

Criminal Revision No.741/2010**THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
(SINGLE BENCH)****(Hon'ble Shri Justice Deepak Kumar Agarwal)****Criminal Revision No.741/2010****Sitaram**

Vs.

Kanhaiyalal

Shri Siddharth Sharma, learned counsel for the petitioner.

Shri A.V.Bhardwaj, learned counsel for the respondent.

ORDER**(19.04.2022)**

Petitioner has filed this criminal revision being aggrieved by the judgment passed by the Appellate Court in Criminal Appeal No.78/2008 on 26.8.2010 by which the Appellate Court has modified the judgment passed by the learned JMFC, Sironj, in Criminal Case No.580/2006 on 10.3.2008 and converted the fine into compensation under Section 357(3) of Cr.P.C.

2. Brief facts of the case necessary for disposal of this revision are that respondent Kanhaiyalal and petitioner Seetaram are relatives. Respondent performs the work of goldsmith. Petitioner contacted him to purchase gold ornaments and assured that he will pay the price of aforesaid ornaments in three months. Relying upon his

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assurance, respondent gave him gold ornaments. The petitioner gave him cheque No.1111024 dated 6.7.2005 of Rs.2,87,500/- and cheque No.1111025 dated 21.7.2005 of Rs.2,87,500 of State Bank of India, Branch Sironj. The respondent presented the said cheque on 10.8.2005 in State Bank of India, Branch Sironj. The bank informed that as said account has been closed, it could not be encashed. Thereafter respondent gave registered notice on 27.8.2005 and demanded money within fifteen days. The petitioner on 31.8.2005 denied to take the said notice. The respondent then also sent under postal certificate on the permanent address of the petitioner. Thereafter, respondent filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner.

3. After service, petitioner appeared before the learned Magistrate and trial conducted. After completion of trial, the petitioner was convicted under Section 138 of the Negotiable Instruments Act and directed to pay a fine of Rs.6,00,000/-, out of which, Rs.5,90,000/- was directed to be paid to the respondent as compensation. Against this, petitioner filed an appeal before the Court of learned Additional Sessions Judge, Sironj. Learned Additional Sessions Judge vide judgment dated 26.8.2010 found that trial of the case was conducted like summons trial and due to Section 29 of Cr.P.C. Judicial Magistrate First Class cannot impose fine of

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more than 10,000/- and converted the fine of Rs.6,00,000/- into compensation under Section 357(3). Aggrieved by the aforesaid judgment, petitioner filed this revision.

4. Heard learned counsel for the parties and perused the record.

5. In Negotiable Instruments Act, 1881, there is no separate provision for compensation and for compensation in criminal cases provisions of Section 357 of Cr.P.C. will be attracted. Section 357 of 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;

(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

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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 trial Court vide judgment dated 10.3.2008 on conviction has not sentenced the petitioner. The trial Court has only imposed fine of Rs.6,00,000/-. Hence, provisions of Section 357(1)(b) will be attracted.

6. As far as conversion of that fine into compensation under Section 357(3) of Cr.P.C. is concerned, it is illegal because provision of Section 357(3) of Cr.P.C. will come into force only when Court imposes a sentence of which fine does not form a part, but learned Magistrate has not convicted the petitioner for any sentence.

7. In Negotiable Instruments Act, as per provision of Section 138, a Magistrate can punish the accused with imprisonment for a term

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which may extend to two years or with fine which may extend to twice the amount of the cheque or with both. It is true that as per provisions of Section 29 of Cr.P.C. Judicial Magistrate First Class cannot impose fine of more than Rs.10,000/-, but in this context amendment of Section 143 dated 6.2.2003 is pertinent by which a provision has been made that in case of any conviction in a summary trial, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees. In this regard, judgment pronounced by Hon'ble Supreme Court in the case of **R.Vijayan vs. Baby and another, (2012) 1 SCC 260** is helpful. Relevant portion of the aforesaid judgment is reproduced hereinbelow:-

“13.....In view of conferment of such special power and jurisdiction upon the First Class Magistrate, the ceiling as to the amount of fine stipulated in section 29(2) of the Code is removed. Consequently, in regard to any prosecution for offences punishable under [section 138](#) of the Act, a First Class Magistrate may impose a fine exceeding Rs.5000/-, the ceiling being twice the amount of the cheque.”

8. It is true that in Section 143(1) of the Negotiable Instruments Act another proviso has been added that if summary trial is not possible, accused will be tried by way of summons trial and Magistrate will rehear the case in the manner provided by said Code. But in aforesaid provision, there is no bar that if trial is conducted in

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summons manner, Magistrate cannot impose the fine twice the cheque amount. In this regard, the order of Chhattisgarh High Court in **Atharva Agro Chemical Pvt. Ltd. vs. Gopal Chand Barik & Anr.** decided on 4.2.2021 in Criminal Misc. Petition No.357/2013 is relevant, whereby Chhattisgarh High Court relying on the judgment of the Apex Court in the case of **R.Vijayan (supra)** has held as under :-

“17. In the matter of **R. Vijayan v. Baby and another, (2012)1 SCC 260** their Lordships of the Supreme Court culled out the following principle contained in the provisions of Chapter-XVII of the Act, which states as under:-

“(i) The provision for levy of fine which is linked to the cheque amount and may extent to twice the amount of the cheque (Section 138) thereby rendering Section 357(3) virtually infructuous insofar as cheque dishonour cases are concerned.”

