

RESERVED
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Criminal Appeal No 2407 of 1986

Sukh Dev
Vs
State of U P

Appearance:

For the appellant:

For the Respondent : Mr Imran Ullah, Addl Advocate General
 Mr Akhilesh Singh, Govt Advocate
 Mr Vimlendu Tripathi, AGA-I
 Mr Narendra Kr Singh Yadav, AGA-II

Hon'ble Dilip B Bhosale, Chief Justice

Hon'ble Vikram Nath, J

Hon'ble Yashwant Varma, J

(Per Dilip B Bhosale, CJ)

A Division Bench, while dealing with the instant criminal appeal against the judgment and order of conviction, noticed the language employed in Section 302 IPC and also that the trial court, while convicting the accused and awarding punishment of life imprisonment, did not impose any fine as such, directed the Registrar General to issue a circular to all District Judges in the State as well as to the Director, JTRI vide order dated 17.12.2016. The relevant observations and direction read thus:

"In a number of appeals listed before this Court, it was found that life imprisonment under Section 302 IPC are being awarded, without imposing fine, as required under Section 302. Section 302, which is punishment for murder, is quoted herein below

"whoever, commits murder shall be punished with death or imprisonment for life and shall also be liable to fine."

It is very surprising that without reading the provision, the punishment are being imposed by the Trial Court and only punishment for life imprisonment are being awarded, though the word is "imprisonment for life and shall also be liable to fine". Since, the appeal is of the year 1986, the then officer must have been retired. Hence, Registrar General is required to issue general direction in this regard.

It appears that even at the JTRI, no proper training are being given in respect of the procedure of trial as well as some practical aspect, which are being faced by the trial courts day-today in civil and criminal trial including the provisions of General Rules (Civil) and General Rules (Criminal). **The Registrar General is required to issue circular to all the District Judges of this State as well as to the Director JTRI, to look into the matter and ensure for such directions, guidelines and training. The District and Sessions Judges should also ensure compliance of the provisions in respect of the procedure, as well as for awarding punishment.**

(emphasis supplied)

When the draft circular was placed for approval on the administrative side, an opinion was sought from one of the members of the Administrative Committee (Hon'ble Mr Justice Arun Tandon). Accordingly, opinion was recorded and it was placed before the Administrative Committee in its meeting held on 25 January 2017. The opinion placed before the Committee for its consideration read thus:

"I have Noticed the directions issued by the High Court on Judicial side in Criminal Appeal No. 2407 of 1986- Sukhdev vs. State.

The issue with regard to the provision of imposition of fine along with punishment of death sentence/life imprisonment for the offence under Section 302 IPC has been examined by two Division Benches of this Court in the case of **Ashfaq Ali and another vs. State of U.P., reported in 2008 (60) ACC 922 and in the case of Santosh Kumar Baranwal vs.**

State of U.P. reported in 2010 (70) ACC 59.

The Division Bench in the case of **Ashfaq Ali** (Supra) has held that it is mandatory to impose fine in addition to the substantive sentence of imprisonment for the offence punishable under Section 302 IPC.

The Division Bench in the case of **Santosh Kumar Baranwal** (Supra) has held that such imposition of fine for the offence committed under Section 302 IPC is only directory and the choice of the Court concerned.

I, therefore, find that there is a conflict between two Division Benches of the Court in the matter of imposition of fine in addition to the substantive sentence for an offence under Section 302 IPC being directory/mandatory. The matter, therefore, needs to be resolved by a Larger Bench.

Till the matter is finally resolved by the Larger Bench, issuance of the circular in terms of the directions issued under the order dated 17.12.2016 needs be kept in abeyance.”

(emphasis supplied)

It is against this backdrop that the Administrative Committee resolved to request the Chief Justice to refer the question “whether it is mandatory to impose fine in addition to the substantive sentence of imprisonment for the offence punishable under Section 302 IPC”, to larger Bench for consideration. Accordingly, this larger Bench has been constituted to record its opinion on the aforesaid question.

Before we deal with the question, we find it necessary to look into the judgments of this Court in **Ashfaq Ali** (supra) and **Santosh Kumar Baranwal** (supra), which have expressed divergent opinions on the question.

