IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1631-2016 (O & M)
Date of decision: 28.02.2023

Gaurav Khullar ….. Revisionist/complainant

V/s

Eleven V Industries and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Viren Jain, Advocate,
for the revisionist-complainant.

Mr. Rajesh Dhiman, Legal Aid Counsel
for the respondents.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present revision petition under Section 397/401 read with Section 357(4) Cr.P.C. is for setting aside the order dated 20.01.2016 passed by the Court of the Additional Sessions Judge, Ludhiana in Criminal Appeal No.124 of 15.12.2014 and registration No.CRA-1033-2014 titled as 'Gaurav Khullar versus M/s Eleven V Industries and Ors.' whereby the appeal filed by the revisionist/complainant against the omission to grant of compensation under Section 357(1)(b) Cr.P.C. by the Magistrate while passing the order of conviction and sentence dated 22.09.2014 in a complaint under Section 138 of the Negotiable Instruments Act and for enhancement of substantive sentence awarded by the Magistrate has been dismissed and no amount of compensation has been granted to the revisionist/complainant after the judgment of conviction and order of sentence had been upheld by the Additional Sessions Judge, Ludhiana.

2. The brief facts of the case are that the revisionist/complainant (hereinafter known as 'the petitioner') had instituted a criminal complaint under Section 138 of the Negotiable Instruments Act against the respondents/convicts (hereinafter known as 'the respondents') on account of the dishonour of a cheque bearing No.577096 dated 25.08.2011 for an amount of Rs.7,75,000/-. A copy of the complaint is attached as Annexure P-1 to the present petition.

2. After the completion of the Trial, the Trial Court convicted the respondents vide judgment of conviction dated 22.09.2014 and sentenced them to undergo rigorous imprisonment for 06 months alongwith a fine of Rs.1,000/- each, in default of which, they were to undergo simple imprisonment for one month. However, at the time of convicting and sentencing, no compensation was awarded to the petitioner in terms of Section 357 Cr.P.C. A copy of the judgment of conviction and order of sentence dated 22.09.2014 passed by the Trial Court is attached as Annexure P-2.

3. Against the non-grant of compensation to the petitioner by the Trial Court under Section 357 Cr.P.C. as also the inadequacy of the substantive sentence of 06 months imprisonment, an appeal was preferred by him under the proviso to Section 372 Cr.P.C. challenging the non-grant of compensation and for enhancement of sentence. A copy of the said appeal is attached as Annexure P-3 to the present petition. The respondents also preferred an appeal against the judgment of conviction and order of sentence imposed upon them. The appeal filed by the respondents was dismissed by the Additional Sessions Judge, Ludhiana and the judgment of conviction and order of sentence passed by the Trial Court was upheld. However, simultaneously, the appeal filed by the petitioner against the non-grant of

compensation by the Trial Court was also dismissed by the Additional Sessions Judge, Ludhiana without awarding any compensation and enhancing the substantive sentence. The copy of the judgment dated 20.01.2016 passed by the Additional Sessions Judge, Ludhiana, whereby both the appeals filed by the respondents as well as the petitioner (complainant) respectively were dismissed is attached as Annexure P-4.

The present revision petition has been preferred against the aforementioned judgment.

4. The primary contention raised in the present petition is that the Additional Sessions Judge, Ludhiana has misinterpreted the provisions of Section 357 Cr.P.C. as also the judgment of the Hon'ble Supreme Court in the case of ***'R. Vijayan versus Baby and another, 2011(4) RCR (Criminal) 743'.*** The Appellate Court had ignored the fact that a cheque had been issued for a sum of Rs.7,75,000/- which came to be dishonoured and while convicting the accused, no amount of compensation was awarded.

