

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 234 of 2018

Indian Oil Corporation Limited

-Vs-

State of West Bengal & Anr.

For the petitioner: Mr. Sabyasachi Banerjee,
Mr. Anirban Dutta,
Mrs. Sharmistha Ghosh,
Mr. Swarbhanu Bhattacharya,
Mr. Victor Chatterjee,
Mr. Barnamoy Basak.

For the Opposite Party: Mr. Abhirup Chakraborty,
Mr. U.S. Menon.

Heard on: June 24, 2021

Judgment on: July 30, 2021.

BIBEK CHAUDHURI, J. : –

1. A short question involved in the instant criminal revision is as to whether a trial court while acquitting an accused can pass an order of compensation against the employer of the said accused under any of the provisions of Section 357 of the Code of Criminal Procedure.

2. Opposite party No.2 PBK Menon was the Deputy Manager (Systems) of Indian Oil Corporation Ltd, a Government company. On 18th December, 1993, the Central Bureau Investigation (hereafter referred to as CBI for short) registered a suo moto a FIR on the basis of source information against one Zenith Electronic and Power Systems and its proprietor N.V Pravakarn alleging, inter alia, that the said N.V Pravakarn had entered into a criminal conspiracy with some unknown persons inducing the Indian Oil Corporation, the petitioner herein to place an order for certain electronic gazettes and get payment for the same without the goods being supplied. The investigation of this case culminated in filing charge-sheet against the said N.V Pravakarn and others including the opposite party No.2 under various provisions of the Indian Penal Code as well as Prevention of Corruption Act, 1988.

3. It will be not be out of place to mention here that after receiving the information of initiation of criminal case against opposite party No.2, a disciplinary proceeding was drawn up against him by the petitioner on 25th March, 1994. The said disciplinary proceeding was however not conducted because of the written request placed by the CBI on 4th August, 1995. Finally by an order dated 30th October, 1997 the disciplinary authority held that the charge against the opposite party No.2 was not proved.

4. During the pendency of the said criminal case and the disciplinary proceeding, the opposite party No.2 stopped attending his duties since 29th May, 1997. Finally, by an order dated 16th July, 2001 the competent

authority of the petitioner company considering the long unauthorized absence of the opposite party No.2 held that he has abandoned his service under the petitioner company.

5. The above referred criminal case being Special Case No.11 of 1996 was disposed by the learned Special Judge, CBI Court, Alipore, South 24 Parganas. In the said judgment the learned trial judge held as follows:-

“From the evidence on record it has transpired that Material Manager had the responsibility to place order, check bill and to issue certificate for payment. But CBI did not array the material manager as accused rather picked up an innocent man.

IOC failed to protect P.B.K. Menon, as admitted by PW-29 who accorded sanction for his prosecution, though he knew that nothing wrong was there on the part of said employee of IOC. PW-29 did not apply his mind and preferred to lend his signature on the paper placed by Manager, Vigilance.

Because of such mechanical response of PW-29 to the request of CBI to accord sanction, the accused P.B.K. Menon lost precious 24 years of his life, which was painted with tar. He lost his face in society. IOC officials cannot give him back those 24 years of his life but there should be some atonement on the part of IOC.

True it is a victim of crime is entitled to compensation u/s. 357 and 357A of the Cr.P.C. Law has not yet prescribed any such provision for an accused, implicated in a criminal case without any cogent reason, practically by force, at the cost of his precious right to a dignified life. “The time then has arrived, Glaucon, when like huntsmen we should surround the cover, and look sharp that justice does not slip away and pass out of sight and get lost...”(The Republic)

Do Judges of trial courts have an obligation to protect human rights?

In order to find out the answer I would like to quote following paragraph from the Hand book on Human Rights for Judicial Officers(NIHR) :-

“Judicial Obligation to Protection of Human Rights”

Do Judges have an obligation to protect human rights?

The higher courts in India, lead by Apex Court, always answered, through numerous Court decisions and also in public discussion by senior Judges and Chief Justices, in emphatic affirmative terms.

