

(2017) 01 MP CK 0285
MADHYA PRADESH HIGH COURT
Case No: 798 of 2016

Rajendra Singh Yadav & Ors

APPELLANT

Vs

State of M.P. & Anr

RESPONDENT

Date of Decision: Jan. 2, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 357(3), Section 421, Section 357 - Order to pay compensation - Warrant for levy of Fine - Order to pay compensation

Hon'ble Judges: S.K.Awasthi

Bench: Single Bench

Advocate: Vilas Tikhe, Vikas Samadhiya

Judgement

1. The applicant has preferred this revision being aggrieved by the order dated 26.07.2016 passed by the Seventh Additional Sessions Judge, Gwalior in Criminal Appeal No.207/2016 affirming the judgment of the trial Court dated 16.03.2016 passed in Criminal Case No.12549/2014 convicting the applicant for an offence under Section 31 of the Protection of Women from Domestic Violence Act, 2005 and sentenced to undergo imprisonment till the rising of the Court and to pay Rs.30,000/- as compensation under Section 357(3) of Cr.P.C. to the complainant Smt. Kalpana Asure and further imprisonment for three months in case of default of payment of the compensation amount.

2. Learned counsel for the applicant questioned the judgment of the appellate Court solely on the ground that the Additional Sessions Judge has committed in law illegality by awarding the sentence of three months in case of default of payment of the compensation amount. According to him, if the applicant fails to deposit the compensation amount, the only mode available to the Court to recover any defaulted amount by way of compensation is to take recourse to the provisions of

3. To the contrary, the learned counsel for the respondent submits that the impugned order is based on legal sanctity which thus calls no interference.

4. Having considered the rival submissions, it appears from the perusal of the record that the Additional Chief Judicial Magistrate, Gwalior convicted the applicant for an offence under Section 31 of the Protection of Women from Domestic Violence Act, 2005 and sentenced to undergo RI for one year and to pay fine of Rs.1000/-. On appeal, the Additional Sessions Judge confirmed the judgment of conviction but modified the sentence and reduced it from one year till rising of the Court and to pay compensation of Rs.30,000/- to the complainant under Section 357(3) of Cr.P.C. and in default to undergo simple imprisonment for six months.

5. In the case of Hari Sing Vs. Sukhbir Singh & Others, reported in (1988) 4 SCC 551, the Hon"ble Apex Court has 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 has been prescribed in the Code for recovery of sums awarded as compensation in the event, the same remained unpaid.

6. In the case of Sugnathi Suresh Kumar vs. Jagdishan, (2002) 2 SCC 420, the Hon"ble Supreme Court observed as under :-

"When this Court pronounced in Hari Singh v. Sukhbir Singh 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."

7. In the context of provision of Section 357 of Cr.P.C., this Hon"ble Court in the case of Vijayan vs. Sadanandan K. & Another, 2009 Cr.L.J. 2957, has observed in the following manner :-

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 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 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 herein below:-

"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.

8. Taking note of the reproduced portion of the judgment in Vijayan (supra) in the light of the facts of the present case, it is clear that while awarding compensation under Section 357(3) Cr.P.C., the Court is within its jurisdiction to add a default sentence of imprisonment.

9. In view of the aforesaid analysis, this revision has no substance and is hereby dismissed.