

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No. 3806 of 2016 (O&M)

Date of Decision:09.01.2023

Manoj Kumar

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Himanshu Puri, Advocate for Mr. Sunny K. Singla,
Advocate for the petitioner.

Mr. R.S. Khaira, DAG, Punjab.

Mr. Ishan Gupta, Advocate with Mr. Gagandeep Singh,
Advocate for respondent No.2.

DEEPAK GUPTA, J.

CRM-32584-2016

This application under Section 5 of the Limitation Act is for
condoning the delay of 372 days in filing the present revision.

Heard.

Considering the grounds mentioned in the application supported
by the affidavit of the petitioner Manoj, the application is allowed. Delay of
372 days in filing the revision is condoned.

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This revision is directed against order dated 02.07.2015 passed
by learned Additional Sessions Judge, Sangrur, whereby petitioner-accused
has been directed to pay compensation of ₹2,00,000/- under Section 357(3)
of the Cr.P.C. to respondent No.2-complainant; and in default of payment of
the same, to undergo rigorous imprisonment for a period of 4 months.

2. On perusal of the paper-book, it is revealed that cheque dated
14.06.2011 for an amount of ₹10,30,940/- issued by the petitioner-accused

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Manoj Kumar in favour of complainant-respondent No.2 Rajiv Kumar Jain, was dishonoured due to '*insufficient funds*' in the account of the accused. After making compliance of the statutory requirements, complaint was filed, in which after holding necessary trial, conviction under Section 138 of the Negotiable Instruments Act of the accused-petitioner was recorded by learned Trial Court on 14.07.2014. Petitioner was sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹5,000/- for committing the said offence.

3. Against the above-said conviction & sentence, petitioner-accused filed appeal seeking acquittal; whereas complainant-respondent No.2 filed revision for enhancement of sentence.

4. Learned Additional Session Judge, Sangrur, though dismissed the appeal of the accused-petitioner but partly accepted the revision for enhancement of sentence on 02.07.2015. Vide this order, petitioner was directed to pay an amount of ₹2,00,000/- as compensation to the complainant-respondent No.2 and in default of payment of the same, to undergo rigorous imprisonment for a period of four months.

5. It is the above-said order, which is assailed by the accused-petitioner by way of present revision. It is submitted that as per the settled proposition of law laid down by the Hon'ble Supreme Court in ***R. Vijayan V.Baby & Anr. 2011(4) RCR (Criminal) 743***, after awarding sentence of fine, the Court cannot pass order, directing the accused to pay compensation under Section 357(3) Cr.P.C. As in the present case, learned JMJC, Malerkotla vide judgment dated 14.07.2014 had already imposed a fine of ₹5000/-, so in such circumstances learned Additional Session Judge could not order payment of compensation of ₹2,00,000/- under Section 357(3) Cr.P.C. and so, the impugned order is illegal,

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arbitrary and perverse. It is also submitted that petitioner has already completed his sentence. Besides, complainant-respondent No.2 has already filed civil suit for recovery of ₹14,02,118/-, which has been dismissed by the trial Court on 08.07.2016. With these submissions, prayer is made to set aside the impugned order.

6. Refuting the aforesaid contentions, it is submitted by learned counsel for the complainant-respondent No.2 that learned Additional Sessions Judge has rightly relied upon ***Ajay Bansal V. Smt. Nirmal Jain, (P&H) : Law Finder Doc Id # 113957*** to grant compensation under Section 357(3) Cr.P.C. to the complainant and so, the impugned order is perfectly legal.

7. I have considered submissions of Ld. counsel of both the sides and have appraised the record carefully.

8. Section 138 of the Negotiable Instruments Act provides for the sentence of two years imprisonment or with fine, which may extend to twice the amount of the cheque, or with both in case of dishonour of cheque for insufficiency, etc., of funds in the account of the accused.

9. Section 357 of the Code of Criminal Procedure provides for order to pay compensation. Relevant part of the said section 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 of 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

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such person in a Civil Court;

(c) & (d) xxxxxxxxxxxx (not relevant)

(2) xxxxxxxxxxxx(not relevant)

(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.”

10. On bare perusal of the above-said provisions, it should be clear that in case court imposes a sentence of fine or a sentence of which fine forms the part, then the Court may order that whole or any part of the fine recovered from the accused, may be applied either in defraying the expenses incurred by the prosecution or to pay compensation for any loss or injury caused by the offence, as per sub-section (1) of Section 357. However, in case fine does not form part of the sentence, then court may order 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 for which accused has been so sentenced, as per sub-section (3) of Section 357. It is, thus, clear that sub-Section (3) Section 57 is categorical to the effect that compensation can be awarded only when fine does not form part of sentence.

11. This legal position was also clarified by Hon’ble Supreme Court in

State of Punjab Versus Gurmej Singh, 2002(3) R.C.R.(Criminal) 869 and reiterated in *R. Vijayan Versus Baby (supra)*.

12. In case, where Court has sentenced accused to imprisonment and also imposed fine, then the power under Section 357(3) cannot be exercised, as has been explained in *Sivasuriyan v. Thangavelu, 2006(2) R.C.R.(Criminal) 330*.