5. The learned counsel for the petitioner contends that the Additional Sessions Judge, Ludhiana, has clearly misinterpreted the provisions of Section 138 of the Negotiable Instruments Act read with Section 357 Cr.P.C. It has also misinterpreted the judgment of the Hon'ble Supreme Court in ***R. Vijayan (supra)*** which had been cited before it. Despite the fact that the dishonoured cheque was for an amount of Rs.7,75,000/-, a fine of only Rs.1,000/- each was imposed by the Trial Court and the same was not enhanced by the Additional Sessions Judge, Ludhiana in appeal so as to adequately compensate the complainant. It is his contention that post-recording of a conviction it becomes the primary duty of the Trial Court to not only punish the offender but to also invariably compensate the complainant for the dishonour of the cheque because,

usually, in such cases of dishonour, the complainant would not file a civil suit for recovery assuming that he would get adequate compensation under the provisions of the Negotiable Instruments Act. On the other hand, post-recording of a conviction, the complainant would wait for the Trial to conclude to file a suit for recovery which, in all probability, would be time-barred as cases of cheque dishonour would not be concluded within three years. Taking his argument further, the learned counsel contends that the Hon'ble Supreme Court has gone to the extent of holding that even if the convict who was ordered to pay compensation has not paid the same but had instead, undergone the sentence in default, he was still liable to pay the compensation and the same was recoverable as per law. He, thus, contends that to bring a certain amount of consistency to the principles of sentencing, adequate compensation commensurate with the cheque amount must be awarded and there can be no justification for awarding a flee-bite sentence. Reliance is placed by him on the judgments of ***'Suganthi Suresh Kumar versus Jagdeeshan, 2002(1) RCR (Criminal) 502, R. Vijayan versus Baby and another, 2011(4) RCR (Criminal) 743, H. Pukhraj versus D.Parasmal 2014(4) RCR (Criminal) 557, Suresh Yedbaji Jantre versus State of Maharashtra 2018(2) NIJ 767 and Kumaran versus State of Kerala and another 2017(2) RCR (Criminal) 879".***

6. The Legal Aid Counsel for the respondents-accused, on the other hand, contends that the respondents have already undergone the sentence imposed upon them and now the same cannot be enhanced. Since the fine had been made a part of the sentence, the compensation could not be awarded. The complainant-revisionist was well withing his right to approach the Civil Court to file a suit for recovery. Therefore, there is no merit in the present petition and the same ought to be dismissed.

7. I have heard the learned counsel for the parties.

8. Before proceeding further, it would be apposite to refer to the provisions of Section 138 of the Negotiable Instruments Act and Section 357 Cr.P.C. are reproduced hereinbelow:-

Section 138 of the Negotiable Instruments Act

"138 Dishonour of cheque for insufficiency, etc., of funds in the account. *—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for*[19] *[a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—*

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque,[20] *[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability".

***Section* 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".

9. The various judgments referred to by the parties are as under:-

In the case of ***'Suganthi Suresh Kumar versus Jagdeeshan, 2002(1) RCR (Criminal) 502',*** the Hon'ble Supreme Court held as under:-

"2. Appellant in this case is the complainant before the court of 9th Metropolitan Magistrate, Saidapet, Chennai. The offence pitted against the respondent was under Section 138 of the Negotiable Instruments Act. In fact there were two complaints arising out of two sets of cheques which were dishonoured by the drawer bank. The trial Magistrate after holding the respondent guilty of the offence convicted him of the aforesaid offence but sentenced him only to undergo imprisonment till rising of the court and pay a fine of Rs. 5000/- in both cases. Apparently the respondent was happy and therefore he did not prefer any appeal. But the complainant/appellant was unhappy and therefore he preferred two revisions before the High Court on the premise that the sentence was grossly inadequate. He contended before the High Court that the trial magistrate should atleast have invoked the provision under section 357(3) of the Code of Criminal Procedure, 1973 (for short the Code).

3. However the learned single Judge of the High Court of Madras was not inclined to interfere with the sentence passed on the respondent and therefore he dismissed both the revisions. Nonetheless learned single judge has chosen this opportunity to send a message to the trial magistrates "to keep in mind the object of providing stringent punishment and the guidelines given by the Apex Court in Pankaj Bhai Nagjibhai Patel v. State of Gujarat and another, 2001(1) RCR (Criminal) 343 (SC) : 2001(2) SCC 595". Nor did the High Court invoke Section 357(3) of the Code.

