

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2782 of 2018
Prasanna Kumar Nahata
Versus
The State of West Bengal & Anr.
With
C.R.R. 3491 of 2019
Abhishek Dhanania
Versus
The State of West Bengal & Anr.

For the Petitioner	:	Mr. Ayan Bhattacharjee, Ld. Sr. Adv.
In CRR 2782 of 2018		Mr. Apalak Basu, Adv.
& Opposite Party No. 2		Ms. Sayanti Santra, Adv.
In CRR 3491 of 2019		Ms. Sanghamitra Mridha, Adv.

For the petitioner	:	Mr. Debangana Bhattacharjee, Adv.
In CRR 3491 of 2019		Mr. Mahiul Islam, Adv.

For the Opposite Party No. 2 : Mr. Souvik Mitter, Adv.
In CRR 2782 of 2018 Mr. Debangana Bhattacharjee, Adv.
 Mr. Mahiul Islam, Adv.

Heard On : 03.03.2025
Judgment On : 22.05.2025

Ajay Kumar Gupta, J:

1. Both the applications have taken up together for disposal for the sake of convenience and passing a common Judgment as the facts, issues and impugned judgment and order under challenged are similar in both the Revisional applications.

2. CRR No. 2782 of 2018 has been filed under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 by the complainant/Petitioner, Sri Prasanna Kumar Nahata for enhancement of the sentence and compensation amount awarded by the Learned Metropolitan Magistrate, 14th Court, Calcutta dated 04.08.2018 in connection with Case No. CS-0053954 of 2016 filed under Section 138 of the Negotiable Instruments Act, 1881.

3. The another Revisional application being CRR 3491 of 2019 has been filed under Section 482 of the Code of Criminal Procedure, 1973 (In short CrPC) by the petitioner/convict assailing the impugned judgment dated 19.09.2019 passed by the Learned Additional Sessions Judge, Fast Track Court – II, City Sessions Court, Calcutta in Criminal Appeal No. 79 of 2019 preferred by the Appellant/convict against the judgment of conviction and sentence dated 4th August, 2018 passed by the Learned Metropolitan Magistrate, 14th Court, Calcutta in connection with Case No. CS-0053954 of 2016 initiated under Section 138 of the Negotiable Instruments Act, 1881 thereby the Learned Trial Court convicted the accused Abhishek Dhanania.

4. By the said judgment dated 19.09.2019, the Learned Additional Sessions Judge, Fast Track Court – II, Calcutta dismissed the appeal and affirmed the judgment of conviction of trial court.

5. The brief facts of this case are relevant for the purpose of disposal of this case as follows: -

5a. The complainant/petitioner Prasanna Kumar Nahata initiated a proceeding under Section 138 of the N.I. Act against the accused being CS Case No. 0053954 of 2016. After considering oral and documentary evidences of the witnesses, the Learned Trial Court finally came to its logical conclusion and convicted the opposite party

no. 2 and thereby ordered to pay fine – cum- compensation to the tune of Rs. 15,00,000/- (Rupees Fifteen Lakhs) only to the complainant/petitioner within 30 days from the date of order, in default, to suffer simple imprisonment for six months.

5b. In the said proceeding, the complainant, *inter alia*, alleged as follows: -

a) That the complainant and accused were known to each other and in the 3rd week of February, 2012, the petitioner/accused herein requested the complainant/opposite party to provide a temporary accommodation commercial loan for a sum of Rs. 15,00,000/- (Rupees Fifteen Lacs) only to the petitioner.

b) That complainant/opposite party advanced a sum of Rs. 15,00,000/- (Rupees Fifteen Lacs) only to the petitioner on 20.02.2015, payable on demand along with interest @ 12% p.a. The petitioner had paid interest from time to time at the interval of 3-4 months. On 06.02.2015, the petitioner has lastly paid interests upto 26.11.2015 by NEFT in respect of the above sum of Rs. 15, 00,000/- (Rupees Fifteen Lacs) only.

c) That the petitioner to pay his existing liabilities and lawful dues, issued an account payee cheque being Cheque no. 000015 dated 01.10.2015 for Rs.

