

**IN THE HIGH COURT AT CALCUTTA**  
**CRIMINAL APPELLATE JURISDICTION**  
**APPELLATE SIDE**

**Present :**

**The Hon'ble JUSTICE BIVAS PATTANAYAK**

**C.R.R. 399 of 2017**

**Subrata Basu Mullick.**

**versus**

**Vipul Kothari**

**For the petitioner:                      Mr. Sachit Talukdar, Adv.**  
**Mr. Saumendra Mohan Rakshit, Adv.**

**For the Opposite Party:              Ms. Sayanti Santra, Adv.**

**Heard on: 29.08.2022.**

**Judgment on: 15.09.2022**

**BIVAS PATTANAYAK, J. : –**

**1.**This is an application under Section 482 of the Code of Criminal Procedure filed by the petitioner challenging judgement and order dated 09.12.2016 passed by learned Chief Judge, City Sessions Court, Calcutta in Criminal Revision No.166 of 2016 rejecting the prayer for enhancement of sentence passed by learned Additional Chief Metropolitan Magistrate, Calcutta on 29.06.2016 in Case No. C/406/2012 under Section 138 of the Negotiable Instruments Act.

**2.**The brief fact of the case is that the petitioner filed a petition of complaint under Section 138 of the Negotiable Instruments Act against the opposite party before the learned Additional Chief Metropolitan Magistrate, Calcutta, *inter alia*, stating as follows:-

(i) The opposite party issued a cheque bearing no.616987 dated 21.02.2012 amounting to Rs. 25,000/- in favour of the petitioner in discharge of his existing debts and liabilities.

(ii) The petitioner deposited the aforesaid cheque with his banker but the cheque was dishonoured with the remark "*funds insufficient*" vide cheque return memo dated 16.05.2012.

(iii) Subsequent thereto a demand notice was sent by the petitioner to the opposite party on 21.05.2012 demanding payment of the aforesaid cheque amount.

(iv) The opposite party in spite of receipt of such notice on 21.05.2012 failed and/or neglected to make payment of the cheque amount within the statutory period. Accordingly on such basis a proceeding under Section 138 of the Negotiable Instruments Act was initiated against the opposite party.

(v) Thereafter considering the evidence and materials on record the learned trial court by judgment and order dated 29.06.2012 convicted the opposite party for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo simple imprisonment till the rising of the court and pay a fine of Rs.5,000/- in addition to Rs. 25,000/- as compensation to the petitioner in pursuance of Section 357 of the Code of Criminal Procedure.

(vi) Being aggrieved by and dissatisfied with the meagre and inadequate quantum of sentence and compensation imposed by the

learned trial court the petitioner filed a criminal revisional application before the Learned Chief Judge, City Sessions Court, Calcutta being Criminal Revision No. 166 of 2016 praying for enhancement of the quantum of sentence and compensation imposed upon the opposite party by the learned trial court.

(vii) By judgment and order dated 09.12.2016, the learned Chief Judge, City Sessions Court, Calcutta was pleased to dismiss the aforesaid Criminal Revision on the ground that the petitioner has withdrawn the amount of compensation without informing or obtaining permission of the learned Court and that the imposition of sentence is a judicial discretion.

**3.** Being aggrieved by and dissatisfied with the impugned order passed in Criminal Revision dismissing the prayer for enhancement of the quantum of sentence and compensation the petitioner is before this Court.

**4.** Mr. Sachit Talukdar, learned advocate appearing on behalf of the petitioner submitted that as per the provisions embodied under Section 138 of the Negotiable Instruments Act the court can impose compensation to the extent of twice the cheque amount, however, the learned trial court awarded a meagre sum of Rs. 25,000/- as compensation which requires to be modified. He further submitted that Section 138 of the Negotiable Instruments Act was designed to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India and as such the Court should adhere to such proposition while imposing compensation and should not impose a

flea bite sentence on the accused as in imposing a lesser sentence the very object of the enactment would stand defeated. In support of his contention he relied on the decision of the Hon'ble Supreme Court passed in ***H.Pukhraj versus D. Parasmal*** reported in **(2015) 17 SCC 368**. He further submitted that by way of filing an application before the learned trial court the amount of compensation of Rs.25,000/- awarded in favour of the petitioner was withdrawn, however, such withdrawal was without any prejudice to the right of the petitioner to seek an enhancement of compensation and sentence. In view of his above submissions he prayed for enhancement of the amount of compensation.