In **Ashfaq Ali**, the Division Bench, while considering a bail

application and enlarging the accused on bail, in paragraph 6 made the following observations:

“6. It is worthwhile to mention that the learned Trial Court has not imposed fine for any offence, whereas it is mandatory to impose fine in addition to the substantive sentence of imprisonment for the offence punishable under section 302 I.P.C., as the language used in section 302 I.P.C. is, “and shall also be liable to fine”. We have come across some other cases also, in which, fine was not imposed by the Trial Courts even for those offences where the expression used by the legislature in the sections for which conviction was recorded was “and shall also be liable to fine”. Where such expression is used in any section, the Court is under obligation to impose fine also in addition to the substantive sentence of imprisonment. No discretion is left to the Court to levy or not to levy fine and imposition of both imprisonment and fine is imperative in such case as held by Hon'ble Apex Court in the case of Zunjarao Bhikaji Nagarkar v. Union of India and others¹, in which reference has been made to the case of Rajasthan Pharmaceutical Laboratory, Bangalore v. State of Karnataka².”

(emphasis supplied)

In **Santosh Kumar Baranwal**, the Division Bench, while dealing with an appeal against the judgment and order of conviction under Sections 302, 309 IPC and Section 25 of the Arms Act, considered the question whether it is mandatory to impose a fine while recording the order of conviction and awarding sentence under Section 302 IPC. After considering judgments of different High Courts and the judgments of the Supreme Court including the judgments in **Zunjarao** (supra), **Rajasthan Pharmaceutical Laboratory** (supra), in paragraphs 109 and 110 observed thus:

“109. In our opinion, the words 'shall also liable to fine' in section 302 IPC merely empower the Court

¹ AIR 1999 SC 2881

² (1981) 1 SCC 645

to impose the fine but does not mandate it. To impose or not to impose is in the discretion of the Court.

110. There is another reason for holding that there is discretion to sentence fine. Section 302 IPC neither prescribes upper limit nor prescribes lower limit. **In view of section 63 of the IPC the upper limit is unlimited but it cannot be excessive: it depends on the fact of each case. There is no mention of lower limit of fine under section 302 IPC. It also means that the Court may chose to impose nil fine that is no fine at all.”**

(emphasis supplied)

In **Zunjarrao**, the Supreme Court, while dealing with the phraseology, namely “shall be liable to a penalty” used in Section 173-Q of the Central Excise Rules, 1944, which is similar to Section 302 IPC, and so also the provisions contained in Section 11-AC with Section 271 of the Income Tax Act, 1961, observed thus:

“33. When we examine Rule 173-Q it does appear to us that apart from the offending goods which are liable to confiscation the person concerned with that shall be liable to penalty upto the amount specified in the Rule. It is difficult to accept the argument of the appellant that levy of penalty is discretionary. It is only the amount of penalty which is discretionary. Both things are necessary: (1) goods are liable to confiscation and (2) person concerned is liable to penalty. We may contrast the provisions of Rule 173-Q and Section 11-AC with Section 271 of the Income-tax Act, 1961...”

(emphasis supplied)

Then, the Supreme Court, after considering the provisions contained in Section 271 of the Income Tax Act, in paragraph 34 observed thus:

“34. It would, thus, be seen that under provisions of Section 271 of the Income-tax Act in the first instance there is a discretion with the assessing authority whether to impose any penalty or not and if the assessing authority finds that it is a case for

imposition of penalty then it has no discretion in the matter and the certain amount of penalty depending on the facts and circumstances of each case has to be imposed subject to the maximum limit mentioned in the section.”

(emphasis supplied)

The Supreme Court in **Zunjarao** considered the provisions of the Excise Rules and the Income Tax Act. Rule 173-Q of the Excise Rules that fell for its consideration provided two options. Firstly, confiscation of the goods and secondly, imposition of penalty. The first part states all such goods shall be liable to confiscation and the second part uses the words manufacturer, producer, etc shall be liable to penalty. This is apparent from the language employed in Rule 173-Q, the relevant portion of which reads thus:

“173Q. Confiscation and penalty.- (1) If any manufacturer, producer, registered person of a warehouse or a registered dealer -

- (a) removes any excisable goods in contravention of any of the provisions of these rules; or
- (b) does not account for any excisable goods manufactured, produced or stored by him; or
- (bb)
- (bbb)
- (c)
- (d) contravenes any of the provisions of these rules with intent to evade payment of duty,

then, all such goods shall be liable to confiscation and the manufacturer, producer, registered person of a warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding three times the value of the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (bb) or clause (c) or clause (d) has been committed, or five thousand rupees, whichever is

greater.”