15,00,000/- (Rupees Fifteen Lacs) only, drawn on HDFC Bank, Dr. U.N. Brahmachari Street branch, Kolkata – 700017, in favour of the complainant.

d) That when the complainant deposited the said cheque with its banker, Canara Bank, Canning Street Branch, Kolkata – 700001, on 19.12.2015, for encashment within the stipulated period but the said cheque was returned unpaid on 21.12.2015 with the remark “fund insufficient”.

e) On 31.12.2015, the complainant/opposite party’s lawyer under the instruction of the complainant sent a demand notice dated 31.12.2015, in terms of section 138(b) of the Negotiable Instruments Act and called upon the accused persons to pay the amount of the dishonoured cheque but failed to pay the same accordingly, Petitioner initiated the proceeding under Section 138 of the N.I. Act, 1882.

5c. Being aggrieved by and dissatisfied with the conviction order, the accused/convict filed a Criminal Appeal No. 79/2019 before the Learned Chief Judge, City Sessions Court, Calcutta. After hearing, the appeal was admitted with a direction upon the appellant/convict to deposit Rs. 1,50,000/- before the Learned Lower Court as security deposit.

5d. Against that order, the petitioner preferred a Criminal Revisional application being CRR. No. 1924/2019 before the Hon'ble High Court and during pendency of the said Criminal Revisional application, the appeal being Criminal Appeal No. 79/2019 came up for hearing before the Learned Additional Sessions Judge, Fast Track Court – II, Calcutta. The appeal was dismissed on contest on 19.09.2019. The impugned judgment and order of conviction passed by the Learned Metropolitan Magistrate, 14th Court, Calcutta on 04.08.2018 was affirmed and the surety of the accused/appellant is directed to take step for surrendering the accused/appellant before the Learned Trial Court within 15 days from the date of receipt of the judgment, in default, the Learned Trial Court is at liberty to take appropriate legal step for complying with the order passed by the Learned Trial Court on 04.08.2018 though the appellant/convict was not present or represented by his Learned Advocate on the date of hearing. Therefore, impugned judgment dated 19.09.2019 is not valid in the eye of law since the appeal should not be dismissed in absence of Appellant/convict or his learned counsel. Accordingly, as per convict, the Judgment dated 19.09.2019 is liable to be set aside and remanded back to the Appellate Court for proper adjudication.

5e. On the other hand, the complainant filed Criminal Revisional application for enhancement of compensation contending therein that

as per the provision of Section 138 of the N.I. Act, the compensation amount must be generally the double the amount of the cheque amount.

6. It was submitted on behalf of the petitioner/convict that the Learned Additional Sessions Judge also dismissed the said appeal without analysing proper evidence, oral and documentary and passed the judgment in casual and mechanical manner and, for that, the accused/convict suffered prejudice as such, impugned judgment and order dated 19.09.2019 is required to be set aside for the ends of justice and remanded back the appeal for proper adjudication as concept of *audi alteram partem*, is the basic concept of principle of natural justice. The denial of *audi alteram partem* is the violation of principle of natural justice as enshrined under Articles 14 and 21 of the Constitution of India. The Hon'ble High Court, time and again, held that in criminal appeal, accused must be heard and in absence of the accused/convict or his/her advocate, decision cannot be passed on merits. Right to legal representation is always in favour of the accused/convict. As such, right, if violated, the impugned judgment would be bristles with illegalities and infirmities. For that reason, the judgment should be set aside. Appeal against the conviction is a statutory right to the convict/accused. While deciding the appeal, the Learned Additional Sessions Judge has taken an

adverse presumption and has affirmed order of conviction without having any justifiable reasons. The ex parte decision in the absence of the petitioner not only violated the principle of natural justice but also failed to give reasoned decision. Since, the Learned Additional Sessions Judge failed to give any opportunity to the accused/convict and has passed the impugned judgment under contravention of the principles of natural justice and, therefore, the said impugned judgment is void and liable to be set aside.

7. The learned counsel has placed reliance of a judgment passed in the case of ***P.S. Mitra @ Partha Sarathi Mitra Vs. Manor Travels Private Limited & Anr.***¹. He also placed reliance of a judgment passed in the case of ***Maneka Gandhi Vs. Union of India***² where the Hon'ble Supreme Court held that rule of fair hearing is necessary before passing any judgment in an appeal.

