

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

**Criminal Appeal No. 57 of 2021**

Abdul Jaheer  
and others.

.....Appellants.

Through: Ms. Pushpa Joshi, learned Sr. Advocate assisted by Ms. Manisha Bhandari and Ms. Chetna Latwal, learned counsel for the appellants.

-Versus-

State of Uttarakhand.

.....Respondents.

Through: Shri J.S. Virk, learned Deputy Advocate General with Shri Rakesh Joshi and Shri Pankaj Joshi, learned Brief Holders for the State of Uttarakhand / respondents.

**And**

**Criminal Appeal No. 350 of 2021**

Mangalam Sharma

.....Appellant.

Through: Shri Gaurav Singh, learned counsel for the appellant.

-Versus-

State of Uttarakhand.

.....Respondents.

Through: Shri J.S. Virk, learned Deputy Advocate General with Shri Rakesh Joshi and Shri Pankaj Joshi, learned Brief Holders for the State of Uttarakhand / respondent.

**With**

**Criminal Appeal No. 341 of 2021**

Shivansh Chauhan.

.....Appellant.

Through: Shri Aditya Pratap Singh, learned counsel for the appellant.

-Versus-

State of Uttarakhand.

.....Respondents.

Through: Shri J.S. Virk, learned Deputy Advocate General with Shri Rakesh Joshi and

Shri Pankaj Joshi, learned Brief Holders for the State of Uttarakhand / respondent.

**With  
Criminal Appeal No. 368 of 2021**

Amit Rawat. ....Appellant.

Through: Shri G.C. Kandpal and Shri Vinod Tiwari, learned counsel for the appellant.

-Versus-

State of Uttarakhand. ....Respondents.

Through: Shri J.S. Virk, learned Deputy Advocate General with Shri Rakesh Joshi and Shri Pankaj Joshi, learned Brief Holders for the State of Uttarakhand / respondent.

Dates of hearing: 22.07.2022 and 01.10.2022

Date of Judgment : 01.10.2022

**Coram:**

**Shri Sanjaya Kumar Mishra, J.**

**Shri Manoj Kumar Tiwari, J.**

**Shri Sharad Kumar Sharma, J.**

**Per: Shri Sanjaya Kumar Mishra, J.**

1. These matters have been referred by the Division Bench to this Court to answer the following question:

*“Whether the Appellate Court has jurisdiction to stay imposition of fine by the learned trial court under Section 389 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code” for brevity), even when no compensation is awarded by the trial court?”*

2. For the sake of convenience facts of Criminal Appeal No. 57 of 2021 are taken into consideration for proper adjudication of the matter.

3. On 08.03.2022, the Division Bench of this Court, in which one of us was a Member, heard an application under Section 389

of the Code for suspension of the sentence moved by one Abdul Jaheer. He has been convicted along with others for the offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as "the Penal Code" for brevity) read with Section 34 of the Penal Code in Sessions Trial No. 86 of 2015 vide judgment dated 16.02.2021 and sentenced to undergo imprisonment for life and to pay fine of Rs. 10,000/- and in default, to further undergo simple imprisonment of two months under Section 302 / 34 of the Penal Code.

4. On 15.02.2022, bail upon appeal has been granted to appellant - Abdul Sayeed and sentence was suspended. Bail application no. 4 of 22 was filed in Criminal Appeal No. 57 of 2021 by said Abdul Jaheer for grant of bail and stay of fine.

5. It may be noted that appellant Abdul Jaheer has been convicted under Section 302 / 34 of the Indian Penal and sentenced to undergo imprisonment for life and to pay fine of Rs. 10,000/- and in default, to undergo further imprisonment of two months under Section 302 / 34 of the Penal Code. No compensation has been awarded to the victim or the informant, as envisaged under Section 357 of the Code. When this Court took up the matter, there was difference of opinion regarding "stay of fine" between S.K. Mishra, J and A. K. Verma, J, hence, matter has been referred to a larger bench along with other connected matters where bail has been granted upon appeal but there has been no stay of the fine.

