

question of withdrawal of benefits and there will also be no question of recoveries to be made. The decision and reasoning in C.W.P. No. 45673 of 2007 will govern also the findings of C.W.P. Nos. 9780 and 12144 of 2008. The petitioners in the respective writ petitions will also be not entitled to the higher scale of pay if they had been stepped up on a wrong basis, apart from the fact that they not also be liable for any recovery. The retiral benefits whenever arise, they shall be recomputed on notional refixation of pay without stepping up their pay. The impugned orders are set aside for re-examination of the issue in the light of the observations made above.

(14) All the writ petitions are disposed of in terms of the above directions.

R.N.R.

Before Augustine George Masih, J.

ANIL KUMAR,—Petitioners

versus

VIJAY KUMAR AND OTHERS,—Respondents

CrI. Misc. No. 20019-M of 2008

8th August, 2008

Code of Criminal Procedure, 1973-S.357-Maintainability—Murder of father of petitioner—Accused convicted & sentenced—Conviction & sentence upheld by High Court—Claim for compensation—Whether High Court has jurisdiction to grant compensation u/s 357 Cr. P.C.—Held, no—Competent authority to grant compensation would be trial court, revisional court or appellate court and no other court—Petition dismissed being not maintainable.

Held, that a bare reading of Section 357 of the Code of Criminal Procedure would clearly show that the competent court, which can

impose sentence can also impose fine and further can compensate, if in the opinion of the court and in the facts and circumstances of the case, the same are required. The contention that these two remedies are independent of each other, therefore, cannot be accepted for the simple reason that the competent authority to grant compensation would be the trial court, revisional court or the appellate court and no other court.

(Para 3)

Further held, that the compensation under Section 357 of the Code of Criminal Procedure can be granted only by the trial Court, revisional court or the appellate court and by no other court. Thus, this petition under Section 482 of the Code of Criminal Procedure is not maintainable.

(Para 5)

P.P. Singh, Advocate, *for the petitioner.*

AUGUSTINE GEORGE MASIH, J. (ORAL)

(1) This petition under Section 482 of the Code of Criminal Procedure has been filed by the petitioner claiming compensation under Section 357 of the Code of Criminal Procedure on the ground that his father was murdered by respondents No. 1 and 2 on the intervening night of 13/14 January, 1993. Both the respondents herein were convicted by the court of Sessions Judge, Ferozepur on 27th October, 1995 for life and with fine. The appeal preferred by respondent No. 1 and 2 before this Court was dismissed on 29th April, 2002. Although the conviction and sentence were upheld by this Court, meaning thereby life imprisonment and fine, however, no compensation under Section 357 of the Code of Criminal Procedure was granted to him. He, therefore, prays that since he was a minor at that time and now he has attained the age of majority, he must be granted compensation exercising the powers under Section 357 of the Code of Criminal Procedure. He further contends that the relief of compensation is separate from sentence and fine, which could include fine.

(2) I have heard the counsel for the petitioner and have gone through Section 357 of the Code of Criminal Procedure, which reads as under :—

“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.”

(3) A bare reading of the Section would clearly show that the competent court, which can impose sentence can also impose fine and further can compensate, if in the opinion of the court and in the facts and circumstances of the case, the same are required. The contention of the counsel for the petitioner that these two remedies are independent of each other, therefore, cannot be accepted for the simple reason that the competent authority to grant compensation would be the trial court, revisional court or the appellate court and no other court.

(4) For reaching this conclusion, I am supported by the ratio laid down by the Supreme Court in **M.R. Kudva versus State of Andhra Pradesh (1)**. This was a case where the petitioner had preferred a petition under Section 482 of the Code of Criminal Procedure praying therein that he was convicted and sentenced in two separate trials for different offences by separate courts. However, provision of Section 427 of the Code of Criminal Procedure was not invoked by the trial court or the appellate court and, therefore, the sentences were not ordered to run concurrently. It was thus prayed that in the light of the

(1) 2007 (1) R.C.R. (Criminal) 868

provisions of Section 427 read with Section 482 of the Code of Criminal Procedure, the High Court must order the running of sentences concurrently. This contention of the petitioner was rejected by the Hon'ble Supreme Court and the following observations are reproduced hereinbelow :

“10. However, in this case the provision of Section 427 of the Code was not invoked in the original cases or in the appeals. A separate application was filed before the High Court after the special leave petitions were dismissed. Such an application, in our opinion, was not maintainable. The High Court could not have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal. Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the trial judge, nor the High Court while passing the judgments in appeal. Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the trial judge nor the High Court while passing the judgment of conviction and sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 would be attracted. The said provision, therefore, could not be applied in a separate and independent proceeding by the High Court. The appeal being devoid of any merit is dismissed.”

(5) Taking support from the above preposition of law, as settled by the Hon'ble Supreme Court and following the same, it is held that the compensation under Section 357 of the Code of Criminal Procedure can be granted only by the trial court, revisional court or the appellate court and by no other court. Thus this petition under Section 482 of the Code of Criminal Procedure is not maintainable.

(6) In view of the above, I do not find any merit in this petition and dismiss the same as not maintainable.

R.N.R.