8. On the other hand, the learned senior counsel, Mr. Bhattacharjee appearing on behalf of the complainant/petitioner submitted that several opportunities were given to the appellant/accused to place his case on 30.07.2019, 16.08.2019, 16.09.2019 and 19.09.2019 but despite filing hazira through learned counsel, none found to represent the appellant at the time of hearing.

¹ (2017) 2 C Cr LR (Cal) 178

² AIR 1978 SC 597

Therefore, there was no option to the Learned Additional Sessions Judge as such decided the case on merits. There is nothing to decide in the appeal because the convict/appellant had himself admitted during examination under Section 313 of the CrPC that he has no intention to deprive the complainant, Mr. Prasanna Kumar Nahata from his legal dues. Since, he has facing financial crisis he was unable to pay the loan amount as long as property is not sold as agreed. Therefore, there is nothing remains with the appeal. This is a sure short case of the dismissal. Accordingly, the Learned Additional Sessions Judge affirmed the order of the Learned Trial Court and dismissed the appeal. Question of prejudice to the accused/convict does not arise at all. Therefore, revision filed by the convict/accused is liable to be dismissed as the application has devoid of merit.

9. With regard to enhancement of the compensation amount, the learned counsel appearing on behalf of the convict/accused vehemently argued and submitted that though the petitioner/complainant filed Revisional application, there is a specific provision to file appeal under Section 372 of the CrPC because victim shall have a right to prefer an appeal against any order passed by the Court either acquitting the accused or convicting for a lesser offence or imposing inadequate compensation and such appeal shall lie to the Court to which the appeal ordinarily lies against the order of

conviction of such Court. The said provision was amended in the year 2008 in the CrPC. It gives the victim rights to prefer an appeal against any adverse order as aforesaid passed by the Learned Trial Court.

10. It was further submitted that a sentence of fine imposed by the High Court, Court of Sessions or Metropolitan Magistrate or any Magistrate of the 1st Class is appealable under Section 374 of the CrPC provided such fine exceeds a sum of Rs. 1,000/-, 200/- and 100/- respectively as provided under Section 376 of the CrPC thereof. It is also laid down in the provision of Section 376 of the CrPC that sentence of fine not exceeding the minimum limit shall not become appealable merely on the score imprisonment is prescribed in default of payment of such fine. Compensation par se is not appealable at the behest of the conviction under the aforesaid provision unless it forms a part of the fine under Section 357 (1) of the CrPC is appealable as such. However, inadequacy of compensation made appealable at the behest of the victim under the proviso of Section 372 of the CrPC. Therefore, the revision filed by the complainant/petitioner is not maintainable and, therefore, liable to be dismissed.

11. Finally, he prays for dismissal of the Revisional application. He placed reliance of a judgment passed in the case of **P.S. Mitra @**

Partha Sarathi Mitra Vs. Manor Travels Private Limited & Anr.³

to support of his contention.

12. In reply, the learned senior counsel, Mr Bhattacharya appearing on behalf of the complainant/petitioner submitted that due to inadequacy of fine, the complainant herein filed this present application under Section 401 read with Section 482 of the CrPC seeking enhancement of fine. He also raised objection with regard to plea that the criminal revision is not maintainable or applied in the present case for enhancement of the compensation amount. He was further filed written notes of argument and submitted as follows: -

i) Right to appeal is a statutory right. Unless such a right is specifically conferred by a statute, the same can neither be assumed nor inferred by way of interpretation. Therefore, a right of appeal is to be construed *stricto sensu*. Learned counsel has placed reliance of a judgement of Hon'ble Supreme Court passed in the case of ***Competition Commission of India Vs. Steel Authority of India Limited and Anr.***⁴, particularly paragraphs 50 and 51 thereof:

“50. The principle of “appeal being a statutory right and no party having a right to file appeal except in accordance with the prescribed procedure” is now well

³ (2017) 2 C Cr LR (Cal) 178

⁴ (2010) 10 SCC 744

settled. The right of appeal may be lost to a party in face of relevant provisions of law in appropriate cases. It being a creation of a statute, legislature has to decide whether the right to appeal should be unconditional or conditional. Such law does not violate Article 14 of the Constitution. An appeal to be maintainable must have its genesis in the authority of law. Reference may be made to **M. Ramnarain Private Limited v. State Trading Corporation of India Limited**, [(1983) 3 SCC 75] and **Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad** [(1999) 4 SCC 468].