While such enlightened reiterations from the highest judiciary may indicate the growing recognition of the crucial role of Judge in the substantive realization of human rights, there exists a reasonable level of skepticism-both among the people at large and among the lower level judiciary – about the availability of such “space” for judiciary at the trial courts level.

It may not far from truth to suggest that the common people continue to perceive judiciary at the trial courts level more as “dispute adjudicators” than officers vested with the responsibility of human rights protection, or ‘justice’ in a broader sense.

While it may be difficult to find out as to why such popular perceptions continue, it may be necessary to recognize that even the Judges at the trial courts level themselves have a tendency to perceive that their role in protection of human rights is rather limited.

This point was repeatedly raised by many judicial officers in the Continuing Education Programmes in Human Rights. Hon’ble Justice J.S. Verma, the Chairperson of NHRC, in his valedictory address in Bangalore programme, while responding to such questions from the officers, emphatically observed that first of all the Judge must have the conviction to protect human rights, then he/she

would be able to read in human rights norms into many existing provisions of Criminal or other laws. Elsewhere (*) he reiterated this point when he observe that,

Law has to be interpreted according to the current societal standards. The law when enacted, in spite of the best efforts and capacity of the legislators cannot visualize all situations in future to which that law requires application. New situations develop and the law has got to be interpreted for the purpose of application of them, for the purpose of finding a solution to the new problems. This is how the law advances. That is the area of field of judicial creativity to fill in the gap between the existing law and the law as it ought to be (emphasis added)."

That apart WE THE PEOPLE of India have resolved to secure to all its citizens JUSTICE social, economic and political.

Though there is no such explicit provision under law that empowers a court to award compensation to accused but as a member of judiciary, I do consider it expedient to send a message to the innocent accused, that he has not been forgotten in the Criminal administration of justice by directing the IOC to pay Mr. P.B.K Menon, whatever he was entitled to as an employee in the management cadre of IOC with interest @12% p.a from the date of according sanction on 14.12.1995 till his attaining 60 years of age and Rs.10,00,000.00 as compensation, within 3 months from this day.

It is,

Ordered,

the accused M.V. Pravakaran and P.B.K. Menon are found not guilty to the charge u/s. 120B/420/468/471/477A IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act,1988. They are acquitted U/s. 248(1) Cr.P.C. They be set at liberty and be released from bail bonds. Seized alamats, if any, be returned from whom

seized and/or destroyed as the case may be, after the period of appeal is over.

IOC is directed to pay Mr. P.B.K. Menon, whatever he was entitled to as an employee in the management cadre of IOC with interest @12% p.a from the date of according sanction for his prosecution till his attaining 60 years of age and Rs. 10,00,000.00 as compensation, within 3 months from this day.”

6. The petitioner has challenged the above quoted part of the order directing the Indian Oil Corporation to pay the opposite party No.2, whatever he was entitled to as an employee in the management cadre of IOC with interest @12% p.a from the date according to the sanction for prosecution till his attaining 60 years of age and Rs.10 lakh as compensation, within three months from this day.

7. It is vehemently urged by Mr. Sabyasachi Banerjee, learned Counsel for the petitioner that Indian Oil Corporation is not the complainant in the case, investigation of which was taken up by the CBI. The CBI alleged suo moto FIR on the basis of source information against a proprietorship firm, namely, Zenith Electronic and Power System and its proprietor Mr. N.V Pravakarn on the allegation that the said Pravakaran did not supply certain numbers of UPS and Batteries of a particular make to Indian Oil Corporation and issued false invoice and received the payment from the petitioner company. During investigation the opposite party No.2 was made an accused by the CBI. Since the opposite party No.2 was posted as Deputy Manager (Systems) of Indian Oil Corporation at the relevant point of time CBI needed sanction for prosecution. One Mr. P.S Krishnan being

the sanctioning authority issued the sanction order on the basis of the report submitted by the Vigilance Officer.