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12. The total amount covered by the cheques involved in the present two cases was Rs. 4,50,000/-. There is no case for the respondent that the said amount had been paid either during the pendency of the cases before the trial court or revision before the High Court or this Court. If the amount had been paid to the complainant there perhaps would have been justification for imposing a flee-bite sentence as had been chosen by the trial Court. But in a case where the amount covered by the

cheque remained unpaid it should be the look out of the trial magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light-heartedly. The very object of enactment of provisions like 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount atleast during the pendency of the case.

13. Learned counsel for the respondent contends that the complainant has subsequently filed a civil suit and attached all the properties of the respondent. That is not a ground for lessening the gravity of the offence or to impose a minor sentence chosen by the trial court".

The Hon'ble Supreme Court in the case of ***'R. Vijayan versus Baby and another, 2011(4) RCR (Criminal) 743',*** held as under:-

"9. It is evident from Sub-Section (3) of section 357 of the Code, that where the sentence imposed does not include a fine, that is, where the sentence relates to only imprisonment, the court, when passing judgment, can direct the accused 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. The reason for this is obvious. Sub-section (1) of section 357 provides that where the court imposes a sentence of fine or a sentence of which fine forms a part, the Court may direct the fine amount to be applied 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. Thus, if compensation could be paid from out of the fine, there is no need to award separate compensation. Only where the sentence does not include fine but only imprisonment and the court finds that the person who has suffered any loss or injury by reason of the act

of the accused person, requires to be compensated, it is permitted to award compensation under compensation under section 357(3).

10. The difficulty arises in this case because of two circumstances. The fine levied is only Rs. 2000/-. The compensation required to cover the loss/injury on account of the dishonour of the cheque is Rs. 20,000/-. The learned Magistrate having levied fine of Rs. 2,000/-, it is impermissible to levy any compensation having regard to section 357(3) of the Code. The question is whether the fine can be increased to cover the sum of Rs. 20,000/- which was the loss suffered by the complainant, so that the said amount could be paid as compensation under section 357(1)(b) of the Code. As noticed above, section 138 of the Act authorizes the learned Magistrate to impose by way of fine, an amount which may extend to twice the amount of the cheque, with or without imprisonment. Section 29 of the Code deals with the sentences which Magistrates may pass. The Chief Judicial Magistrate is empowered to pass any sentence authorised by law (except sentence of death or imprisonment for life or imprisonment for a term exceeding seven years). On the other hand, sub-section (2) of Section 29 empowers a court of a Magistrate of First Class to pass a sentence of imprisonment for a term not exceeding three years or fine not exceeding Rs. 5,000/- or of both. (Note : By Act No.25 of 2005, sub-section (2) of Section 29 was amended with effect from 23.6.2006 and the maximum fine that could be levied by the Magistrate of First Class, was increased to Rs. 10,000/-). At the relevant point of time, the maximum fine that the First Class Magistrate could impose was Rs. 5,000/-. Therefore, it is also not possible to increase the fine to Rs. 22,000/- so that Rs. 20,000/- could be awarded as compensation, from the amount recovered as fine.

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14. We propose to address an aspect of the cases under section 138 of the Act, which is not dealt with in Damodar S. Prabhu. It is sometimes said that cases arising under section 138 of the

Act are really civil cases masquerading as criminal cases. The avowed object of Chapter XVII of the Act is to "encourage the culture of use of cheques and enhance the credibility of the instrument". In effect, its object appears to be both punitive as also compensatory and restitutive, in regard to cheque dishonour cases. Chapter XVII of the Act is an unique exercise which blurs the dividing line between civil and criminal jurisdictions. It provides a single forum and single proceeding, for enforcement of criminal liability (for dishonouring the 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 fora for relief. This is evident from the following provisions of Chapter XVII of the Act.

(i) The provision for levy of fine which is linked to the cheque amount and may extend to twice the amount of the cheque (section 138) thereby rendering section 357(3) virtually infructuous in so far as cheque dishonour cases.

(ii) The provision enabling a First Class Magistrate to levy fine exceeding Rs. 5,000/- (Section 143) notwithstanding the ceiling to the fine, as Rs. 5,000/- imposed by section 29(2) of the Code;

(iii) The provision relating to mode of service of summons (section 144) as contrasted from the mode prescribed for criminal cases in section 62 of the Code;

(iv) The provision for taking evidence of the complainant by affidavit (section 145) which is more prevalent in civil proceedings, as contrasted from the procedure for recording evidence in the Code;

(v) The provision making all offences punishable under section 138 of the Act compoundable.