51. Right of appeal is neither a natural nor an inherent right vested in a party. It is substantive statutory right regulated by the statute creating it. **Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar** [(1999) 3 SCC 722] and **Kashmir Singh vs. Harnam Singh** [(2008) 12 SCC 796 : AIR 2008 SC 1749] may be referred to on this point. Thus, it is evident that the right to appeal is not a right which can be assumed by logical analysis much less by exercise of inherent jurisdiction. It essentially should be provided by the law in force. In absence of any specific provision creating a right in a party to file an appeal, such right can neither be assumed nor inferred in favour of the party.”

ii) As per Section 372 of CrPC, an appeal from any Judgment or Order of a criminal court shall lie in terms of the provisions available under CrPC or any other law for the time being in force.

iii) As there is no provision for appeal or revision in the NI Act, the right to appeal has to be determined according to procedure prescribed under Chapter XXIX of CrPC particularly Section 372 of CrPC thereof. From an analysis of Section 372 of Cr PC, the victim shall have the right to appeal in the following contingencies:

- a) Against the order of acquittal;
- b) Against the order of conviction for lesser offence;
- c) Against the order of conviction for imposing inadequate compensation;

Therefore, it is evident that a victim does not have a right to appeal save and except the aforesaid eventualities apart from an order of acquittal in a complaint case under Section 378 of Cr PC (which is subject to special leave).

iv) A case under Section 138 of NI Act is punishable with imprisonment or fine. According to Section 143 of NI Act, a court can pass an Order of fine beyond Rs. 5,000/- and which may extend to double the cheque amount. According to Section 143 of NI Act, the trial is to be conducted as per the provisions of Sections 251-259 of

CrPC, which fall under Chapter XX of CrPC (Trial of Summons Cases by Magistrates). According to Section 255(2) of CrPC, if the Magistrate, after trial, finds the accused person guilty then court "shall pass sentenced according to law".

v) According to Section 53 of Indian Penal Code, 1860, imprisonment and fine are sentences whereas compensation is not so.

vi) Hence, the Magistrate, after conclusion of trial in a case of conviction, is obligated to pass an Order of imprisonment or fine, or only fine. However, such fine may be applied in the payment to any person of compensation in terms of Section 357(1)(b) of Cr.P.C. Learned counsel has placed reliance of a judgment passed in **R. Vijayan Vs. Baby & Anr.**⁵, particularly paragraphs 9, 10, 13 and 14 as under:-

"9. It is evident from Sub-Section (3) of section 357 of the Code, that where the sentence imposed does not include a fine, that is, where the sentence relates to only imprisonment, the court, when passing judgment, can direct 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 of the act for which the accused person has been so sentenced. The reason for this is obvious. Sub-section (1) of section

⁵ (2012) 1 SCC 260

357 provides that where the court imposes a sentence of fine or a sentence of which fine forms a part, the Court may direct the fine amount to be applied 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. Thus, if compensation could be paid from out of the fine, there is no need to award separate compensation. Only where the sentence does not include fine but only imprisonment and the court finds that the person who has suffered any loss or injury by reason of the act of the accused person, requires to be compensated, it is permitted to award compensation under compensation under section 357(3).

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.

13. 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.

14. This case relates to dishonour of cheque in the year 1995. Though the complainant-appellant has succeeded in obtaining a conviction, he has virtually lost in the sense he did not get compensation to recover the amount of the dishonoured cheque. As the limitation for filing a civil suit expired during the pendency of the appeal before the sessions court, the appellant has also lost the opportunity of recovering the amount by way of

civil suit. In view of this peculiar position, we requested Dr. Rajiv Dhavan, senior counsel, to assist us as an Amicus Curiae to suggest methods to improve the disposal of cases under section 138 of the Act and also improve the relief that could be granted in such cases.”

vii) An Order of compensation can only be passed along with a substantive sentence under Section 357(3) of CrPC.

a) Appeal being a statutory right, the same cannot be assumed by logical analysis and it should be specifically provided by statute.

b) As per Section 372 of the CrPC, inadequacy of fine cannot be appealable as the word 'fine' is conspicuously absent therein.

c) In a trial under Section 138 of NI Act, in case of conviction, the court is obligated to pass an order of "Sentence".