**5.** In reply to the contention raised on behalf of the petitioner Ms. Sayanti Santra, learned advocate appearing on behalf of the opposite party submitted that during pendency of the revisional application before the learned Chief Judge, City Sessions Court, Calcutta, the petitioner voluntarily withdrew the amount of compensation without the permission or leave of the revisional court, meaning thereby that the petitioner impliedly accepted the amount of compensation awarded by the learned trial court. Further the provisions embodied therein under Section 138 of the Negotiable Instruments Act does not specify that in all cases the amount of compensation should be twice the amount and as such the imposition of compensation to the extent of twice the amount of the cheque lies with the discretion of the learned trial court depending on the facts and circumstances varying from case to case. In view of her

aforesaid submissions she prayed for dismissal of the revisional application.

6. Having heard the rival contentions raised on behalf of both the parties before delving into the merit of the application it will be apposite to reproduce Section 138 of the Negotiable Instruments Act which is as follows:

**“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 <sup>19</sup> [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, <sup>20</sup> [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.”*

**6.1.** Mr Talukdar, learned advocate on behalf of the petitioner has strenuously argued that in cases falling under Section 138 of the Negotiable Instruments Act the compensation should be twice the cheque amount. It is pertinent to note that the section provides that the fine ‘*may extent to twice the cheque amount*’. As per Section 29(2) of the Code of Criminal Procedure a magistrate cannot impose fine of more than Rs.10,000/-, however, in cases under the Negotiable Instruments Act compensation can be granted to the payee or holder of the cheque taking recourse to Section 357 of the Code, which may extent to twice the cheque amount. The word ‘*may*’ appearing in the Section clearly gives the discretion to the learned trial court to decide on the extent of compensation to be awarded on the basis of facts and circumstances before it. The legislatures have not made out any hard and fast rule that in all cases falling under Section 138 of the Negotiable Instruments Act, there has to be compensation equaling to twice the cheque amount. Mr.Talukdar, learned advocate referring to the judgement of Hon’ble Supreme Court passed in ***H.Pukhraj (supra)*** submitted that there should not be a flea bite sentence on the accused for commission of offence under Section 138 of the Negotiable Instruments Act. The facts of the cited decision shows that the cheque amount involved in the said case was Rs.6,19,488/-. The trial court on conviction sentenced the convict to undergo 6 months’ imprisonment and pay fine of Rs.4000/-, in default, to

undergo 3 months' further imprisonment. There was no imposition of compensation by the trial court. Whereas in the case in hand the learned trial Magistrate in addition had imposed compensation of Rs.25,000/-. Thus, the decision of the Hon'ble Supreme Court is distinguishable from the case at hand.

**6.2.** Mr. Talukdar, learned advocate for the petitioner has submitted that although the amount of compensation was withdrawn by the petitioner but that was without any prejudice to the right of the petitioner to seek enhancement of the sentence and compensation. Firstly, on going through the judgement of the Learned Chief Judge, City Sessions Court, Calcutta, passed in Criminal Revision No. 166 of 2016 it appears that no such leave or permission was taken by the petitioner for withdrawing the amount of compensation. In view of the matter, the learned Chief Judge, City Sessions Court, Calcutta, observed that the petitioner on one hand has challenged the quantum of the sentence whereas on the other he has withdrawn the amount of compensation without informing the court or taking its permission. The petitioner has annexed a copy of the application (Annexure P3) filed before the learned Additional Chief Metropolitan Magistrate at Calcutta, for withdrawing the compensation amount. Upon perusal of the said application it appears that nowhere in the four corners of the application the petitioner has stated that he intends to withdraw the amount of compensation deposited in court by the opposite party-accused without prejudice to his rights to seek enhancement. It appears from order dated 28.09.2016 of the trial court

that the petitioner has not made any submissions that he intends to withdraw the compensation amount without prejudice to his right to seek enhancement. Thus, the aforesaid materials clearly indicate that the petitioner withdrew the amount of compensation out of his own volition. Accordingly, I do not find any perversity or irregularity in the observation of learned Chief Judge, that the petitioner on one hand challenged the quantum of the sentence and on the other hand received the amount of compensation without the permission from the Court.

**7.** In the aforesaid backdrop the facts and circumstances of the present case does not merit enhancement of the compensation imposed by the learned trial court.

**8.** Accordingly, the criminal revisional application being No. **CRR 399 of 2017** stands dismissed. The judgement and order of the learned Chief Judge, City Sessions Court, Calcutta passed in Criminal Revision No. 166 of 2016 is, thus, upheld.

**9.** All connected applications stands disposed of.

**10.** Interim orders, if any, stand vacated.

**11.** Let a copy of this order be sent to the learned trial court and learned revisional court for information.

**12.** Urgent Photostat Certified copy, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

**(Bivas Pattanayak, J)**