8. According to Mr. Banerjee even assuming that the opposite party No.2 was falsely implicated in a criminal case, such implication was made by the CBI. Sanction for prosecution in a criminal case is more of an administrative order issued by the sanctioning authority to the prosecuting agency. Even assuming that the order of sanction was subsequently proved to be wrong and issued without considering the materials on record, employer cannot be held to be liable and cannot be asked to make payment of the dues on salary from the date of issuance of sanction order till the employee attains the age of 60 years with interest plus compensation. Mr. Banerjee further submits that the accused was terminated from service not on the ground of a criminal case being initiated against him or that a disciplinary proceeding was going on. He was terminated vide order dated 16th July, 2001 by Indian Oil Corporation on clear finding that the opposite party No.2 stopped coming to the office since 29th May, 1997. In view of such circumstances the order passed by the learned trial judge in favour of opposite party No.2 to pay is dues on salary with interest 12% p.a and compensation of Rs.10 lakhs is illegal, inoperative, perverse and passed beyond jurisdiction of the learned trial court.

9. Learned Advocate for the opposite party No.2, on the other hand, submits that in the judgment passed in Special Case No.11 of 1996 by the learned trial judge it has been established that the opposite party No.2

was subjected to malicious prosecution. Not only he faced trial in a criminal case, he also subjected to a departmental proceeding. He lost about 20 years of his service life as a result of false allegation made by the petitioner against him. It is true that the criminal case was initiated on the basis of a suo moto complaint alleged by the CBI. But prosecution could not have been lodged if sanction order was not issued by the PW29, P.S Krishnan. The role of the opposite party No.2 as Deputy Manager (Systems) was limited to sending requisition to material department. He accordingly sent requisition. It was the duty of the Manager (Material) to pass order for procurement of the materials. It was not the duty of opposite party No.2 to examine as to whether actual goods and materials were supplied by a vendor or not. If the prosecution case is believed, it was the Manager (Materials) who should be held liable because he placed the order and passed four bills of M/s Zenith Electronic and Power System. Learned Advocate for the opposite party also draws my attention to the second paragraph of page 13 of the impugned judgment where the learned trial judge observed that the sanctioning authority issued the sanction order for prosecution against the petitioner without applying his mind, mechanically. Since the Vigilance Officer is an employee of the petitioner company, the company is liable to pay compensation to the opposite party No.2. In support of his contention learned Advocate for the opposite party refers to a three Judges Bench decision of the Hon'ble Supreme Court in the case of **S. Nambi Narayanan vs. Siby Mathews &**

Ors. reported in **(2018) 10 SCC 804**. In the said report the Hon'ble Supreme Court held and observed in paragraph 34 as follows:

“The criminal law was set in motion without any basis. It was initiated, if one is allowed to say, on some kind of fancy or notion. The liberty and dignity of the appellant which are basic to his human rights were jeopardized as he was taken into custody and, eventually, despite all the glory of the past, he was compelled to face cynical abhorrence. This situation invites the public law remedy for grant of compensation for violation of the fundamental right envisaged under Article 21 of the Constitution. In such a situation, it springs to life with immediacy. It is because life commands self-respect and dignity.”

10. In paragraph 43 of the said report, it was held and observed as under:-

“43. In the instant case, keeping in view the report of the CBI and the judgment rendered by this Court in K. Chandrasekhar, suitable compensation has to be awarded, without any trace of doubt, to compensate the suffering, anxiety and the treatment by which the quintessence of life and liberty under Article 21 of the Constitution withers away. We think it appropriate to direct the State of Kerala to pay a sum of Rs. 50 lakhs towards compensation to the appellant and, accordingly, it is so ordered. The said amount shall be

paid within eight weeks by the State. We hasten to clarify that the appellant, if so advised, may proceed with the civil suit wherein he has claimed more compensation. We have not expressed any opinion on the merits of the suit.”