d) Fine is a part of sentence in terms of Section 53 of IPC, whereas compensation is not. An order of fine can be applied to a victim/complainant as compensation as per Section 357(1)(b) of Cr PC. Nevertheless, it remains a fine.

e) An order of compensation can only be passed in a case where substantive sentence of imprisonment has been passed in terms of Section 357(3) of CrPC.

viii) Judging on the aforesaid touchstone, it will be evident that the Learned Trial Magistrate has only passed an Order of fine which was applied as compensation as per Section 357(1)(b) of Cr PC. Such fine cannot be judicially considered to be compensation as no substantive imprisonment was awarded.

ix) As inadequacy of fine cannot be subject matter of an appeal under any provision falling under Chapter XXIX of CrPC, therefore, the petitioner did not have any appellate remedy and present revision is perfectly maintainable.

x) A revision under Section 401 read with Section 482 of CrPC is perfectly maintainable before this Hon'ble Court. A right of appeal will not eclipse the inherent power of this Hon'ble Court, which this Hon'ble Court enjoys by virtue of its existence. Learned counsel for the Petitioner/complainant has placed a reliance of a judgment passed in the case of ***Punjab State Warehousing Corporation,***

Faridkot vs. Shree Durga Ji Traders and Ors.⁶, particularly paragraphs 5 and 12 as under:-

“5. Aggrieved thereby the appellant moved the High Court with a petition under Section 482 of the Code for setting aside of the said orders and restoration of the complaint. As aforesaid, by the impugned judgment, the High Court has dismissed the petition, holding that the dismissal in default of a private complaint amounts to acquittal of the accused, and since against such an order a specific statutory remedy exists in the Code, a petition under Section 482 of the Code cannot be entertained. Hence the present appeal by the complainant.

12. We are convinced that in the instant case, rejection of the appellant's petition under Section 482 of the Code has resulted in miscarriage of justice. Availability of an alternative remedy of filing an appeal is not an absolute bar in entertaining a petition under Section 482 of the Code. As aforesaid, one of the circumstances envisaged in the said Section, for exercise of jurisdiction by the High Court is to secure the ends of justice. Undoubtedly, the Trial Court had dismissed the complaint on a technical ground and therefore, interests of justice required the High Court to exercise its jurisdiction to set aside such an order so that the Trial Court could proceed with the trial on merits.”

⁶ (2011) 14 SCC 615

xi) The fine imposed under Section 138 of NI Act may be deemed to be compensation for paying the same to complainant/victim on a holistic reading of Sections 138 and 143 of NI Act read with Section 357(1)(b) of Cr PC. However, the same cannot be compensation *stricto sensu*. Therefore, the revision so filed in the present form is maintainable.

13. From the above facts and arguments canvassed by the learned counsels for the parties, this Court finds that two vital questions emerge to be decided:

Firstly, whether against an order of acquittal or inadequate fine or compensation, a revision is maintainable?

Secondly, whether the dismissal of appeal on merits by the Learned Additional Sessions Judge in absence of the accused/convict or none representation by the learned Advocate is justified or liable to be set aside?

14. Learned Trial Court has convicted the accused/petitioner and sentenced him thereby ordered to pay fine – cum- compensation to the tune of Rs. 15,00,000/- (Rupees Fifteen Lakhs) only to the complainant/petitioner within 30 days from the date of order, in default, to suffer simple imprisonment for six months. The whole

compensation amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs) only be paid to the complainant in view of the provision of Section 357(1) (b) of the CrPC. Therefore, it is crystal clear that the trial court directed to pay fine-cum-compensation amount.

15. The punishment provided under Section 138 of the NI Act is amended and after amendment, the convict be punished with imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of cheque, or with both if accused found guilty of offence. Here the word 'Fine' is indicated.

16. The trial court imposed fine-cum-compensation upon the convict. Section 143 (1) of NI Act 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.