It is also relevant to notice that at both places, the words/phrases used are 'shall be liable to'. That is to say same words/phrases are used. The Supreme Court, therefore, interpreted the expression 'shall be liable to penalty' as mandatory. In other words, in case the first part of this provision is interpreted to be discretionary then the second part also would be discretionary. If such an interpretation is placed on the language that would be against the intention of the legislature and, therefore, the Supreme Court, it appears, held that the expression 'shall be liable to penalty' makes the provision mandatory. Similar interpretation cannot be placed on the language of Section 302 IPC. It clearly uses two different phrases and different language.

In **Rajasthan Pharmaceutical**, the appellants were only fined under Section 18 (c) read with Section 27 (a) (ii) of the Drugs and Cosmetics Act, 1940 and no imprisonment was awarded. In this backdrop, after considering the relevant provisions, the question that was considered was whether it is mandatory to award imprisonment, and not whether fine was mandatory. While dealing with the question, it was observed that Section 27 (a) (ii) makes a sentence for imprisonment of not less than one year compulsory for such an offence, in addition to fine, unless for special reason a sentence of imprisonment for a lesser period was warranted.

It would also be necessary to notice the views taken by other High Courts on the question. In **Sebastian alias Kunju Vs State of Kerala, 1992**

CrLJ 3642, the Kerala High Court, after considering the expression “and shall also be liable to fine” observed that the power is conferred on the Court to impose sentence of fine also in addition to imprisonment. It was further observed, it does not mean that the court should impose fine in all such cases as a rule. The court has the discretion to impose or not to impose a fine in addition to the sentence of imprisonment. In **Tetar Gope Vs Ganauri, 1968 CrLJ 1108**, the Patna High Court also took a similar view and observed that the expression “and shall also be liable to fine” has been used in the Indian Penal Code only in connection with those offences where the legislature has provided that a sentence of imprisonment is compulsory. It was further observed that in regard to such offences, the legislature has left a discretion in the court to impose a sentence of fine in appropriate cases in addition to the imposition of a sentence of imprisonment which alone is obligatory. This judgment was subsequently overruled in **Zunjarrao**. Similar view was taken by this Court and other High Courts in various judgments in **Satveer Vs State of U P, 2007 (58) ACC 796; Dhanno Khan Vs The State, AIR 1957 Allahabad 317; Babu Lal Vs State, AIR 1960 Allahabad 228**; Punjab and Haryana High Court in **State Vs Amru Tuisi Ram, AIR 1957 Punjab 55**, and Andhra Pradesh High Court in **In re Shankarappa & Ors, AIR 1958 AP 380.**

Section 302 IPC, is a penal provision for committing murder, which provides that “whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.” A plain reading of this provision clearly shows that while punishing the accused for committing

murder, with death or imprisonment for life, he shall also be liable to fine.

Before we deal with the same and the question, it would be necessary to look into some more provisions of IPC.

Chapter III of IPC consisting of Sections 53 to 75 deals with punishments. Some of the provisions in this Chapter are relevant for our purpose. We are concerned with Sections 53, 63 and 64. Section 53 provides different punishments to which the offenders are liable under IPC. Fine is one of the punishments provided therein. Section 63 provides for the amount of fine. It states that where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive. Section 64 provides for a sentence of imprisonment for non-payment of fine. This provision states that 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, it shall be competent for 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, which 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 sentence. A careful reading of these provisions shows that it shall be competent for the Court to award punishment of imprisonment for non-payment of fine in which the offender is sentenced to fine. The expression “in which the offender is sentenced to a fine” indicates that if the fine is imposed and if it is not paid, then it is competent to the Court to direct the accused to undergo further sentence in

default of payment of the fine.

