

Before N. K. Agrawal, J
PRABHU RAM & OTHERS,—*Petitioners*
versus
STATE OF HARYANA,—*Respondent*
Crl. R. No. 141 of 1988
22nd January, 1999

Code of Criminal Procedure, 1973—S. 357—Probation of Offenders Act, 1958—Ss. 5 & 11—Conviction by trial Court—In appeal benefit of probation given and compensation granted to the injured party—In revision before the High Court contended that compensation could not be ordered under section 357 Cr. P.C. and such compensation could only be paid out of fine imposed as sentence on an accused in defraying the expenses to any person for any loss or injury on the premise that when probation is granted neither sentence nor fine subsists—Held, Sessions Court did not pass any orders under section 357 Cr. P.C. but in fact u/s 5(1) read with S. 11(1) of the 1958 Act—Revision dismissed.

Held that, it is manifest that the Court ordering the release of an offender on probation of good conduct may also direct him to pay reasonable compensation to any person who suffered loss or injury due to the offence. The amount of compensation may be recovered as fine.

(Para 12)

Further held, that the appellate Court has not granted compensation out of the amount of fine imposed on the accused persons in the present case. The appellate Court had the power to make any order under the Probation of Offenders Act while granting the benefit of probation to the accused persons. Section 11(1) of the Act empowers the appellate Court to pass an order regarding the payment of compensation as mentioned in section 5 (1) of the Act. The order of the appellate Court for the payment of compensation by the accused persons is a valid order in the light of section 5(1) read with section 11(1) of the Act.

(Paras 14 & 15)

Kapil Aggarwal, Advocate for the Petitioners.

Parmod Goel, D.A.G. (H) for the Respondent.

JUDGMENT

(1) This is a revision petition under section 401 of the Code of Criminal Procedure (Cr. P.C.) challenging the appellate order dated 1st December, 1987 passed by the Sessions Judge, Ambala, whereby compensation amounting to Rs. 250 was ordered to be paid by each accused to the persons who had received injuries in the incident.

(2) The six petitioners faced trial in the Court of Additional Chief Judicial Magistrate, Ambala. They were convicted and sentenced to various terms of imprisonment for offences under sections 148, 324/149, 325/149 and 326/149, Indian Penal Code (IPC). They were also sentenced to a fine of Rs. 250 each for the offence under section 326/149, IPC, and in default of payment of fine, to further rigorous imprisonment for two months. Fine was imposed in addition to the sentence of rigorous imprisonment for two years under section 326/149, IPC.

(3) The accused persons went in appeal against the order of conviction and sentence. The learned Sessions Judge, in appeal filed by the accused persons, upheld their conviction but granted them the benefit of probation. The accused persons were ordered to be released on probation of good conduct for a period of one year on their executing personal and surety bonds. The appellate Court also ordered as under :—

“In addition thereto, all the appellants shall pay an amount of Rs. 250 each to be equally distributed amongst Sucha Ram and Gian Chand, PWs, as compensation. The fine, if already deposited by the appellants, shall be adjustable towards this compensation.”

(4) Shri Kapil Aggarwal, learned counsel for the petitioners, has argued that compensation could not be ordered to be paid as it was contrary to the provisions of section 357, Cr. P.C. Compensation could be paid out of fine imposed as sentence on the accused persons. The Court imposing any fine by way of sentence on an accused may, under section 357, Cr. P.C., order the whole or any part of such fine recovered to be applied in defraying the expenses properly incurred in the prosecution or in the payment of compensation to any person for any loss or injury caused by the offence. The learned counsel has contended that once the appellate Court granted the benefit of probation to the accused persons, both the sentences, namely, the sentence of imprisonment and the sentence of fine, no more subsisted and no compensation could, therefore, be ordered to be paid out of fine.

(5) Shri Kapil Aggarwal, in support of his contention, has placed reliance on a decision of this Court in *Darshan Lal v. The State of Punjab* (1). That was a case where the accused was convicted for the offence under section 324, IPC, and thereafter he was ordered by the trial Court to be released on probation of good conduct on his furnishing bond in the sum of Rs. 1,000 and also payment of compensation of Rs. 500. It was further ordered that out of compensation, Rs. 200 would be paid to the injured. The trial Court did not fix the period of probation. The appellate Court reduced the period of probation to six months and also reduced the amount of compensation to Rs. 400. It was held that since the petitioner had been released on probation by the trial Court presumably under section 360, Cr. P.C., he could not have been ordered to pay compensation. Relying upon a decision of the Supreme Court in *Girdhari Lal v. State of Punjab* (2), it was observed that once the accused was released on probation, he could not be directed to pay compensation under section 357, Cr. P.C. In the case of *Girdhari Lal (supra)*, the Supreme Court had considered a matter where the High Court had directed the accused to pay Rs. 3,000 as litigation costs to the State. In the light of the provisions of section 357, Cr. P.C. it was held that, in the absence of any sentence of fine, no direction for payment of litigation costs could be given.

