

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

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CRR-3656-2017**Reserved on : 31.01.2024****Pronounced on : 16.04.2024****Sanjiv Kumar****..... Petitioner**

versus

Santokh Singh**..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. S.S. Sidhu, Advocate
for the petitioner.

Mr. A.S. Shergill, Advocate for
Mr. Navjot Singh, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Complainant is in revision. Challenge is to the order dated 24.07.2017 passed by Additional Sessions Judge, Bathinda to the extent that the appeal preferred by the complainant seeking enhancement of sentence stands dismissed.

2. Petitioner filed complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') against the respondent qua cheque bearing No.027942 dated 05.05.2014 drawn for a sum of Rs.5 lakhs on account of the respondent was dishonoured with the remarks of 'payment stopped by the drawer being instrument loss'. Respondent was summoned to face trial. On the basis of evidence, JMIC Talwinda Sabo held respondent guilty of offence punishable under Section 138 of the N.I. Act and sentenced him to undergo R.I. for a period of one year. He was further directed to pay a fine of Rs.1 lakh and in

default of payment of fine to further undergo simple imprisonment for two months. Both the parties preferred appeal. Respondent-accused was aggrieved of conviction. Petitioner-complainant was aggrieved of nominal fine and sought enhancement thereof. Appellate Court dismissed both the appeals. Appeal preferred by the petitioner-complainant was dismissed holding that there was no ground to enhance sentence as the sentence awarded was appropriate.

3. Petitioner is before this Court impugning the judgment passed by the Appellate Court.

4. While assailing the quantum of sentence awarded to the respondent, counsel for the petitioner submits that the Courts below did not appreciate that even though the petitioner successfully proved the guilt of the accused, but has remained empty handed even after 10 years of lis. He thus submits that after the petitioner successfully proved the guilt of the respondent, he deserves to be compensated for the loss he has suffered on account of criminal act of the respondent accused.

5. *Per contra*, counsel for the respondent however refers to the grounds of appeal preferred by the petitioner before the Appellate Court to submit that in the prayer clause, the petitioner never challenged fine part of sentence and rather prayed for grant of compensation, in addition to the sentence awarded to the accused. He contends that as per Section 357(3) of the Code, question of awarding compensation would arise only where the Court imposes sentence of which fine does not form a part. Hence the petitioner himself in appeal sought enhancement of fine in appeal, he cannot now claim compensation in view of statutory bar.

6. I have heard counsel for the parties and have gone through the records of the case.

7. The issue in the present case relates to adequacy of sentence. Respondent stands convicted for offence punishable under Section 138 of the N.I. Act and has been awarded sentence of R.I. for a period of one year and fine of Rs.1,000/-. The same has been maintained by the Appellate Court as such. Counsel for the respondent-convict relies upon Section 357(3) of the Code to submit that the compensation cannot be awarded as the fine has been imposed as part of sentence. At the first blush, the argument appears to be attractive as trite it is that per mandate of Section 357(3) of the Code, the compensation cannot be awarded where sentence includes fine. However, Section 357 of the Code needs to be read as a whole. The same is being reproduced hereinbelow:-

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.”

8. As per Section 357(1) of the Code where Court imposes sentence of fine or a sentence of which fine forms a part, the Court may while passing judgment, order the whole or any part of the fine recovered to be applied in payment to any person of compensation for any loss or injury caused by the offence when compensation is in the opinion of Court recoverable by such person in a Civil Court. Thus, where a fine can be enhanced, the same can be utilized to compensate the complainant for any loss or injury caused by the offence. However, the issue was with respect to provision as contained under Section 29 of the Code which restricted the authority of the Magistrates to impose fine exceeding 10,000/- rupees.

9. Position on the said issue qua the offence punishable under Section 138 of the N.I. Act stands altered after amendment in Section 143 of the N.I. Act by Amendment Act No.55 of 2002 with effect from 06.02.2003. Now the line between Section 357(1) and Section 357(3) has faded so far as offence punishable under Section 138 of 1881 Act is concerned. It is the said precise issue that has been answered by Supreme Court in the case of **R. Vijayan’s case (supra)**. Apex Court while considering Section 357(3) of the Code and the provisions of Chapter XVII of the Act observing as under:-

“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 authorized 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.

12. It is of some interest to note, though may not be of any assistance in this case, that the difficulty caused by the ceiling imposed by section 29(2) of the Code has been subsequently solved by insertion of section 143 in the Act (by Amendment Act No.55 of

2002) with effect from 6.2.2003. Section 143(1) provides that notwithstanding anything contained in the Code, all offences under Chapter XVII of the Act should be tried by a Judicial Magistrate of the First Class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 of the Code (relating to summary trials) shall, as far as may be, apply to such trials. The proviso thereto provides that it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term extending one year and an amount of fine exceeding Rs.5,000/-, in case of conviction in a summary trial under that section. In view of conferment of such special power and jurisdiction upon the First Class Magistrate, the ceiling as to the amount of fine stipulated in section 29(2) of the Code is removed. Consequently, in regard to any prosecution for offences punishable under section 138 of the Act, a First Class Magistrate may impose a fine exceeding Rs.5000/-, the ceiling being twice the amount of the cheque.”

10. The Apex Court further observed as under:

“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 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 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.”

11. The aforesaid view has been reiterated in ***H. Pukhraj’s case*** (*supra*) observing as under:-

“5. In ***Suganthi Suresh Kumar v. Jagdeeshan, 2002(1) RCR (Criminal) 502 : (2002)2 SCC 420***, this

Court was considering the propriety of inadequate sentence imposed by courts on the accused charged under Section 138 of the NI Act. This Court expressed displeasure about courts imposing a flea-bite sentence on the accused. Following paragraph from the said judgment could be quoted :

“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 amounts 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 at least during the pendency of the case.”

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 2 (2012) 1 SCC 260 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 Rs.6,19,488/- (Rupees six lakh nineteen thousand four hundred eighty eight only), we direct the respondent-accused to pay compensation of Rs.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.”

12. In the present case, complaint relates to cheque dated 05.05.2014. The complaint was decided by JMIC, Talwandi Sabo on 23.05.2016. Appeal was thereafter decided on 24.07.2017 and since 2017, petitioner is before this Court. As per settled law, proceedings under Section 138 of the N.I. Act are restitutional in nature and denial of compensation to the petitioner has resulted in a situation wherein the impugned orders have virtually defeated the very objective of the legislation.

13. In view of above, this Court does not find any reason to deliberate further once the issue already stands decided authoritatively by the binding precedents. So far as the objection raised by the respondent-accused is concerned, the same also stands answered by Apex Court in para 12 of **R. Vijayan’s case (supra)**.

14. Resultantly, the objection raised by counsel for the accused is hereby rejected being without merit.

15. In view of above, present revision petition is allowed. While maintaining the conviction, the respondent is sentenced to undergo R.I. for a period of 01 year and to pay a fine of Rs.10 lakhs. The respondent shall be entitled for setting off the sentence part already served. The same

shall be paid to the petitioner as compensation for the loss caused to him by the respondent by committing offence under Section 138 of the N.I. Act in light of law laid down by Apex Court in **R. Vijayan’s** case *ibid*.

16. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

16.04.2024
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	Yes