We have carefully seen different provisions in IPC providing punishments such as Section 302 thereof. We have also gone through the First Schedule in CrPC providing classification of offences under IPC and the entries in the second and third columns, prescribing the punishments for the offences. Having regard thereto, we would like to have a close look at the offences affecting the human body in Chapter XVI of the IPC. This Chapter consists of Sections 299 to 377, providing definitions and penal provisions such as Sections 300 and 302 respectively. Close survey of these provisions shows that there are mainly two patterns of punishments. The first pattern of punishment provides for imprisonment for the term provided for the offence defined under every individual Section, and fine, with the expression “and shall also be liable to fine” such as Sections 302, 305, 306, 312, 313, 314, 316, 325, 344 etc. The other pattern of punishments in this Chapter provides for “imprisonment or with fine or with both” such as Sections 308, 309, 315, 317, 318, 323, 324 etc. We have also noticed the provisions contained in Section 304B IPC which provides punishment with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. This provision does not provide for imposition of fine. We are not entering into the reasons why in this provision, fine has not been provided for as punishment.

We have also seen the provisions contained in Section 326A which was inserted by the Criminal Law (Amendment) Act, 2013 with effect from 3.2.2013, providing punishment for voluntarily causing grievous hurt by use

of acid, etc. Under this Section, once the offence is proved, the accused shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, “and with fine”. The first proviso to this Section states that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim and that any fine imposed under this Section shall be paid to the victim. Section 326B which also was inserted by Amendment Act, 2013 provides punishment for voluntarily throwing or attempting to throw acid. Under this provision, the accused shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and “shall also be liable to fine”.

The difference between the language employed in different penal provisions in IPC is clear. Under Section 326A, the Court is obliged or bound to inflict punishment of imprisonment “with fine” whereas under Section 302, the accused shall be punished “with imprisonment” and “shall also be liable to fine”. The expression “shall also be liable to fine” or the expression “shall be punished with imprisonment or with fine or with both”, are used, as observed earlier, for different offences defined under the provisions of IPC. Undoubtedly, the legislature has made a distinction between the language for providing punishment with imprisonment and/or fine for the offences under different provisions of IPC. In other words, a distinction has certainly been made between the punishment “with imprisonment or fine or both” and “imprisonment and with fine” and the expression “imprisonment and shall also be liable to fine”. The

expression “imprisonment and with fine”, which is obviously mandatory in nature, in our opinion, cannot be equated with the expression “imprisonment and shall also be liable to fine”. Similarly, the expression “imprisonment or fine or with both”, also cannot be equated with the expression “imprisonment and shall also be liable to fine”. The legislature has consciously used the word 'liable' in the first pattern of punishments or set of Sections, as aforementioned, which leave it to the discretion to the Court to impose fine. In other words, imposition of fine is not made mandatory as we find in Section 326A of IPC where the burden is cast on the Court to inflict punishment with imprisonment and with fine, whereas in case of the first pattern of punishment liability is of the accused to pay fine, if it is imposed for the offences punishable with imprisonment and fine, such as Sections 302, 305, 306 etc.

The word “liable” occurring in Section 302 and all other similar provisions does not convey the sense of an absolute obligation, but it only empowers the Court to impose fine and if the fine is imposed, the accused is liable to pay the same and in default to suffer further imprisonment as provided for under Section 63 IPC. Section 326A was inserted by the Criminal Law (Amendment) Act, 2013 with effect from 3 February 2013, wherein the expression “imprisonment for life, and with fine” has been employed. If the expression “and shall also be liable to fine” is held to be mandatory, then why the legislature did not use a similar expression while inserting Section 326A in 2013. In other words, if the legislature had an intention to make the fine also mandatory, instead of using the expression

“and shall also be liable to fine”, it was possible to use the expression “the imprisonment and the fine” in all the Sections including Section 302, where the imprisonment is mandatory. The word “liable” clearly indicates that the accused is liable to pay fine if liability to pay fine is created by imposing it under the provision which enables the Court to impose the fine. In other words, the offender is liable to pay fine if imposed.