6. Such a question also arose before the High Court of Madras in the case of **Bay Leathers Exports Pvt. Ltd Vs. Saileela 1998 CriLJ 3719** where the High Court has held as under:

*"1. The question that arises for consideration in this revision petition is whether the appellate court under Section 389(1) of the Criminal Procedure Code, 1973, could suspend the sentence of fine, while admitting the appeal and if so, under what circumstances ?*

*xxxxx*

*12. In view of the wordings contained in Section 389(3), the trial court can suspend the sentence of imprisonment alone. However, the question raised in this case is, whether the appellate court has got powers under Section 389(1) to suspend the sentence of fine. But, we need not delve into the question, since the counsel for the petitioner himself has conceded that the word "sentence" in Section 389(1) would include fine. Therefore, the incidental question that would arise is can the sentence of fine be suspended by the appellate court, merely because the appellate court is empowered to do.*

*13. My emphatic answer is the appellate court cannot exercise the said power lightly, in view of the wordings contained in Section 389(1) as "the appellate court may, for reason to be recorded by it in writing, order that the execution of the sentence ... be suspended".*

*14. From the plain language of Section 389 of the Criminal Procedure Code, it is clear that the section confers discretionary jurisdiction on the appellate court to suspend the execution of sentence during the pendency of the appeal only on the valid reasons recorded in writing.*

15. The expression "sentence", of course, means, not only substantive sentence of imprisonment but also included sentence of fine. Though the language of Section 389 of the Criminal Procedure Code is silent in terms of the same, the appellate court has to consider the two situations, while ordering suspension of sentence of fine. The one is to find out the reasons for suspending the sentence of fine and the next is to impose suitable conditions, as may be justified on the facts of each case, in order to ensure that the order of sentence of fine which may ultimately be imposed on the appellant as a result of the appeal, can be executed without any difficulty.

16. In a case where the sentence of both imprisonment and fine is imposed, the legitimate condition that could be imposed by the court while granting the prayer for suspension of imprisonment could be to call upon the appellant to execute a bond on suitable terms and furnish sureties to ensure his presence before the court to undergo the sentence of imprisonment, in the event of dismissal of the appeal. For suspending the sentence of fine the legitimate condition that could be imposed would be to direct the appellant to furnish a suitable security which could ensure the deposit of fine which may ultimately be imposed on the appellant as a result of the decision of the appeal."

7. Similar question also arose before the Hon'ble Apex Court in the case of **Satyendra Kumar Mehra Vs. State of Jharkhand (2018) 15 SCC 139**. It was an appeal against the order passed by the High Court of Jharkhand wherein an appellant had been convicted and sentenced to undergo imprisonment for life and to pay fine in a Criminal Appeal bearing No. 176 of 2018. An

application for bail and suspension of sentence was also filed by the appellant before the High Court of Jharkhand. The High Court after hearing the parties, allowed the application granting the privilege of suspension of sentence and directed the appellant to be released on bail on furnishing two sureties of Rs. 50,000/-, however, while allowing the application the High Court has directed that appellant should also deposit the amount of fine as awarded by the trial court. Aggrieved by such an order, Satyendra Kumar Mehra preferred an SLP before the Hon'ble Supreme Court. The SLP was allowed and the SLP was registered as Criminal Appeal No. 406 of 2018. It was contended before the Hon'ble Supreme Court that if any fine is imposed on a convict then by virtue of sub-section (2) of Section 357 of the Code, there should be automatic stay of realization of such fine in the event, the Convict files an appeal. However, the Hon'ble Supreme Court taking into consideration the different provisions of Section 357 and 389 of the Code has observed as follows:

*“14. The fine is thus contemplated to be utilised for compensating different circumstances as enumerated in Section 357(1) CrPC. Sub-section (2) of Section 357 CrPC has been engrafted in reference to what was stated in sub-section (1) of Section 357 CrPC. Crucial words used in sub-section (2) of Section 357 CrPC are “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” (emphasis supplied). Thus, what is prohibited under Section 357(2) CrPC is that payment of compensation utilising the fine be not paid till the period allowed for presenting the appeal has elapsed, or if an appeal is filed then before*

*the decision of the appeal. It does not involve any concept of stay of sentence.*

**15.** *Chapter XXIX deals with the appeals. In the said Chapter, Section 389 deals with the subject "suspension of sentence pending the appeal; release of appellant on bail". Section 389(1) CrPC empowers the appellate court to order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail. Thus, the power of suspension of sentence emanates from Section 389 CrPC where appellate court is empowered to pass such an order.*