11. Learned Advocate for the opposite party also refers to another decision of the Hon’ble Supreme Court in the case of **Ram Lakhan Singh vs. State of Uttar Pradesh through Chief Secretary** reported in **(2015) 16 SCC 715**. In the aforesaid reported decision a member of Indian Forest Service faced false vigilance cases at the instances of the then Chief Minister of the respondent State and thereby lost his professional career, reputation and heavy financial loss. He experienced great agony and defamation. The Hon’ble Supreme Court under Article 32 of the Constitution granted compensation to the petitioner to the tune of Rs.10 lakhs.

12. Coming to the instant case, it is submitted by the learned Advocate for the opposite party No.2 that the learned trial court rightly passed the order directing the petitioner to pay the dues of the opposite party No.2 towards his salary with interest and compensation.

13. Having heard the learned Counsel for the petitioner and the opposite party No.2 and on careful perusal of the impugned judgment as well as the facts and circumstances of the case and the decision of the Hon’ble Supreme Court, I like to state at the outset that the decision of the Hon’ble Supreme Court in **S. Nambi Narayanan** (Supra) was passed under Article 136 of the Constitution. The appellant preferred WP (C)

No.30918 of 2012 before the Kerala High Court for certain reliefs including compensation. The Hon'ble Single Judge of Kerala High Court allowed the writ petition. The State of Kerala preferred an appeal before the Division Bench. The Division Bench reversed the order passed by the learned Single Judge. The appellant went in appeal before under Article 136 of the Constitution before the Hon'ble Supreme Court. While disposing of the appeal the Hon'ble Supreme Court was pleased to grant compensation in favour of the appellant under Article 141 of the Constitution. Similarly, the decision in the case **Ram Lakhan Singh** (supra) was passed under Article 32 of the Constitution. In both the decisions the Hon'ble Supreme Court was pleased to consider the prayer of the appellant/petitioner on the touchstone of law of torts and public law remedy.

14. In the Code of Criminal Procedure, there is no provision for granting compensation to an accused for malicious prosecution. The accused will either be convicted or acquitted on conclusion of trial. There is absolutely no provision in the Code of Criminal Procedure for granting compensation to an accused. Chapter XXVII of the Code of Criminal Procedure deals with the judgment. Section 357 of the Code states-

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.

15. Sub-section 1 of Section 357 has been amended by WB Act 33 of 1985 and the provision in Section 357(1) is substituted by the West Bengal Amended Act:-

West Bengal

(a) In sub-sec. (1), for –

“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 recorded to be applied –”,

Substitute

“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, and where the person against whom an offence has been committed belongs to Scheduled Castes or Scheduled Tribes, except when both the accused person and the person against whom an offence has been committed belong either to Scheduled Castes or to Scheduled Tribes, shall, when passing judgment, order the whole or any part of the fine recovered to be applied –”,

(b) For sub-sec. (3), the following sub-section shall be substituted:

“(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, and where the person against whom an offence has been committed belongs to Scheduled Castes or Scheduled Tribes, shall, 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:

Provided that the Court may not order the accused person to pay by way of compensation, any amount if both the accused person and the person against whom an offence

has been committed belong either to Scheduled Castes or Scheduled Tribes.”;

And

(c) insert the following Explanation after sub-sec.(5):

“*Explanation.-* For the purpose of this section, the expressions “Scheduled Castes” and “Scheduled Tribes” shall have the meanings respectively assigned to them in clauses (24) and (25) of Article 366 of the Constitution of India.”- W.B. Act 33 of 1985, sec.3.