It is well settled that a statute is not to be interpreted merely from a lexicographer's angle. The Court must give effect to the will and inbuilt policy of the legislature as discernible from the object and scheme of the enactment and the language employed therein. If the language of penal provisions in IPC is taken as a whole, it shows that the legislation empowers the Court to impose fine and it does not mandate it, except where it is made clear. In other words, whether to impose fine or not is left to the discretion of the Court and if that was not the case, the legislature would have used similar language as has been used in Section 326A of IPC. It is true that it is desirable for Courts to impose fine also along with the sentence of imprisonment with direction to undergo further imprisonment if the fine is not paid, as contemplated by Section 63 of IPC but merely because sentence of fine is not inflicted, it would not either vitiate the order of punishment or render unsustainable in law.

The Supreme Court in **Superintendent and Remembrancer of Legal Affairs to Government of West Bengal Vs Abani Maity, (1979) 4 SCC 85**, considered the word 'liable' while dealing with the question whether the vehicle carrying contraband items was liable to be confiscated under Section

63 of the Bengal Excise Act, 1909. This provision uses the expression "shall be liable to confiscation." There, the Supreme Court considered the word 'liable' and observed thus:

"Accordingly, the word "liable" occurring in many statutes, has been held as not conveying the sense of an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty, even where this word is used along with the words "shall be". Thus, where an American Revenue Statute declared that for the commission of a certain act, a vessel "shall be liable to forfeiture", it was held that these words do not effect a present absolute forfeiture but only give a right to have the vessel forfeited under due process of law. (See Kate Heron, 14 Fed Cas 139, 141 : 6 Sawy, 106 quoted in Words and Phrases, Vol. 25, page 109, Permanent Edition, West Publishing Co.) **Similarly, it has been held that in Section 302, Indian Penal Code, the phrase "shall also be liable to fine" does not convey a mandate but leaves it to the discretion of the Court convicting an accused of the offence of murder, to impose or not to impose fine in addition to the sentence of death or imprisonment for life."**

(emphasis supplied)

Apart from an analysis of the provisions in Chapter XVI, if we carefully examine the contents of Section 302, and as observed by the Division Bench in **Santosh Kumar Baranwal (supra)**, we also find that it was possible for the legislature to use similar language as has been used in Section 326A. In other words, the legislature in order to make the imposition of fine mandatory would have used the expression 'and also fine' instead of 'and shall also be liable to fine'. Use of language, as is seen in Section 302, thus, in our opinion, makes it clear that the imposition of fine is not mandatory.

In **Dalip Singh & Ors Vs State of Punjab, (1979) 4 SCC 332**, the

Supreme Court while dealing with an appeal by special leave from the judgment of the Punjab and Haryana High Court confirming death sentence imposed upon each of the three appellants under Section 302 read with Section 34 IPC for murder of five persons belonging to one family commuted the sentence of death imposed on one of the accused namely Balvinder Singh. All the three accused along with death sentence were also directed to pay fine of Rs.2000/- separately. The Supreme Court upheld the sentence of death awarded to appellant to other two accused namely Dalip Singh and Kundan Singh but set aside the imposition of fine of Rs.2000/- on each of them. Similarly by a specific direction, even though the sentence of death in case of Balvinder Singh was commuted, the sentence of fine of Rs.2000/- imposed on him was also knocked down. It is true that the question that falls for our consideration was neither framed nor dealt with by the Supreme Court but from the facts of the case and so also the judgment of the Supreme Court, it is clear that imposition of fine in the event of conviction under Section 302 is not mandatory. If the interpretation of the expression 'and shall also be liable to fine' is accepted to mean that imposition of fine is mandatory then certainly the Supreme Court would not have set aside the sentence of fine even where the sentence of death was commuted and instead the accused was sentenced to undergo imprisonment for life.

The Supreme Court in **Palaniappa Gounder Vs The State of Tamil Nadu & Ors, AIR 1977 SC 1323**, though was dealing with an appeal against the order of conviction and imposition of fine, the special leave

granted was limited to the question of the propriety of the fine imposed by the High Court. In that case, the High Court, while reducing the sentence from death to imprisonment of life, imposed a fine of Rs 20,000/- on the appellant and directed that out of the fine, if realised, a sum of Rs 15,000/- should be paid to the son and daughters of the deceased under Section 357 (1) (c) of the Code of Criminal Procedure. The Supreme Court, in that case, after considering the provisions contained in Section 357 of the Code of Criminal Procedure in the light of the order of the High Court imposing a fine of Rs 20,000/-, in paragraphs 7, 8 and 9 observed thus:

“7. It cannot however be overlooked that the order for compensation can be passed under S. 357 (1) (c) only when "a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part." **We are concerned in this appeal to examine primarily the legality and propriety of the sentence of fine imposed by the High Court** because upon that would depend the efficacy and indeed the very existence of the order for payment of compensation to the heirs of the deceased. The compensation, as provided in the section, has to come out of the fine. Therefore, if on a proper application of the principles of sentencing, the fine imposed by the High Court is found to be excessive and has therefore to be reduced, the order regarding the payment of compensation must suffer a corresponding variation.

