

Abstract

Because of the reason that there has been the Act Amending the Criminal Procedure Code Criminal Procedure Code, (No. 24), B.E. 2548 (2005), in relation to the proceedings of a civil case connected with a criminal case under which the injured party is given a right to file a petition for compensation in the criminal case in which a Public Prosecutor is the prosecutor if the injured party should have been endangered on life, bodily or mentally harmed or deprived of liberty in person or prestige or injured in property because of the commission of an offence of the accused under Section 44/1 of Criminal Procedure Code. Result of the study even though revealed that such provision contains certain advantageous points which are a non-requirement to pay Court fee, no expenses on entering an action nor time consuming in bringing the civil case before the Court, however, there remain problems on the interpretation and law enforcement on many respects; such as,

1. The problem on being the injured party entitled to file a petition for compensation which must be the injured person only who shall be eligible for filing a claim for such compensation or including the person having the power of management in his place?

From the definition of Section 2 (4), the word "Injured Party" inclusively means a person who has sustained an injury resultant from a commission of any offence including the other person having the power of management in his place as provided under Section 4, 5 and 6. When the provision of Section 44/1 is the provision provided on the part of Criminal Procedure Code, therefore, the definition under Section 2 (4) should be applied for the adjustment in corroboration with the provision of Section 44/1 on the unclear part which after the adjustment is made in corroboration with Section 44/1, the word "Injured Party" shall inclusively mean the person having the power of management in place of the injured party, as well.

2. Whether or not an injured party who shall be entitled to file a petition for compensation under Section 44/1 must be the injured person of legal sense?

I (Thesis Writer) am of the opinion that the provision of Section 44/1 is the case of the exercise of the right of claim resultant from the commission of an offence of the accused. Even the filing of a petition under this Section is the exercise of the right in civil case and the power in entering a civil claim in connection with an offence, however, the injured party shall be eligible to enter an action in Court that tries criminal cases or in Civil Court¹ and regardless of whether the action will be entered in Court trying the criminal cases or the Court having a jurisdiction in trying and adjudicating civil cases, the trying of the case shall be in accordance with the provisions of Civil Procedure Code. In the case of an injured party participating in the commission of an offence who is no longer the injured person of legal sense, the filing of a petition under Section 44/1 of the injured party may be adduced by the accused and rebutted that the injured party is not the injured person of legal sense, thus, he shall have no power to file a claim against the accused for any compensation.

However, there is a supreme court judgment on a case where the decision is made and contained in the judgment of supreme court No. 4147/2550² whereby the decision is made likely in a manner that even the injured parties have consented in having sexual intercourses shall not mean that all three girls have participated in the commissions of the offence, therefore, all three girls shall be deemed to be the injured persons of legal sense, thus, they shall have the power to institute a criminal case. And thereafter, if supreme court should have a subsequent judgment that an injured parties who will file a petition for compensation under Section 44/1 must be the injured persons of legal sense only, thus, it will result in the injured parties to enter civil action against the accused and that in such case it will cause a repetition on the entering of action of the injured party on the part of civil claims.

¹ Criminal Procedure Code, Section 40

² Justice Affairs Promotion Services (2550, p. 114).

3. If the law should hold on to the petition under Section 44/1 as a charge, the problem remains unsolved is whether or not a third person can interplead into the case under Section 57 of Criminal Procedure Code.

In considering this problem, what shall be taken into account is that the principal case where action has been entered is the criminal case in which the Public Prosecutor is the prosecutor, not an action on civil claims and the provision under paragraph three also prohibits the injured party to offer the other issues not in relation to the matter of compensation into the case or alter the charge in accordance with the charge of the prosecutor in order to cause further delay in the criminal case.

Therefore, the other person not being an injured party shall not be eligible to interplead disregarding whether being in the capacity of a litigant or third person litigant which is different from the case where a private person has enforced an action whereby a third person can become a party to the case and it is a jurisdiction of the Court to determine whether or not such third person shall be permitted to become a party to the case by basing its consideration on the petition whether or not there is a reasonable ground. On the matter of entering an action on civil case connected with a criminal case, there is a supreme court judgment No. 925/2508 that interpleading into the case is possible in accordance with Section 57 of Civil Procedure Code which provides "Any third person, not being the party, may become a party by way of interpleading." Now that, the expression "may become a party" has a meaning likely to give a power to the Court to consider first whether it is reasonable to permit or not permit such third person to become a party depending upon the petition whether or not it is reasonable, therefore, I (Thesis Writer) am of the opinion that in a petition under Section 44/1, which the law considers the petition as a charge, whereby the injured party has filed a petition for compensation in the criminal case in which the Public Prosecutor is the prosecutor instituting the case, the right of interpleading can be exercised in the civil case, however, the Court, first, may consider whether or not such third party should be permitted to become a joint litigant by considering from the petition whether or not such petition bears a reasonable ground.

Therefore, in order to solve a problem on the provision of the law which is unclear that compellingly leads to the interpretation of the law as to how it should be interpreted and law enforcement on various problems which have been occurred as to what direction it should go in order to attain benefits in line with the intention of the law drafters who wanted to see the injuries of injured party remedied as much as possible, I, (Thesis Writer) am of the view that the adoption of Criminal Procedure Code for application on the adjustment for use in solving various problems which have been occurred should be more reasonably suitable due to the reason that such provision is provided under the Criminal Procedure Code coupled with the fact that it will not create any entangled problems on the interpretations and law enforcements whatsoever.

Moreover, there remains another important problem which may compellingly require the injured party to enter an action on civil claims for compensation and pay Court fee as well as various expenses in the case proceedings; the problem on the lack of understanding on the steps of filing a petition where the law stipulates a requirement on a period of time for an injured party to file such petition on claims for compensation which must be before the commencement of the taking of evidence and that in the case where the taking of evidence is not required, the petition shall be filed before the final decision of the Court. It is generally known that most of the injured parties have less knowledge in law, thus, lacking understanding on the steps and period of time in filing the petitions and the method of composing the petitions which consequently resulting in those injured parties to fail to include the petitions in the case or even filing the petitions after the period of time prescribed under paragraph 2 of Section 44/1 of Criminal Procedure Code, has passed over. Therefore, the Court should be designated and assigned with the duty to inform the injured parties on their rights in filing claims for compensations in such case.

It can be seen that the rising of various problems were initiated as a result of the unclearness of the provisions of the law where the interpretations are always necessary consequently causing problems in such law enforcements which, at the present, there has been no judgment of supreme court for adhering as a standard

criteria for implementations. Thus, a wait for a judgment of supreme court for backing up is most likely in order to create the clearness in further interpretations and law enforcements.