Their Lordships in the later part of judgment while considering the intention of legislature for enacting Section 138 of the NI Act, have held as under:—

"17. The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation under Section 357(1) (b) of the Code. Though a complaint under Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under Section 357(1) (b) of the Code and the provision for compounding the offences under Section 138

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of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under Section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary.

18. Having reached that stage, if some Magistrates go by the traditional view that the criminal proceedings are for imposing punishment on the accused, either imprisonment or fine or both, and there is no need to compensate the complainant, particularly if the complainant is not a "victim" in the real sense, but is a well-to-do financier or financing institution, difficulties and complications arise. In those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. As the provisions of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine up to twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. Direction to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts, not only increase the credibility of cheque as a negotiable instrument, but also the credibility of courts of justice

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19. We are conscious of the fact that proceedings under Section 138 of the Act cannot be treated as civil suits for recovery of the cheque amount with interest. We are also conscious of the fact that compensation awarded under Section 357(1)(b) is not intended to be an elaborate exercise taking note of interest, etc. Our observations are necessitated due to the need to have uniformity and consistency in decision making. In same type of cheque dishonour cases, after convicting the accused, if some courts grant compensation and if some other courts do not grant compensation, the inconsistency, though perfectly acceptable in the eye of the law, will give rise to certain amount of uncertainty in the minds of litigants about the functioning of courts. Citizens will not be able to arrange or regulate their affairs in a proper manner as they will not know whether they should simultaneously file a civil suit or not. The problem is aggravated having regard to the fact that in spite of Section 143(3) of the Act requiring the complaints in regard to cheque dishonour cases under Section 138 of the Act to be concluded within six months from the date of the filing of the complaint, such cases seldom reach finality before three or four years let alone six months. These cases give rise to complications where civil suits have not been filed within three years on account of the pendency of the criminal cases. While it is not the duty of criminal courts to ensure that successful complainants get the cheque amount also, it is their duty to have uniformity and consistency with other courts dealing with similar cases.”

18. In the matter of **Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197**, the Supreme Court following the principle of law laid down in *R. Vijayan (supra)*, held that Section 138 of the NI Act is both punitive as well as compensatory and restitutive, and also provides for enforcement of civil liability for realisation of cheque amount. It was held as under: -

“25. In *R. Vijayan v. Baby, (2012) 1 SCC 260* this Court observed that the object of Chapter XVII of the Negotiable Instruments Act is both punitive as also compensatory and restitutive. It provides a single forum and single proceeding for enforcement of criminal liability by reason of dishonour of cheque and for enforcement of the civil liability for realisation of the cheque amount, thereby obviating the need for the creditor to move two different

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fora for relief. This Court expressed its anguish that some Magistrates went by the traditional view, that the criminal proceedings were for imposing punishment and did not exercise discretion to direct payment of compensation, causing considerable difficulty to the complainant, as invariably the limitation for filing civil cases would expire by the time the criminal case was decided.”

Thereafter, while granting appeal and confirming conviction of the respondent therein, their Lordships of the Supreme Court sentenced him only to fine, which was enhanced to ₹ 16 lakhs and further directed the same to be paid as compensation to the complainant. It was held as under: -

“40. The appeals are allowed. The judgment and order of the High Court is set aside. The conviction of the respondent under Section 138 of the Negotiable Instruments Act is confirmed. However, the respondent-accused is sentenced only to fine, which is enhanced to Rs 16 lakhs and shall be paid as compensation to the appellant complainant. The fine shall be deposited in the trial court within eight weeks from the date, failing which the sentence of imprisonment of one year as imposed by the trial court shall revive. There shall be no order as to costs.”

19. Thus, it is quite vivid that under Section 138 of the NI Act, Criminal Court is competent to levy fine up to twice the cheque amount and direct payment of such amount as compensation by way of restitution in regard to the loss on account of dishonour of cheque under Section 357(1)(b) of the CrPC and as such, the power under Section 357(3) of the CrPC cannot be exercised by Criminal Court in the cheque dishonour cases.”

9. In view of the aforesaid discussion and law laid down by the Hon'ble Supreme Court, it is clear that in cases under Section 138 of the Negotiable Instruments Act, compensation can be granted only under Section 357 (1)(b) of Cr.P.C. and not under Section 357(3) of

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Cr.P.C.

10. In view of the aforesaid and amendment in Section 143 of the Negotiable Instruments Act, conversion of fine into compensation under Section 357(3) of Cr.P.C. is illegal and beyond jurisdiction. Accordingly, the judgment of appellate Court dated 26.8.2010 is set aside and judgment of trial Court dated 10.3.2008 is restored.

With the aforesaid, revision stands disposed of.

(Deepak Kumar Agarwal)
Judge

ms/-