8. **There can be no doubt that for the offence of murder Courts have the power to impose a sentence of fine under S. 302 of the Penal Code.** That section provides that whoever commits murder shall be punished with death or imprisonment for life, and "shall also be liable to fine." That is why S. 357(1) of the Code speaks of "a sentence (including a sentence of death) of which fine forms a part." That is only an instance of the practical application of S. 302 under which not only a sentence of imprisonment for life but even a sentence of death can legitimately be combined with a sentence of fine.

9. **But legitimacy is not to be confused with**

propriety and the fact that the Court possesses a certain power does not mean that it must always exercise it. Though, therefore, the High Court had the power to impose on the appellant a sentence of fine along with the sentence of life imprisonment the question still arises whether a sentence of fine of Rs. 20,000/- is justified in the circumstances of the case. Economic offences are generally visited with heavy fines because an offender who has enriched himself unconscionably or unjustifiably by violating economic laws can be assumed legitimately to possess the means to pay that fine. He must disgorge his ill-gotten wealth. But quite different considerations would, in the generality of cases, apply to matters of the present kind. Though there is power to combine a sentence of death with a sentence of fine that power is sparingly exercised because the sentence of death is an extreme penalty to impose and adding to that grave penalty a sentence of fine is hardly calculated to serve any social purpose. **In fact the common trend of sentencing is that even a sentence of life imprisonment is seldom combined with a heavy sentence of fine. We cannot, of course, go so far as to express approval of the unqualified view taken in some of the cases that a sentence of fine for an offence of murder is wholly "inapposite" (See, for example, State v. Pandurang Shinde, AIR 1956 Bom 711 at p. 714) but before imposing the sentence of fine, particularly a heavy fine, along with the sentence of death or life imprisonment, one must pause to consider whether the sentence of fine is at all called for and if so, what is a proper or adequate fine to impose in the circumstances of the case.** As observed by this Court in Adamji Umar Dalal v. The State of Bombay, 1952 SCR 172 = (AIR 1952 SC 14) 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 considerations but the court must always bear in mind the necessity of maintaining a proportion between the offence and the penalty proposed for it. Speaking for the Court Mahajan J. observed in that case that: "in imposing a fine it is necessary to have as much regard to the pecuniary circumstances of the accused persons as to the character and magnitude of the offence, and where a substantial term of imprisonment is inflicted, an excessive fine should not accompany it except in exceptional cases" (page 177). Though that

case related to an economic offence, this Court reduced the sentence of fine from Rs. 42,300/- to Rs. 4,000/- on the ground that due regard was not paid by the lower Court to the principles governing the imposition of a sentence of fine.”

(emphasis supplied)

Our attention was also invited to the latest judgment of the Supreme Court in **Employees State Insurance Corporation Vs A K Abdul Samad & Anr, AIR 2016 SC 1290**. In this case, the question that was considered was whether the court has been given the judicial discretion only to reduce the sentence of imprisonment for any term lesser than six months or whether it also has the discretion to levy no fine or a fine of less than five thousand rupees. While dealing with this question, the Supreme Court considered several judgments including **Zunjarrao** and **Palaniappa Gounder** and in paragraph 8 observed thus:

