Uma Abhilasha Iyer & Ors. Vs V. Janardhan & Ors

Court: Karnataka High Court At Bengaluru

Date of Decision: Feb. 1, 2025

Acts Referred: Code Of Criminal Procedure, 1973 â€" Section 2(wa), 29, 29(2), 200, 313, 357, 357(1)(b), 372, 374, 377, 378, 397, 397(1), 397(3), 401, 401(4), 401(5)
Negotiable Instruments Act, 1881 â€" Section 30, 38, 117, 138, 142

Hon'ble Judges: H.P. Sandesh, J

Bench: Single Bench

Advocate: Kashyap N. Naik, M.D. Basavanna

Final Decision: Allowed/ Dismissed

Judgement

H.P. Sandesh, J

CAV ORDER

1. Heard learned counsel for the petitioner and learned counsel for the respondent.

2. The parties are referred to in the name of complainant and accused for the sake of brevity and convenience of the Court.

3. Crl.R.P.No.58/2016 is filed by the complainant praying to set aside and modify the order of conviction and sentence dated 12.03.2014 on the file of

the XIII Additional Chief Metropolitan Magistrate, Bengaluru City in C.C.No.12697/2009. Crl.R.P.No.438/2020 is filed by the accused against the

judgment of the First Appellate Court in Crl.A.No.359/2014 dated 01.10.2015 on the file of LXVIII Additional City Civil and Sessions Judge,

Bengaluru City (CCH-69) contending that criminal appeal is not maintainable and that only revision petition is maintainable.

4. The complainant filed the complaint under Section 200 of Cr.P.C. alleging that the accused person has committed an offence punishable under

Section 138 of N.I. Act stating that the accused being a vendor of immovable property bearing Site No.134, new Khatha No.2/1, old Khatha No.14/4

situated at Doddanagamangala Village, Begur Hobli, Bengalore South Taluk, coming under the jurisdiction of Konnappana Agrahara Village

Panchayath and measuring East to West 44 feet and North to South 90.09 inches, in all measuring a total extent of 3,993 sq.ft., the complainant and

accused had entered into a sale agreement in respect of the said immovable property for a total sale consideration of Rs.40 lakhs dated 07.01.2008.

The complainant had paid a sum of Rs.10 lakhs, the accused had acknowledged the same. In view of the above said transaction, the complainant

further paid a sum of Rs.5 lakhs on 14.02.2008 for which the accused had acknowledged the same on 16.06.2008. The accused received a sum of

Rs.5 lakhs towards part sale consideration, then complainant had paid totally a sum of Rs.20 lakhs. It is the further case of the complainant that

accused had issued a legal notice to the complainant on 08.06.2008. After receipt of the said notice, the complainant suitably replied through her

advocate on 14.06.2008 for the above said reasons and transaction, the complainant and accused came into mutual understanding, the accused agreed

to return the above said part sale consideration for a sum of Rs.15 lakhs received from the complainant. For the above said liability on the demand, the

accused had issued Cheque in favour of complainant for a sum of Rs.15 lakhs dated 10.02.2009 and when the same was presented, it was

dishonoured. Again the accused requested to represent the same, accordingly, the same was represented, once again it was dishonoured. Hence, got

issued the legal notice on 24.03.2009 through her advocate by RPAD and UCP and the postal receipt produced, the postal acknowledgement has not

been received through legal notice, the complainant had demanded to pay the said Cheque amount. The accused on receipt of the said legal notice,

gave reply notice through his advocate on 07.04.2009 simply denying the liability. Hence, complaint was filed and the Trial Court taken cognizance and

registered criminal case against the accused for the offence punishable under Section 138 of N.I. Act.

5. In support of the case of the complainant, she examined herself as P.W.1 and got marked the documents as Exs.P1 to P12. On the other hand, the

statement of the accused was recorded under Section 313 of Cr.P.C. and he also led evidence and examined himself as D.W.1 and got marked the

documents as Exs.D1 to D4.