15. 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 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.

16. 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 spe-

cial circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto 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.

17. 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 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. One other solution is a further amendment to the provision of Chapter XVII so that in all cases where there is a conviction, there should be a consequential levy of fine of an amount sufficient to cover the cheque amount and interest thereon at a fixed rate of 9% per annum interest, followed by award of such sum as compensation from the fine amount. This would lead to uniformity in decisions, avoid multiplicity of proceedings (one for enforcing civil liability and another for enforcing criminal liability) and achieve the object of Chapter XVII of the Act, which is to increase the credibility of the instrument. This is however a matter for the Law Commission of India to consider".

In the case of ***'H. Pukhraj versus D. Parasmal, 2014(4) RCR (Criminal) 557',*** the Hon'ble Supreme Court has held as under:-

"*6. Again, in* ***R. Vijayan v. Baby & Anr., 2011(4) RCR (Criminal) 743 : 2011(4) RCR (Civil) 834 : 2011(6) Recent Apex Judgments (R.A.J.) 19 : (2012)1 SCC 260*** *this Court considered the same question. This Court also examined the need to award compensation to the complainant. This Court was of the opinion that the traditional view that the criminal proceedings are for imposing punishment on the accused, either punishment 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, gives rise to difficulties and complications. This Court further observed that 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. This Court further observed that as the provisions of Chapter XVII of the NI 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 upto twice the cheque amount keeping in view the cheque amount and the simple interest thereon at nine per cent per annum as the reasonable quantum of loss and direct payment of such amount as compensation. This Court further observed that the 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.

7. In light of the above judgments, we are of the opinion that the impugned order needs to be modified. Hence, we sentence the respondent-accused to undergo simple imprisonment for a period of six months for offence under Section 138 of the NI Act. Considering the fact that the cheque amount is L 6,19,488/- (Rupees six lakh nineteen thousand four hundred eighty eight only), we direct the respondent-accused to pay compensation of L 10,00,000/- (Rupees ten lakh only) to the appellant. In default of payment of compensation, the respondent-accused will have to undergo simple imprisonment for a period of six months".

In case of ***'Suresh Yedbaji Jantre versus State of Maharashtra, 2018(2)NIJ 767',*** the Magistrate convicted and sentenced" the accused to simple imprisonment for 04 months and imposed a fine of Rs.3,000/-. In default of payment of fine, he was to undergo simple imprisonment for 15 days. The Sessions Court, altered the sentence and reduced it to "till rising of the Court". The fine was maintained. The complainant challenged the said order whereby the sentence had been reduced "till rising of the Court". However, compensation was not sought in appeal or revision. The Bombay High Court (Aurangabad Bench) held as under:-

"14. Since the learned Additional Sessions Judge, Osmanabad had unnecessarily taken a lenient view and altered the sentence awarded to the accused on the basis of only a pursis, which can not be said to be an evidence; the said order of alteration of sentence requires to be modified. The amount of the cheque involved in the matter was Rs. 70,000/-. Though in R. Vijayan Hon'ble Supreme Court had adviced to award interest @9% p.a., such interest can not be awarded here in this case, as complainant had not filed any appeal or revision challenging the order of refusal of grant compensation. The compensation that would be awarded now to the complainant is the outcome of the afore-said reasons. Therefore, awarding amount equivalent to the cheque amount would serve the interest of both the parties. Hence, following order is passed.

ORDER

1. Criminal Revision Application is hereby partly allowed.

2. Respondent No. 2/original accused is sentenced to pay fine of Rs. 70,000/- for the offence punishable under section 138 of Negotiable Instruments Act. This amount of fine is in addition to the fine amount Rs. 3,000/- already deposited. The said amount be deposited by the respondent No. 2/accused in the trial Court within a period of 4 weeks from today.

3. In default of payment of said fine amount, accused will have to undergo simple imprisonment for a period of one month.

4. After the amount of fine is deposited in the trial Court, it be given to complainant under section 357 (1) of Code of Criminal Procedure, 1973.