17. The co-ordinate Bench of this Court in the case of **P.S. Mitra @ Partha Sarathi Mitra Vs. Manor Travels Private Limited & Anr** held particularly in paragraphs 15, 16 and 17 as follows:-

15. However, the issue may be viewed from another angle. It is by way of purposive interpretation that the Apex Court in Vijayan (Supra) and R. Mohan (Supra) held that 'compensation' shall be deemed to be a 'fine' for the purposes of Section 64 of I.P.C. and in default of payment of such compensation the Court shall have the power to impose imprisonment upon the defaulter. Such purposive interpretation, therefore, creates a legal fiction and treats 'compensation' as 'fine' for the purposes of Section 64 of I.P.C. and thereby prescribes a procedure established by law to deprive a defaulter of his liberty in case of failure to pay such compensation. It is trite law that a procedure established by law depriving liberty of an individual must be just, reasonable and fair so as to survive the test of constitutionality on the touchstone of Article 14 and 21 of the Constitution. Judged from this angle, any interpretative exercise which deems an 'award of compensation' as 'sentence of fine' for the purposes of Section 64 of I.P.C. and empowers the Court

to impose imprisonment in default of payment of such compensation must also bring within the sweep of such legal fiction the appellate remedy available under Section 374 read with Section 376 of the Code of Criminal Procedure against the 'sentence of fine' and hold that 'compensation' in default of payment of which imprisonment may be imposed shall be deemed to be a 'sentence of fine' for the purposes of such appellate remedy. In other words, if by judicial interpretation a procedure to impose imprisonment in default of payment of compensation is acknowledged by treating 'compensation' as 'fine', the remedy of appeal available against such 'sentence of fine' must also be extended to 'orders of compensation'. To interpret otherwise would create an inequitable and unfair situation to the prejudice of an accused by permitting the Court to impose imprisonment in default of payment of compensation by treating it as a fine on the one hand but not permitting him to appeal against such order of compensation, on the other hand, since it is not a 'sentence of fine'.

16. Hence, I am of the view that the legal fiction equating 'compensation' with 'fine' for the purposes of Section 64 of the I.P.C. and permitting the Court to pass direction for imprisonment in default of payment of such compensation would be unjust, unfair and unconstitutional if such legal fiction is not extended to the appellate remedy engrafted in Section 374 read with Section 376 of the Cr.P.C. and compensations which are

coupled with a direction for imprisonment as a default clause are not made appealable under the aforesaid provision of law as if it were a 'sentence of fine'.

17. Accordingly, I am of the opinion that a compensation which is treated as a fine in terms of Section 64 of I.P.C. and a direction for imprisonment is given in default of payment of such compensation is appealable under Section 374 read with Section 376 Cr.P.C. as if it was a 'sentence of fine' for the purposes of such appellate remedy.:-

18. Here, the Petitioner/complainant filed revisional application seeking enhancement of the conviction, sentence and compensation passed by the Learned Trial Court. To understand the legal provision in this regard, Sections 372 and 482 of the CrPC are necessary to look into for ready reference and proper adjudication of the present case in hand.

Section 372 of CrPC reads as follows: -

“372. No appeal to lie unless otherwise provided.

—No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser

offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

Section 482 of the CrPC reads as follows:-

“482. Saving of inherent power of High Court.-

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

19. In case of **Joseph Stephen and Others Vs. Santhanasamy and Others**⁷, the Hon’ble Supreme Court held in paragraph nos. 8.2, 13, 13.1 and 13.2 as under:-

“8.2. (ii) *In a case where the victim has a right of appeal against the order of acquittal, now as provided under Section 372CrPC and the victim has not availed such a remedy and has not preferred the appeal, whether the revision application is required to be entertained at the instance of a party/victim instead of preferring an appeal?*

13. *Now so far as Issue (ii), namely, in a case where no appeal is brought though appeal lies under the Code, whether revision application still to be*

⁷ (2022) 13 SCC 115;

entertained at the instance of the party who could have appealed, the answer lies in sub-section (4) of Section 401CrPC itself. Sub-section (4) of Section 401CrPC reads as under:

*“**401. (4)** where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”*

13.1. *It cannot be disputed that now after the amendment in Section 372 CrPC after 2009 and insertion of the proviso to Section 372 CrPC, a victim has a statutory right of appeal against the order of acquittal. Therefore, no revision shall be entertained at the instance of the victim against the order of acquittal in a case where no appeal is preferred and the victim is to be relegated to file an appeal. Even the same would be in the interest of the victim himself/herself as while exercising the revisional jurisdiction, the scope would be very limited, however, while exercising the appellate jurisdiction, the appellate court would have a wider jurisdiction than the revisional jurisdiction. Similarly, in a case where an order of acquittal is passed in any case instituted upon complaint, the complainant (other than victim) can prefer an appeal against the order of acquittal as provided under sub-section (4) of Section 378 CrPC, subject to the grant of special leave to appeal by the High Court.*