6. The Trial Court having considered the material on record, convicted the accused for the offence punishable under Section 138 of N.I. Act and

directed to pay a fine of Rs.15,05,000/-. Out of the same, Rs.5,000/- is payable to the State. In default of payment of fine, the accused to undergo

simple imprisonment for a period of six months. Being aggrieved by the order of the Trial Court, both the complainant and the accused have filed

Criminal appeals before the City Civil Court and Sessions Judge. The appeal filed by the accused is numbered as Crl.A.No.359/2014, wherein prayed

the First Appellate Court to set aside the conviction and sentence and the appeal filed by the complainant is numbered as Crl.A.No.687/2014, wherein

prayed the Court to modify the judgment and enhance the compensation. The First Appellate Court having reassessed the material on record,

dismissed the appeal filed by the accused and also dismissed the appeal filed by the complainant stating that the same is not maintainable, but given

liberty to prefer an appeal before the competent Court. Hence, the complainant has filed Crl.R.P.No.58/2016.

7. The main contention of the learned counsel for the complainant in Crl.R.P.No.58/2016 is that no dispute with regard to issuance and dishonour of

Cheque and also there is no dispute with regard to issuance of Cheque Ex.P1 for repayment of Rs.15 lakhs. The counsel would contend that more

than 5 years have been elapsed by the time when the Trial Court passed an order and failed to take note of the fact that inspite of this gap, not a single

paisa more is awarded as compensation to the complainant on the principal Cheque amount of Rs.15 lakhs. The transaction being a commercial

transaction between the parties, the Trial Court ought to have awarded the compensation amount by calculating the interest minimum at 18% per

annum on Rs.15 lakhs besides awarding damages. It is contended that the leaned trial Judge failed to notice the unrighteous conduct of the accused

throughout the proceedings in the Trial Court and therefore, he ought to have imposed a maximum imprisonment of 2 years, in the event of default of

payment of compensation amount within 30 days. It is further contended that the object of introducing Section 138 to the Act is only to encourage

commercial transactions and not to discourage and punish such fraudulent persons, who issue Cheques with a dishonest motive. It is contended that

the order passed by the Trial Court is erroneous and when the appeal was filed under Section 372 Cr.P.C. against the impugned judgment and

sentence, the appeal was dismissed with liberty to prefer an appeal before the competent Court. Hence, the present revision petition is filed before this

Court.

8. In Crl.R.P.No.438/2020 filed by the accused, it is contended that the Trial Court committed an error in convicting the accused and both the Courts

failed to consider the material available on record and the Cheque is not issued towards legally enforceable debt. It is contended that Cheque was

issued on threat and coercion and one Mico Manju @ Payasa came to him along with other 10 persons and taken him to Lakkasandra to the house of

one Corporator. The said Mico Manju and other persons assaulted him and taken him forcibly to the house of the Corporator and obtained the

Cheque. It is contended that he has repaid the earnest money to the respondent and even then, the respondent has not returned the Cheque to him and

clearly set out the defence throughout in the cross-examination and also in the evidence, when he was examined as D.W.1 and both the Courts failed

to take note of said fact into consideration and committed an error in convicting and sentencing the accused. Hence, it requires interference.

9. Learned counsel appearing for the accused in Crl.R.P.No.438/2020 in his argument would vehemently contend that the Trial Court failed to

consider Ex.D4, cancellation of sale agreement. It is also not in dispute that earlier there was an agreement between both of them. Learned counsel

would vehemently contend that signature and contents of Ex.P1-Cheque not belongs to the accused. Learned counsel would further contend that

matter is civil in nature and through the rowdy elements, Cheque was obtained and the same was misused. The answered elicited during the course of

cross-examination of P.W.1 shows that there was no any transaction. Learned counsel would vehemently contend that Sessions Court rightly

dismissed the appeal filed by the complainant and revision filed by the complainant is not maintainable for enhancement. Hence, allow the revision

petition filed by the accused and dismiss the revision petition filed by the complainant.