5. It is clarified that the sentence of imprisonment till rising of Court awarded by Learned Additional Sessions Judge in Cri. Appeal No. 57 of 2013 on 29-06- 2016 is hereby not altered.

Appeal dismissed".

In the case of ***'Kumaran versus State of Kerala and another 2017(2) RCR (Criminal) 879',*** the question was as to whether on account of non-payment of compensation, if the convict had undergone the default sentence, could the compensation still be recovered or not. The Hon'ble Supreme Court has held as under:-

> *"27. These two judgments make it clear that the deeming fiction of Section 431 Cr.P.C. extends not only to Section 421, but also to Section 64 of the Indian Penal Code. This being the case, Section 70 I.P.C., which is the last in the group of Sections dealing with sentence of imprisonment for non-payment of fine must also be included as applying directly to compensation under Section 357(3) as well. The position in law now becomes clear. The deeming provision in Section 431 will apply to Section 421(1) as well, despite the fact that the last part of the proviso to Section 421(1) makes a reference only to an order for payment of expenses or compensation out of a fine, which would necessarily refer only to Section 357(1) and not 357(3). Despite this being so, so long as compensation has been directed to be paid, albeit under Section 357(3), Section 431, Section 70 I.P.C. and Section 421(1) proviso would make it clear that by a legal fiction, even though a default sentence has been suffered, yet, compensation would be recoverable in the manner provided under Section 421(1). This would, however, be without the necessity for recording any special reasons. This is because Section 421(1) proviso contains the disjunctive "or" following the recommendation of the Law Commission, that the proviso to old Section 386(1) should not be a bar to the issue of a warrant for levy of fine, even when a sentence of imprisonment for default has been fully undergone. The last part inserted into the proviso to Section 421(1) as a result of this recommendation of the Law Commission is a category by itself which applies to compensation payable out of a fine under Section 357(1) and,*

> *by applying the fiction contained in Section 431, to compensation payable under Section 357(3)".*

10. A perusal of the aforementioned judgments would show that the Courts have held that unless there are special circumstances, in all cases of conviction, fine up to twice the cheque amount ought to be imposed and out of the said fine amount, adequate compensation must be awarded to the complainant. The Hon'ble Supreme Court has gone to the extent of holding that even if a convict had undergone the sentence in default for non-payment of compensation, the said compensation amount was still recoverable. The provisions of the Act also lean towards grant of reimbursement of the loss by way of compensation. Therefore, directions to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic. Uniformity and consistency in deciding similar cases by different courts not only increase the credibility of the cheques as a Negotiable Instruments Act but also the credibility of the Courts of justice. This awarding of compensation as a reimbursement is on account of the fact that usually, when proceedings under Section 138 of the Negotiable Instruments Act are initiated, no simultaneous civil suit for recovery is filed as the complainant assumes that he would get compensation in the proceedings initiated under Section138 of the Negotiable Instruments Act. On the other hand, such proceedings take a long time to culminate and therefore, if the complainant was not awarded adequate compensation at the culmination of such proceedings, a civil suit for recovery, if filed, would in, all probability be hopelessly time-barred. In fact, awarding such adequate compensation in proceedings under Section 138 of the Negotiable Instruments Act would also avoid multiplicity of litigation inasmuch as there would be little requirement to institute a civil suit on the one hand while

enforcing the criminal liability under Section138 of the Negotiable Instruments Act on the other.

11. In view of the above discussion, the instant criminal revision petition is allowed. The respondents-accused are sentenced to pay a fine of Rs.10,00,000/-. This amount of fine would be in addition to the fine of Rs.1,000/- each already imposed. The said amount shall be deposited by the accused-respondents in the Trial Court within a period of 04 weeks from the date of this order. In default of payment of fine, the accused would have to undergo simple imprisonment for a period of one month. After the amount of fine is deposited in the Trial Court, it be given to the petitioner as compensation under Section 357(1) Cr.P.C. However, it is clarified that the sentence of imprisonment awarded by the Additional Sessions Judge, Ludhiana in its judgment dated 20.01.2016 (Annexure P-4) is not altered.

(JASJIT SINGH BEDI)
JUDGE

February 28, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No