13. In the present case, accused was sentenced by learned JMIC to undergo rigorous imprisonment for a period of one year and also to pay fine of ₹5,000/-. Appeal against the said conviction was dismissed. In the revision filed by the complainant, learned Additional Session Judge, by way of the impugned order has directed the accused to pay compensation under Section 357(3) Cr.P.C. to the tune of ₹2,00,000/-. There is no mention in the impugned order that whether sentence of fine of ₹5,000/- has been set aside; or whether said fine imposed by trial court is to be adjusted in this amount of compensation or not. So, it is assumed that compensation of ₹2,00,000/- has been ordered to be paid in addition to the sentence of one year imprisonment and fine of ₹5,000/-.

14 It is no doubt true that court has no power to pay compensation under Section 357(3) Cr.P.C. in case fine forms part of the sentence. However, it is pertinent to notice that power of Judicial Magistrate Ist Class as per Section 29 (2) of the Code of Criminal Procedure is to award sentence up to 3 years and fine up to ₹5,000/-, though later on, by way of an Amendment Act No.25 of 2005, said Section was amended and the maximum fine that can be levied by the Judicial Magistrate First Class was increased to ₹10,000/-.

15. Prior to 2002, because of the ceiling imposed by Section 29(2) in Cr.P.C., the Magistrate were helpless in awarding adequate compensation to the complainant in a case under Section 138 of the Negotiable Instruments Act

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despite the fact that amount of the dishonoured cheque was much higher. As noticed by Hon'ble Supreme Court in ***R. Vijayan's case (supra)***, this difficulty was later on solved by insertion of Section 143 in the NI Act by Amendment Act No.55 of 2002 with effect from 06.02.2003.

16. Section 143(1) provides that notwithstanding anything contained in the Code, all sentences under Chapter XVII of the Act should be tried by a Judicial Magistrate First Class or by a Metropolitan Magistrate and the provisions of Section 262 to 265 of the Code, shall as far as may be apply to such trials. The proviso thereto further provides that it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not extending one year and an amount of fine exceeding ₹5,000/-, in case of conviction in summary trial under that section. In view of conferment of this special power and jurisdiction upon the Magistrate First Class, the ceiling as to the amount of fine stipulated in Section 29(2) of the Court is removed and consequent thereto, in regard to the prosecution for offences punishable under Section 138 of the NI Act, a Magistrate First Class may impose a fine exceeding ₹5,000/-, the only ceiling being twice the amount of cheque.

17. ***R. Vijayan v. Baby & Anr. case (supra)*** related to dishonour of a cheque in the 1995. Cheque amount was ₹20,000/-. Accused was a widow and a police woman. On these facts and circumstances, learned Magistrate thought it fit not to sentence the accused to any imprisonment and rather, imposed a fine of ₹20,000/- only. The said conviction and sentence imposed on the accused was set aside by the First Appellate Court, which acquitted the accused. High Court allowed the appeal of the complainant in part. Conviction was restored by reversing the judgment of the First Appellate Court. However, High Court held that it could only restore the fine of ₹2,000/- imposed by the Magistrate with

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default sentence but not the direction for payment of compensation under Section 357 (3) of the Code, as it could not co-exist with the imposition of fine. Appeal against the said order of the High Court was dismissed by Hon'ble Supreme Court by holding that after awarding sentence of fine, court cannot pass the order directing the accused to pay compensation under Section 357 (3) of the Code of Criminal Procedure.

18. While deciding the appeal, Hon'ble Supreme Court considered the question as to whether the fine could be increased to cover the sum of cheque amounting of ₹20,000/-, which was the loss suffered by complainant, so that said amount could be paid as compensation under Section 357(1)(b) of the Code. As Section 29 of the Code imposed a ceiling, under which Magistrate could not impose fine exceeding ₹5,000/-, therefore, it was observed by Hon'ble Supreme Court that it was not possible to increase the fine to ₹22,000/- so that ₹20,000/- could be awarded as compensation from the amount covered as fine.

19. Position in this case is different. The cheque pertains to the year 2011. Section 143 was inserted in NI Act in 2002 and the same came with effect from 06.02.2003, which as already noticed, provides for power of the Magistrate First Class to impose a fine exceeding ₹5,000/-, ceiling being twice the amount of the cheque. It is notwithstanding anything to the contrary contained in the Code of Criminal Procedure. Thus, there is no longer any ceiling of ₹5,000/- on the powers of the Magistrate to impose a fine. The only ceiling is that said fine should not exceed double the cheque amount.

20. In the above facts and circumstances pertaining to this case, it is directed that amount of fine imposed by the Magistrate shall be deemed to be enhanced to ₹2,05,000/-, out of which ₹5,000/- has already been paid; and the

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remaining amount of fine is liable to be paid as compensation to the complainant-respondent No.2 under Section 357(1)(b) of Criminal Procedure Code. On account of the changed scenario in the legal position, *R. Vijayan V. Baby & Anr. case* is of no advantage to the petitioner.

21. Consequent to the aforesaid discussion, present revision is hereby dismissed. However, sentence as imposed by the Trial Court is modified to the extent as above.

January 09, 2023
Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No