**16.** *Sections 357 and 389 CrPC operate in two different fields. Section 357 CrPC contains an embargo that on passing a judgment of sentence of fine, the fine be not utilised for payment of compensation till contingency as mentioned therein does not occur. The sentence awarded by the court including sentence of fine is in no way affected by the embargo contained in Section 357(2) CrPC. The operation of Section 357(2) CrPC is restricted to payment of compensation as contemplated by Sections 357(1) and (3) CrPC. The heading of Section 357 CrPC i.e. "Order to pay compensation" as well as contents of the section lead to only one conclusion that the entire provision has been engrafted regarding payment of compensation out of the fine imposed or when court imposes sentence the fine is not part of which, the court may by way of compensation direct payment of such amount to a person who has suffered the injury. We, thus, are of the view that*

*Section 357 CrPC has nothing to do with suspension of sentence awarded by the trial court and the sentence of fine imposed on the accused is in no way affected by Section 357(2) CrPC. The present is not a case where the trial court has directed payment of any compensation to anyone out of fine imposed. There is no direction for payment of compensation in the order of the trial court nor the present case is covered by the circumstances mentioned in sub-clauses (a) to (d) of Section 357(1) CrPC. Present is also not a case of Section 357(3) CrPC. Hence, there is no question of applicability of Section 357(2) CrPC.*

*xxxxxx*

*35. What is the purpose and object of sub-section (2) of Section 357 CrPC? Section 357(1) CrPC contemplated utilisation of fine imposed in certain circumstances as compensation to be paid to the victim. Sub-section (2) engrafted an embargo that such payment shall not be made till the period allowed for appeal has elapsed or if the appeal is filed, till the same is decided. The legislature was conscious that compensation paid if utilised, there may not be appropriate measures to recover the said amount utilised from victim to whom the compensation is paid hence embargo in payment has been engrafted in sub-section (2). Thus, at best sub-section (2) of Section 357 CrPC is a provision which defers or withholds the utilisation of the amount of compensation awarded till the limitation of appeal elapses or if filed till it is decided. The provision in no manner stays the sentence of fine during the pendency*

*of the appeal. The purpose for which sub-section (2) of Section 357 CrPC has been enacted is different as noted above and it never contemplates a stay of sentence of fine imposed on the accused.*

*36. We, however, make it clear that the appellate court while exercising power under Section 389 CrPC can suspend the sentence of imprisonment as well as of fine without any condition or with conditions. There are no fetters on the power of the appellate court while exercising jurisdiction under Section 389 CrPC. The appellate court could have suspended the sentence and fine both or could have directed for deposit of fine or part of fine."*

8. Thus, it is clear that two Sections 357 and 389 of the Code operate in different fields. Section 357 especially sub-Section (2) of the Code comes into play when a fine is imposed and a compensation, in terms of sub-Section (1) of Section 357 of the Code is ordered to be paid. However, provisions of Section 389 of the Code are the general powers of the Court to suspend sentence for reasons recorded.

9. Sentence has not been defined either in "the Code" or in "the Penal Code". Chapter III of the Penal Code provides for "punishments". Section 53 defines "punishments". Thus, for the purpose of appreciation, the same is quoted below:

*"53. Punishments - The punishments to which offenders are liable under the provisions of this Code are-*

*First.-- Death;*

*[Secondly.--Imprisonment for life;]*

*[\*\*\*]*

*Fourthly.-- Imprisonment, which is of two descriptions, namely:-- (1) Rigorous, that is, with hard labour. (2) Simple;*  
*Fifthly – Forfeiture of property.*  
*Sixthly – Fine.”*

10. Sections 54 and 55 provide for commutation of sentence of “death” and “imprisonment for life” and instead of word “punishment”, the word “sentence” is used in both the Sections. Thus, it is clear that “sentence” has to be read as “punishment” as defined under Section 53 of the Code which includes “death penalty” “imprisonment for life” “imprisonment, rigorous or simple in nature”, “forfeiture of property” and “fine”. Thus, Section 389 (1) of the Code provides that the Appellate Court has jurisdiction, for reasons to be recorded, to suspend the sentence. Such suspension of sentence includes both imprisonment and fine. In that view of the matter, this Court holds that the question is answered in the following manner:

“The Appellate Court has jurisdiction to suspend the fine imposed upon the appellant in a criminal trial, even when no compensation is awarded by the trial court.”

11. It is further directed that once the Appellate Court suspends the “Sentence”, it shall also mean stay of fine, unless otherwise directed. All these cases be listed before the assigned Bench.

**(S. K. Sharma, J.)      (M. K. Tiwari, J.)      (S. K. Mishra, J.)**  
 (Grant urgent certified copy of this judgment, as per Rules)