16. Section 357A deals with victim compensation scheme.

17. Plain reading of the above provisions shows that imposition of a substantive sentence of fine is a *sine qua non* for an order of compensation under Section 357 of the Code of Criminal Procedure. Sentence of imprisonment and fine to be imposed should be independent of any claim for compensation that may have been filed. Determination of the right measure of punishment is often a point of great difficulty and no hard and fast rule can be laid down, it being a matter of discretion which is to be guided by a variety of consideration, but the court must always bear in mind the necessity of maintain a *proposition* between an offence and penalty proposed for it. Section 357A on the other hand has been incorporated in the Code vide Act 5 of 2009 and the amendment duly came into force vide notification dated 31st December, 2009. The object and purpose of the provision is to enable the court to direct the state to pay compensation to the victim where the compensation under Section 357 was not adequate or where the case ended acquittal or discharge and

the victim was required to be rehabilitated. In both the cases the compensation is payable to the victim.

18. The only provision where compensation can be given to persons groundlessly arrested is led down in Section 358. Section 358 runs thus:

“358 Compensation to persons groundlessly arrested.–

(1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one hundred rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one hundred rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

19. Groundless arrest of a person amounts to violation of Article 21 of the Constitution. In **Anita Thakur vs. Jammu and Kashmir** reported in **(2016) 15 SCC 525**, the Hon’ble Supreme Court while discussing the scope of Section 358 held as follows:-

“It is apparent that to that extent, the respondents misused their power. To that extent, fundamental right of the petitioners, due to police excess, has been violated. In such circumstances, in exercise of its power under Article 32 of the

Constitution, this Court can award compensation to the petitioners.”

20. The ratio of the above precedents can be explained thus:

First, it is clear that a violation of fundamental rights due to police misconduct can give rise to a liability under public law, apart from criminal and tort law. Secondly, that pecuniary compensation can be awarded for such a violation of fundamental rights. Thirdly, it is the state that he is held liable and, therefore, the compensation is borne by the state and not the individual police officers found guilty of misconduct. Fourthly, this Court has held that the standard of proof required for proving police misconduct such as brutality, torture, custodial violence and for holding the State accountable for the same, is high. It is only for patent and incontrovertible violation of fundamental rights that such remedy can be made available. Fifthly, the doctrine of sovereign immunity does not apply to cases of fundamental rights violation and hence, cannot be used as a defence in public law.

21. In the instant case the learned trial judge passed the order of compensation to be payable to the opposite party No.2 by the petitioner while disposing of a criminal case under Indian Penal Code and Prevention of Corruption Act. As a trial judge he is guided by the Code of Criminal Procedure. He is not a constitutional court. Even the High Court

sitting in criminal jurisdiction cannot pass any such order of granting compensation to an accused after his acquittal de hors the provision of Section 358 of the Code of Criminal Procedure. Section 358 does not empower any court to pay compensation to make good of the financial loss which an accused incurred on termination of his service. It will not be out of place to mention that his termination from service was not due to the charge established in disciplinary proceeding or pendency of a criminal case. He stopped attending his office for about three years which compelled the petitioner company to abandon his service.

22. The learned trial judge has not only failed to exercise his jurisdiction but exceeded his limit in excess of his jurisdiction. No criminal court including the High Court created under the provision of Section 2e read with Section 6 of the Code of Criminal Procedure can pass such order as impugned before this court.

23. While setting aside the relevant part of the judgment passed by the learned Special Judge CBI, Alipore in Special Case No.11 of 1996 relating to payment of amount equivalent to his salary from the date of issuance of the sanction order for prosecution till his attainment of 60 years 12% interest thereon and compensation amounting to Rs.10 lakhs, this Court permits the opposite party No.2 to take appropriate step for compensation in accordance with law, if so advised.

24. This court finds that of late a tendency is noticed amongst the members of subordinate judiciary that they are trying to overreach their jurisdiction in the name of dispensation of justice. This tendency is highly

condemnable. Therefore, this Court is of the opinion that a copy of the judgment be circulated through the learned Registrar General, High Court, Calcutta to the learned District Judges with a request to circulate the same to the members of the subordinate judiciary under their respective judgship so that they should perform their judicial function within statutory limit and should not embark upon extraneous considerations.

25. The instant revision is accordingly disposed of on contest.

26. There shall, however, no order as to cost.

(Bibek Chaudhuri, J.)