction to pay any compensation out of fine imposed, Section 357(2) Cr.P.C. is not attracted. We are of the view that the High Court's observation that in view of Section 357 sub-section (2) of Cr.P.C. the realisation of fine

would automatically get stayed does not take into consideration the distinction in a case where fine is part of sentence and there is direction to pay compensation and in a case where there is no direction to pay any compensation.

31. The third case relied by the learned Counsel for the appellant is again a Division Bench Judgment of Patna High Court in Criminal Appeal (DB) No.529 of 2012, Naresh Yadav@ Naresh Mahto & Ors. Vs. The State of Bihar, decided on 26.06.2012. The Judgment of Patna High Court has been placed on record along with the short submissions of learned counsel for the appellant. A perusal of the judgment indicate that Patna High Court has not noticed the facts of the case and the nature of Order passed by the trial Court regarding imposition of fine. The applicant prayed for modification of Order of the High Court by which the direction was issued for depositing the fine. Section 357 sub-section (2) Cr.P.C. was relied and the Division Bench relying on earlier judgment of Patna High Court in Bharat Mandal & Ors. (Supra) modified the last paragraph of the Order dated 04.06.2012 providing that the fine imposed shall remain stayed till the decision of the case. The above judgment relies only on Bharat Mandal & Ors. which has already been noted above by us hence this judgment also does not help the appellant.

32. The object and purpose of Section 357 Cr.P.C. was considered by this Court in Hari Singh vs. Sukhbir Singh and others, (1988) 4 SCC 551. This Court held that the power given to the Court to direct for payment of compensation is intended to do something for the victim. The provision was held to be a step forward in our criminal justice system. Following were the observations made in paragraph 10:

"10...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."

33. What is the purpose and object of sub-section (2) of section 357 Cr.P.C.? Section 357(1) Cr.P.C. contemplated utilisation of fine imposed in certain circumstances as compensation to be paid to victim. Sub-section (2) engrafted an embargo that such payment shall not be made till the period

allowed for appeal has elapsed or if the appeal is filed, till the same is decided. Legislature was conscious that compensation paid if utilised, there may not be appropriate measures to recover the said amount utilised from victim to whom the compensation is paid hence embargo in payment has been engrafted in sub-section (2). Thus at best sub-section (2) of Section 357 Cr.P.C. is a provision which differs or withholds the utilisation of the amount of compensation awarded till the limitation of appeal elapses or if filed till it is decided. The provision in no manner stays the sentence of fine during the pendency of the appeal. The purpose for which sub-section (2) of Section 357 Cr.P.C. has been enacted is different as noted above and it never contemplates as stay of sentence of fine imposed on accused.

34. We, however, make it clear that Appellate Court while exercising power under Section 389 Cr.P.C. can suspend the sentence of imprisonment as well as of fine without any condition or with conditions. There are no fetters on the power of the Appellate Court while exercising jurisdiction under Section 389 Cr.P.C.. The Appellate Court could have suspended the sentence and fine both or could have directed for deposit of fine or part of fine.

35. Learned counsel for the appellant has also relied on the judgment of this Court in K.C. Sareen vs. C.B.I. Chandigarh, (2001) 6 SCC 584, where this Court has made the following observation:

"No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal."

36. The above observation was made by this Court in the context of suspension of sentence of imprisonment. The present is not a case where question of suspension of sentence of imprisonment is involved rather Appellate Court has already suspended the sentence of imprisonment. The above case also thus does not help the appellant in the facts of the present case.

37. In view of the foregoing discussion, we are of the view that Section 357(2) Cr.P.C. was not attracted in the present case since there was no direction of payment of any compensation out of the fine imposed by the trial court as part of sentence. Section 357 Cr.P.C.(2) comes into play only where any order of payment of compensation utilising the fine imposed as sentence under Section 357(1) Cr.P.C. or compensation as directed under Section 357(3) Cr.P.C. is made. Present being neither a case of Section 357(1) Cr.P.C. nor Section 357(3), sub-section(2) of Section 357 Cr.P.C. is clearly not applicable and the submissions raised by the learned counsel for the appellant are without any substance. We, thus, do not find any infirmity in the impugned order of the High Court where the High Court has directed the appellant

to deposit the fine awarded by the trial court. In the result, the appeal is dismissed.

.....J. (A.K. SIKRI)J. (ASHOK BHUSHAN) NEW DELHI,
MARCH 23, 2018.