

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revn. No.4905 of 2015 (O&M)

Date of Decision: April 05, 2017

Sukhbir Singh son of Shri Subh RamPetitioner

Versus

H.D.F.C. Bank LimitedRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Suneet Kumar, Advocate for the petitioner.

Mr.Satish Saini, Deputy Advocate General, Haryana.

Mr.ADS Sukhija, Advocate for the Bank.

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TEJINDER SINGH DHINDSA, J.

The instant revision is directed against the concurrent conviction of the petitioner for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'). Petitioner has been sentenced to undergo simple imprisonment for one year and to pay ₹40 lacs as compensation to the complainant-HDFC Bank for commission of the said offence and in default of payment of amount of compensation to further undergo simple imprisonment for one year.

2. Brief facts are that the petitioner had raised three loans of ₹10,96,800/- each from HDFC Bank to purchase vehicles.

Petitioner apparently defaulted in payment of instalments. In the month of October 2007, an amount of ₹24,30,000/- was outstanding against him in the three loan accounts. In order to discharge his liability, he issued a cheque for the said amount dated 30.10.2007, Exhibit C1. The complainant-Bank having deposited the cheque for collection at its Rohtak Branch, the same was returned unpaid for want of sufficient funds in the account of the petitioner-accused. HDFC Bank called upon the petitioner to make good the payment of the cheque through legal notice dated 19.11.2007 which was sent by registered post on the address provided by him at the time of execution of the loan agreements. The petitioner having failed to make the requisite payment, complainant-HDFC Bank initiated proceedings under Section 138 of the Act. The trial has culminated in the conviction of the petitioner vide judgment dated 2.7.2013 passed by the Judicial Magistrate Ist Class, Rohtak and order of sentence dated 4.7.2013. The conviction and order of sentence stands affirmed vide judgment dated 28.10.2015 passed by the learned Sessions Judge, Rohtak.

3. Learned counsel, at the very outset, makes a statement that he is not assailing the conviction of the petitioner on merits. He, however, prays for a lenient view to be taken as regards quantum of sentence. In such regard, it is contended that there is no specific provision under the Code of Criminal Procedure which enables the Court to sentence a person who commits breach of the order of payment of compensation. It is contended that insofar as the substantive sentence of one year

simple imprisonment is concerned, the same has already been undergone.

4. The question as regards competence of Court to impose and award sentence for breach of an order of payment of compensation is no longer res-integra. In **R.Mohan v. A.K.Vijaya Kumar**, 2012(3) RCR (Criminal) 648, the Hon'ble Supreme Court had dealt with precisely such issue and had held as follows:

“13. Undoubtedly, there is no specific provision in the Code which enables the court to sentence a person who commits breach of the order of payment of compensation. Section 421 of the Code provides for the action which the court can take for the recovery of the fine where the accused has been sentenced to pay a fine. Proviso thereto states how to deal with a situation where default sentence is prescribed. Section 421 reads thus:

“421. Warrant for levy of fine.—(1) When an offender has been sentenced to pay a fine, the court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant unless, for special reasons to be recorded in writing, it

considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

14. Section 431 of the Code provides for recovery of any money (other than a fine) payable by virtue of any order made under the Code and the recovery of which is not otherwise expressly provided for. Compensation awarded by a court can fall in this category. Section 431 says that such money shall be recoverable as if it were a fine. Section 431 of the Code reads thus:

***"431. Money ordered to be paid recoverable as fine.—**Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:*

Provided that Section 421 shall, in its application to an order under Section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of Section 421, after the words and

figures 'under Section 357', the words and figures 'or an order for payment of costs under Section 359' had been inserted."

*Thus, one has to again fall back on section 421 of the Code for recovery of compensation directed to be paid by the court. For the purpose of mode of recovery, compensation is put on par with fine (See **K.A . Abbas HSA .**)*

15. Section 64 of the Indian Penal Code also needs to be quoted because it provides for sentence of imprisonment for non-payment of fine. It reads thus:

***"64. Sentence of imprisonment for non-payment of fine.—**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, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to 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 imprisonment 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 a sentence."*

*16. The above provisions were examined by this Court in **Vijayan v . Sadanandan K . & Anr . 2009(2) R.C.R. (Criminal) 969: 2009(3) R.A.J.525: (2009)6 SCC 652.** After quoting them, this Court rejected the submission that where there is default in payment of compensation ordered by the court, recourse can only be had to Section 421 of the Code because there is no provision enabling the court to award a default sentence. This Court observed that if such a view is taken, the very object of sub-section (3) of Section 357*

would be frustrated and the relief contemplated therein would be rendered somewhat illusory.

17. We respectfully concur with this view. In K . Bhaskaran v . Sankaran Vaidhyan Balan, (1999)7 SCC 510 while considering Section 357 (3) of the Code this Court expressed that if the Judicial Magistrate of the First Class were to order compensation to be paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of rupees five thousand because Judicial Magistrate First Class can as per Section 29 (2) of the Code pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding Rs. 5,000/-, or of both (the said amount is now increased to Rs. 10,000/-). This Court clarified that in such cases the Magistrate can alleviate the grievance of the complainant by taking resort to Section 357(3) of the Code.

18. The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3) compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order, directing compensation, is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance."

5. In the light of the dictum laid down by the Apex Court, the contention raised by learned counsel for the petitioner that sentence in default of payment of compensation could not have been awarded, is rejected.

6. Be that as it may, in the considered view of this Court,

the alternate submission made by learned counsel appearing for the petitioner for reduction in sentence merits acceptance. The custody certificate furnished by the learned State counsel indicates that the petitioner has already undergone the substantive sentence of one year simple imprisonment for offence under Section 138 of the Act. Even with regard to the sentence of one year simple imprisonment awarded towards default of compensation, the petitioner has undergone a custody period in excess of six months. The petitioner has faced the pangs of trial followed by the appeal for a period of almost one decade. The petitioner is stated to be the lone bread-earner of the family. Even Mr.ADS Sukhija, learned counsel representing the complainant-HDFC Bank does not seriously oppose the submission for reduction of sentence imposed for breach of payment of compensation amount. He, however, submits that the interest of HDFC Bank to recover the compensation amount be safe-guarded.

7. In the light of the discussion above, the instant revision petition is partly accepted. Conviction of the petitioner as also sentence for offence under Section 138 of the Act is upheld. However, the sentence of one year simple imprisonment awarded in default of compensation amount is reduced to the period already undergone. It would, however, be open for the respondent-HDFC Bank to take recourse in accordance with law as regards recovery of compensation amount of ₹40 lacs is concerned.

8. Petitioner, who is stated to be in custody at District Jail,

Rohtak, be released forthwith.

9. Revision is disposed of in the aforesaid terms.

April 05, 2017
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: *Whether speaking/reasoned?* *Yes/No*
Whether Reportable? *Yes/No*