



Bail Slip

R.Palanisamy, Male, S/o Ramasamy, Appellant / Sole Accused
was released on bail vide order of this Court in dated 11.02.2013 in
Crl.MP(MD)No.2 of 2013 in Crl.RC(MD)No.85 of 2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C(MD)No.85 of 2013

R.Palanisamy ... Petitioner / Appellant / Accused

Vs.

Veerappan ... Respondent / Respondent / Complainant

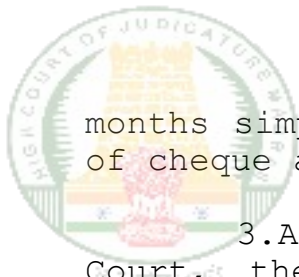
Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the records relating to the judgment made in C.A.No.39 of 2012, by the Additional District and Sessions Judge, Dindigul dated 12.12.2012 confirming the judgment of conviction made in CC.No.241 of 2011 by the Fast Track Court (Judicial Magistrate Level), Palani dated 14.03.2012 and set aside the same.

For Petitioner :Mr.D.Venkatesh
For Respondent :Mr.T.Antony Arul Raj

ORDER

This Criminal Revision Case has been filed against the conviction and sentence imposed by the trial Court as well as the appellate Court on the revision petitioner for the commission of offence under Section 138 of NI Act.

2.The respondent / complainant filed the private complaint as against this revision petitioner for the offence punishable under Section 138 of NI Act. The learned Judicial Magistrate, Fast Track Court, Palani while deciding the case in CC No.241 of 2011, found the petitioner guilty, convicted and sentenced him to undergo three



months simple imprisonment and also ordered for a compensation that of cheque amount Rs.2,00,000/- under Section 357(3) CrPC.

3.As against the conviction and sentence imposed by the trial Court, the petitioner preferred an appeal before the District Sessions Court, Dindigul and the same was taken in Criminal Appeal No.39 of 2012 by the Additional District and Sessions Court, Dindigul and the same was dismissed by order dated 12.12.2012. Aggrieved over the same, the present revision petition is filed.

4.The revision case has been admitted and the substantial sentence imposed on the petitioner was also suspended by order dated 11.02.2013 with a condition that the petitioner shall deposit a sum of Rs.50,000/- to the credit of CC.No.241 of 2011 on the file of the Fast Track Court (Judicial Magistrate Level), Palani.

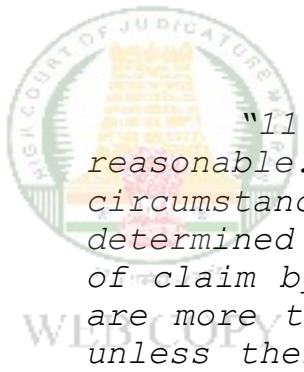
5.Heard Mr.R.Palanisamy, learned Counsel for the revision petitioner and Mr.D.Venkatesh, learned Counsel appearing for the respondent and also perused the materials placed on record.

6.When this revision case was taken up for hearing, it was reported that the revision petitioner is no more and therefore, this revision case can be closed as charges are abated. However, it was strongly objected to by the learned Counsel for the respondent / complainant that apart from the conviction, the trial Court has also passed an order under Section 357(3)CrPC imposing compensation of Rs.2,00,000/- to be paid to the complainant by the petitioner.

7.In this regard, the learned Counsel also relied upon the decision of the Hon'ble Supreme Court in the case of **R.Mohan Vs A.K.Vijaya Kumar**, reported in **(2012) 3 SCC (Cri) 1013**, wherein the Hon'ble Supreme Court has held as follows:

" 19.This court inter alia considered whether the compensation awarded to the injured could be legally sustained. This court observed that the power of the court under Section 357(3) to award compensation is not ancillary to other sentences, but it is in addition thereto and is intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. This court further observed that it is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. Describing it as a constructive approach to crime, this court recommended to all courts to exercise this power liberally so as to meet the ends of justice in a better way. It was clarified that the order to pay compensation may be enforced by awarding sentence in default.

20.The relevant observations of this court may be advantageously quoted.



"11. The payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default."

21. While dealing with a case under Section 138 of the said Act in Suganthi Suresh Kumar, relying on Hari Singh, this court reiterated the same view and held that the court can impose a sentence of imprisonment on the accused in default of payment of compensation ordered under Section 357(3) of the Code.

22. 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.

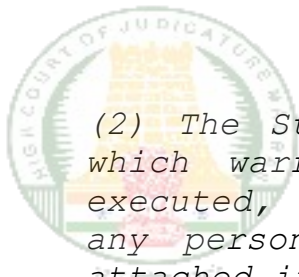
23. Section 421 reads thus:

"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.

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(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."

24. 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.

25. Section 431 of the Code reads thus:

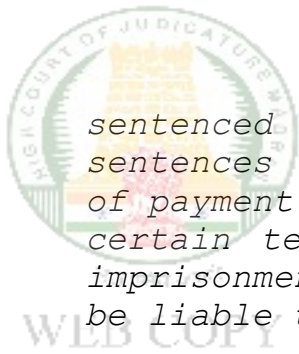
"431. Money ordered to be paid recoverable as fine.—Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

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.)

26. Section 64 of the IPC 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

<https://hcservices.ecourts.gov.in/hcservices/>

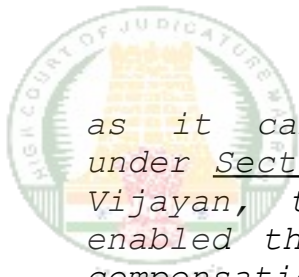


sentenced to a fine, it shall be competent to the court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence."

27. The above provisions were examined by this Court in *Vijayan v. Sadanandan K. & Anr.*[4] 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.

28. We respectfully concur with this view. In *K. Bhaskaran v. Sankaran Vaidhyan Balan*[5] 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.

29. 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. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. Order under Section 357 (3) must have potentiality to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid by the court on par with fine so far as mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation



as it can be done in case of default in payment of fine under Section 64 of the IPC. It is obvious that in view of this, in Vijayan, this court stated that the above mentioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in Hari Singh are as important today as they were when they were made. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding sentence in default."

8. Section 431 of CrPC provides for recovery of money, which is not otherwise expressly provided for, as if, it were for fine. Section 421 of CrPC provides the mode of recovery of fine amount.

9. As per the law laid down by the Hon'ble Supreme Court in the judgment cited supra, the respondent / complainant can work out his remedy before the learned Judicial Magistrate by filing necessary application under Section 421 of CrPC. The respondent/petitioner is also at liberty to file necessary application to collect the sum of Rs.50,000/-, which was deposited by the petitioner / accused before the trial Court in CC No.241 of 2011, pursuant to the orders of this Court in MP(MD)No.2 of 2013 in CrI.R.C(MD)No.85 of 2013, dated 11.12.2013. With the above observation, the revision petition is disposed of. Since the sentence of imprisonment against the revision petitioner is abated, the respondent / complainant is at liberty to workout his remedy before the concerned Judicial Magistrate Court by filing necessary application under Section 421 CrPC to recover the compensation amount.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

To

1. The Additional District and Sessions Judge,
Dindigul.

2. The Judge, Fast Track Court (Judicial Magistrate Level),
Palani.



3.The Judicial Magistrate, Plalani.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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Copy to:

The Section Officer, (2 Copies)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-94709[F] 25/10/2019)

+1 CC to M/s.D.VENKATESH, Advocate (SR-95239[F] dated 31/10/2019)

Crl.R.C(MD)No.85 of 2013
25.10.2019

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