13.2. As observed by this Court in **Mallikarjun Kodagali [Mallikarjun Kodagali v. State of Karnataka, (2019) 2 SCC 752 : (2019) 1 SCC (Cri) 801]**, so far as the victim is concerned, the victim has not to pray for grant of special leave to appeal, as the victim has a statutory right of appeal under Section 372 proviso and the proviso to Section 372 does not stipulate any condition of obtaining special leave to appeal like sub-section (4) of Section 378CrPC in the case of a complainant and in a case where an order of acquittal is passed in any case instituted upon complaint. The right provided to the victim to prefer an appeal against the order of acquittal is an absolute right. Therefore, so far as Issue (ii) is concerned, namely, in a case where the victim and/or the complainant, as the case may be, has not preferred and/or availed the remedy of appeal against the order of acquittal as provided under Section 372CrPC or Section 378(4), as the case may be, the revision application against the order of acquittal at the instance of the victim or the complainant, as the case may be, shall not be entertained and the victim or the complainant, as the case may be, shall be relegated to prefer the appeal as provided under Section 372 or Section 378(4), as the case may be. Issue (ii) is therefore answered accordingly.”

20. In the case of **Subhash Chand Vs. State (Delhi Administration)**⁸, the Hon'ble Supreme Court held in paragraph nos. 13, 18 and 19 as under: -

“13. Section 378 of the Code prior to its amendment by Act 25 of 2005 read as under:

“378. Appeal in case of acquittal.—(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the

⁸ (2013) 2 SCC 17.

provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2)."

Thus, under the earlier Section 378(1) of the Code, the State Government could, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court or an order of

acquittal passed by the Court of Session in revision. Section 378(2) covered cases where order of acquittal was passed in any case in which the offence had been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 or by any other agency empowered to make investigation into an offence under any Central Act other than the Code. In such cases, the Central Government could also direct the Public Prosecutor to present an appeal to the High Court from an order of acquittal. Section 378(3) stated that appeals under sub-sections (1) and (2) of Section 378 of the Code could not be entertained except with the leave of the High Court. Sub-section (4) of Section 378 of the Code provided for orders of acquittal passed in any case instituted upon complaint. According to this provision, if on an application made to it by the complainant, the High Court grants special leave to appeal from the order of acquittal, the complainant could present such an appeal to the High Court. Sub-section (5) of Section 378 of the Code provided for a period of limitation. Sub-section (6) of Section 378 of the Code stated that if in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-sections (1) or (2). Thus, if the High Court refused to grant special leave to appeal to the complainant, no appeal from that order of acquittal

could be filed by the State or the agency contemplated in Section 378(2). It is clear from these provisions that earlier an appeal against an order of acquittal could only lie to the High Court. Sub-section (4) was aimed at giving finality to the orders of acquittal.

18. *If we analyse Sections 378(1)(a) and (b), it is clear that the State Government cannot direct the Public Prosecutor to file an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence because of the categorical bar created by Section 378(1)(b). Such appeals, that is, appeals against orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence can only be filed in the Sessions Court at the instance of the Public Prosecutor as directed by the District Magistrate. Section 378(1)(b) uses the words “in any case” but leaves out orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence from the control of the State Government. Therefore, in all other cases where orders of acquittal are passed appeals can be filed by the Public Prosecutor as directed by the State Government to the High Court.*

19. *Sub-section (4) of Section 378 makes provision for appeal against an order of acquittal passed in a case instituted upon complaint. It states that in such case if the complainant makes an application to the High Court and the High Court grants special leave to appeal, the complainant may present such an appeal*

to the High Court. This sub-section speaks of “special leave” as against sub-section (3) relating to other appeals which speaks of “leave”. Thus, the complainant's appeal against an order of acquittal is a category by itself. The complainant could be a private person or a public servant. This is evident from sub-section (5) which refers to application filed for “special leave” by the complainant. It grants six months' period of limitation to a complainant who is a public servant and sixty days in every other case for filing application. Sub-section (6) is important. It states that if in any case the complainant's application for “special leave” under sub-section (4) is refused no appeal from the order of acquittal shall lie under sub-section (1) or under sub-section (2). Thus, if “special leave” is not granted to the complainant to appeal against an order of acquittal the matter must end there. Neither the District Magistrate nor the State Government can appeal against that order of acquittal. The idea appears to be to accord quietus to the case in such a situation.”