(6) It would, thus, appear that the order of payment of compensation in the absence of any fine imposed on the accused person, was held to be not sustainable in the light of section 357, Cr. P.C.

(7) Relevant part of section 357, Cr.P.C., 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 ;

(1) 1984 (2) C.L.R. 792.

(2) A.I.R. 1982 S.C. 1229.

(c)	***	***	***	***	***
(d)	***	***	***	***	***
(e)	***	***	***	***	***
(2)	***	***	***	***	***
(3)	***	***	***	***	***
(4)	***	***	***	***	***
(5)	***	***	***	***	***"

(8) A plain reading of the above provision shows that compensation may be ordered to be paid where a Court imposes a sentence of fine. The whole or part of the fine recovered from the accused may be applied in the payment of compensation to any person for any loss or injury caused to him by the offence. The amount of fine may also be applied in defraying the expenses incurred in the prosecution. Thus, it is the amount of fine which is applied either for defraying the expenses incurred in the prosecution or compensating any person for any loss or injury caused to him by the offence.

(9) The appellate Court upheld the conviction in the present case and thereafter proceeded to grant the benefit of probation to the accused persons. Since neither the sentence of imprisonment nor the sentence of fine subsisted any more, the question of applying the whole or part of the fine in the payment of compensation does not arise.

(10) The appellate Court has not stated in its order that payment of compensation is ordered out of the fine imposed on the accused persons. After recording the order in respect of probation the Court proceeded to direct the appellants to pay a sum of Rs. 250 each by way of compensation. Section 357, Cr. P.C., was not invoked inasmuch as compensation was not ordered to be paid out of the amount of fine. There was no occasion for the appellate Court to pass an order under Section 357, Cr. P.C., as no part of fine survived after the benefit of probation was granted by the appellate Court to the appellants.

(11) Section 5 of the Probation of Offenders Act, 1958 (for short, the Act) also refers to the payment of compensation which is found to be reasonable, for the loss or injury caused to any person by the commission of the offence. Section 5 reads as under :—

5. *Power of court to require released offenders to pay compensation and costs. —*

- (1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a

further order directing him to pay—

- (a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence ;
 - (b) such costs of the proceedings as the court thinks reasonable.
- (2) The amount ordered to be paid under sub-section (1) may be recovered as fine in accordance with the provisions of sections 386 and 387 of the Code.
 - (3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.”.

(12) From the above provision, it is manifest that the Court ordering the release of an offender on probation of good conduct may also direct him to pay reasonable compensation to any person who suffered loss or injury due to the offence. The amount of compensation may be recovered as fine.

(13) Under sub-section (1) of Section 11 of the Act, the appellate Court may also pass any order under the Act. Sub-section (1) of Section 11 says :—

11. *Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision :—*

(1) Notwithstanding anything contained in the Code or any other law, an order under this Act may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or revision.

- (2) *** *** *** ***
- (3) *** *** *** ***
- (4) *** *** *** ****”

(14) The appellate Court has not granted compensation out of the amount of fine imposed on the accused persons in the present case. The appellate Court had the power to make any order under the

probation of Offenders Act while granting the benefit of probation to the accused persons. Section 11 (1) of the Act empowers the appellate Court to pass an order regarding the payment of compensation as mentioned in Section 5(1) of the Act.

(15) In the light of the above discussion, the plea put forward by the learned counsel for the petitioners has no merit. The order of the appellate Court for the payment of compensation by the accused persons is a valid order in the light of Section 5(1) read with section 11 (1) of the Act.

(16) The petition has no merit and it is, therefore, dismissed.

R.N.R.

Before Arun B. Saharya, C.J. & V. K Bali, J

P.N.B. THROUGH ITS CHAIRMAN-CUM-MANAGING DIRECTOR
AND OTHERS,—*Appellants.*

versus

K.S. RAJPUT & ANOTHER,—*Respondents.*

L.P.A. No. 664 of 1996

23rd July, 1999

Punjab National Bank (Officers) Service Regulations, 1979—Reg. 17—Promotions to all grades of officers in accordance with the policy laid down by the Court—Promotion policy providing process of selection for promotion—Marks fixed for different parameters—Can one parameter be ignored.

Held that, a bare perusal of the criteria laid down for promotion from Scale IV to Scale V would demonstrate that it deals with two different heads, namely, (i) to assess job and general knowledge, personal characteristics and potential for shouldering higher responsibilities and (ii) assessment of performance. The interview is held to assess the performance with regard to job and general knowledge, personal characteristics and potential for shouldering higher responsibilities. The other assessment of performance is with regard to work done by a candidate in preceding two years. The maximum marks (60 and 40) for different parameters, i.e., assessment of performance with regard to work done by a candidate in preceding two years and performance in interview have been mentioned in the promotion policy. The word 'interview' is followed by words 'to assess job and general