“In our considered view, the clause “shall also be liable to fine”, in the context of Indian Penal Code may be capable of being treated as directory and thus conferring on the court a discretion to impose sentence of fine also in addition to imprisonment although such discretion stands somewhat impaired as per the view taken by this Court in the case of Zunjarrao Bhikaji Nagarkar (AIR 1999 SC 2881) (supra). But clearly no minimum fine is prescribed for the offences under the IPC nor that Act was enacted with the special purpose of preventing economic offences as was the case in Chern Taong Shang (AIR 1988 SC 603) (supra). The object of creating offence and penalty under the Employees’ State Insurance Act, 1948 is clearly to create deterrence against violation of provisions of the Act which are beneficial for the employees. Non-payment of contributions is an economic offence and therefore the Legislature has not only fixed a minimum term of imprisonment but also a fixed amount of fine of five thousand rupees under Section 85(a)(i)(b) of the Act. There is no discretion of awarding less than the specified

fee, under the main provision. It is only the proviso which is in the nature of an exception whereunder the court is vested with discretion limited to imposition of imprisonment for a lesser term. Conspicuously, no words are found in the proviso for imposing a lesser fine than that of five thousand rupees. In such a situation the intention of the Legislature is clear and brooks no interpretation. The law is well settled that when the wordings of the Statute are clear, no interpretation is required unless there is a requirement of saving the provisions from vice of unconstitutionality or absurdity. Neither of the twin situations is attracted herein.”

We would also like to have a glance at Section 357 of CrPC. Section 357 reads thus:

“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.”

The language of Section 357 also makes the intention of the legislature clear even in respect of the power to impose a sentence of fine under Section 302 IPC. Sub-sections (1) and (3) of Section 357 make it clear that when a court imposes a sentence of fine or a sentence, including a sentence of death of which “fine forms a part”, the court has powers to direct payment of compensation to any person for any loss or injury caused by the offence from the amount of fine. Sub-section (2) also uses the expression “if the fine is imposed” which also makes it clear that imposition of fine is not mandatory. The expression 'a sentence of fine or a sentence of which fine forms a part' used in Section 357 supports our view that “if” the fine forms part of a sentence, such fine can be directed to be paid by way of compensation to the victim.

From the observations made by the Supreme Court in **Palaniappa**

Gounder and **Abani Maity** (supra), particularly in the paragraphs quoted above, and so also the language of sub-section (2) of Section 357, it appears to us that the imposition of fine is not mandatory and an order of compensation under Section 357 can be passed only if the fine is imposed and if it is paid or recovered. In other words, it is clear that compensation can only come out of fine. It is always necessary to consider in the first instance whether the sentence of fine is at all called for, particularly when the offender is sentenced to death or life imprisonment, as observed in **Palaniappa Gounder**. Though, there is power to combine a sentence of death/life imprisonment with a sentence of fine, that power is required to be exercised keeping in view that the sentence of life imprisonment is an extreme punishment. In **Surinder Kumar Vs State, AIR 1987 SC 692**, the Supreme Court set aside part of the sentence of fine and confirmed only the sentence of life imprisonment.

Indubitably, courts are armed with the power to impose sentence of fine also in addition to imprisonment, but it does not mean that the court should impose fine in every case as a rule, though it may be desirable, having regard to the facts and circumstances of the case, to impose fine and to consider issuing directions to pay compensation to the victim as contemplated by Section 357 of CrPC. Section 302 or other similar Sections do not fix any upper limit in respect of fine for a particular offence and the court has the freedom to fix any amount. Section 63 of IPC says that where no sum is expressed, the amount of fine, to which the offender is liable to pay, would be unlimited but not excessive or ridiculously low. Financial

capacity of the accused, enormity of the offence, extent of damage caused to the victim of the offence are also relevant considerations in fixing the amount. Having regard to these and overall facts and circumstances of each case, it needs to be taken into consideration whether to impose a fine or not, and it should not be a mechanical process of either imposing fine or not to impose fine. It is for the court to decide whether any person involved in a criminal offence (victim) deserves payment of compensation. In all such cases, sentence of fine in conjunction with the sentence of imprisonment would be necessary and appropriate.

Thus, we answer the question framed by us in the negative. In other words, we hold that it is not mandatory to impose a fine in addition to a substantive sentence of imprisonment for an offence punishable under Section 302 IPC, though it is desirable to impose a fine having regard to the facts and circumstances of the case and the power conferred under Section 357 of CrPC.

The Registry is directed to place the instant criminal appeal alongwith this judgment before the appropriate Bench.

March 22, 2017
AHA

(Dilip B Bhosale, CJ)

(Vikram Nath, J)

(Yashwant Varma, J)