21. Considering the aforesaid provisions and propositions laid down by the Hon'ble Supreme Court, it is clear that when the victim is aggrieved by and dissatisfied with the judgment of acquittal, or convicting for a lesser offence or imposing inadequate compensation, victim shall have a right to prefer an appeal against any order passed

by the Court and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. The answer of the first question is in negative. Therefore, revision is not maintainable.

22. In so far as to the second question is concerned, it is not disputed by the parties that the Learned Additional Sessions Judge, Fast Track Court – II, City Sessions Court, Calcutta dismissed the appeal on merits though no appellant was present or represented by any learned advocate on the date of hearing. The principle of natural justice has been ignored at the time of disposal of Appeal. It is settled principle of law that any criminal appeal should not be dismissed on merits or on the ground of default in absence of representation by learned advocate for the appellant (s). In this regard, the Hon'ble Supreme Court, time and again, reiterates that a court cannot dismiss the appeal filed by an appellant/accused merely because of non-representation or default of the advocate for the appellant/accused. If the accused does not appear through counsel appointed by him/her, the Court is obliged to proceed with the hearing of the case only after appointing amicus curiae. This Court relies a judgment passed in the case of **K. Muruganandam & Ors.**

Vs. State Rep. by the Deputy Superintendent of Police and Anr.⁹,

where in Hon'ble Supreme Court held in paragraph nos. 8 and 9 as under:

*“8. It is well settled that if the accused does not appear through counsel appointed by him/her, the Court is obliged to proceed with the hearing of the case only after appointing an amicus curiae, but cannot dismiss the appeal merely because of non-representation or default of the advocate for the accused (see **Kabira vs. State of Uttar Pradesh**¹⁰ and **Mohd. Sukur Ali vs. State of Assam**¹¹).*

9. Accordingly, we have no hesitation in setting aside the impugned judgment and order and relegate the parties before the High Court for hearing of Criminal Appeal No. 246/2012 afresh on its own merits and in accordance with law.”

23. The judgment referred by the petitioner/complainant in the case of **Punjab State Warehousing Corporation (supra)** is not applicable in the present case as the facts and circumstances of the present case are different.

24. In the light of the aforesaid discussion and observations, the Criminal Revisional application being **CRR No. 2782 of 2018** is,

⁹ Criminal Appeal No. 809/2021 (arising out of SLP (Crl.) No. 5690/2021)

¹⁰ 1981 (Supp) Supreme Court Cases 76

¹¹ 2011 (4) SCC 729

thus, **dismissed** and **CRR No. 3491 of 2019** is, thus, **allowed**. Consequently, connected applications, if any, are also, thus, disposed of.

25. Accordingly, the impugned judgment dated 19.09.2019 passed by the Learned Additional Sessions Judge, Fast Track Court – II, City Sessions Court, Calcutta in Criminal Appeal No. 79 of 2019 thereby affirmed the judgment of conviction and sentence dated 4th August, 2018 passed by the Learned Metropolitan Magistrate, 14th Court, Calcutta in connection with Case No. CS-0053954 of 2016 is hereby set aside.

26. Interim order, if any, stands vacated.

27. The Appeal being Criminal Appeal No. 79 of 2019 is remanded back to the Appellate Court below with a direction to dispose of on its own merits independently and in accordance with law after affording an opportunity of hearing to the parties. In the event none represent the appellant/convict, the same may be disposed of after appointing amicus curiae. I also make it clear that this court does not get an opportunity to enter into the merits of the instant case as such Appellate Court shall not influence by any of the observation, whatsoever, made herein above.

- 28.** The petitioner/complainant may also take recourse of his grievances by filing appeal in accordance with law if so advised.
- 29.** Registry, Circuit Bench at Jalpaiguri is directed to transmit the record to the Principal Bench of this Court.
- 30.** Parties shall act on the server copies of this Judgment uploaded on the official website of this Court.
- 31.** Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J.)

P. Adak (P.A.)