10. Per contra, learned counsel for the respondent/complainant would contend that issuance of Cheque is not disputed and execution of agreement and

cancellation of the same is also not in dispute. When the agreement was cancelled, Cheque was given and when the said Cheque was presented, it

was dishonoured. The counsel would vehemently contend that the Trial Court as well as the First Appellate Court rightly considered the evidence

available on record and convicted the accused. However, learned counsel would contend that the First Appellate Court committed an error in coming

to the conclusion that the appeal is not maintainable. Though the counsel would contend that Cheque was obtained under coercion and force, no

complaint was given and the same is not admitted and the defence is not proved. Learned counsel would contend that payment was made in the year

2009 and double the amount was not awarded. Hence, the appeal was filed and now the revision petition is filed.

11. Learned counsel for the respondent/complainant in support of his argument, relied upon the judgment in R. VIJAYAN VS. BABY AND

ANOTHER reported in (2012) 1 SCC 260 and brought to notice of this Court paragraph Nos.17 and 18, wherein discussion was made with regard

to invoking Section 357(1)(b) of the Code and the provision for compounding the offences under Section 38 of the Act. Even where the offence is not

compounded, the Courts tend to direct payment of compensation equal to the Cheque amount (or even something more towards interest) by levying a

fine commensurate with the Cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly

private financiers) view the proceedings under Section 138 of the Act, as a proceeding for the recovery of the Cheque amount, the punishment of the

drawer of the Cheque for the offence of dishonour, becoming secondary. Learned counsel also brought to notice of this Court discussion made in

paragraph No.18, wherein it is 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.

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 up to 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.

12. The counsel also relied upon the judgment in P. SURESH KUMAR VS. R. SHANKA rReported in (2007) 4 SCC 752 and brought to notice of

this Court paragraph Nos.13 to 18, wherein discussion was made with regard to Section 138 and also Section 29(2) Cr.P.C. and so also Section 357

Cr.P.C. that consideration for payment of compensation is somewhat different from payment of fine. The counsel also brought to notice of this Court

paragraph No.18, wherein it is discussed that purpose of imposition of fine and/or compensation, however, must be considered having regard to the

relevant factors in mind as envisaged under Section 357 of the Code of Criminal Procedure. Learned counsel referring these two judgments would

contend that this Court has to allow the revision petition and enhance the fine amount and sentence, in case of default.

13. In reply to this argument, learned counsel appearing for the accused would contend that Cheque is disputed and no such special circumstances to

enhance the compensation. In reply to this argument of the learned counsel for the accused, learned counsel for the complainant would contend that in

the reply notice itself the accused admitted the cheque and now cannot dispute the same.

14. Having heard learned counsel for the complainant and learned counsel for the accused and also having considered the principles laid down in the

judgments referred supra, the points that would arise for consideration of this Court are:

(i) Whether the complainant has made out a ground to allow Crl.R.P.No.58/2016 for enhancement of compensation?

(ii) Whether the accused has made out a ground to set aside the order of conviction and sentence as prayed in Crl.R.P.No.438/2020?

(iii) What order?

Point Nos.(i) and (ii)

15. Having heard respective counsel and also the material available on record i.e., both oral and documentary, it is the specific case of the complainant

that there was an agreement and the same was subsequently cancelled. It is the contention of the complainant that earnest money which was paid

under the agreement was repaid by way of issuance of Cheque at Ex.P1 and the same was dishonoured. It is also not in dispute that after dishonour

of the Cheque, notice was issued and reply was given in terms of Ex.P9. Having perused the reply also, the accused admitted the issuance of subject

matter of Cheque and also admitted receipt of Rs.20 lakhs as earnest money which was given towards sale consideration. It has to be noted that, in

the reply notice at paragraph No.1, the accused admitted and acknowledged receipt of an amount of Rs.20 lakhs. In paragraph No.2, admitted that he

paid back the entire amount and there is no due from his end. However, admits that Cheque was issued at the time of executing the cancellation of

sale deed on 20th day of November, 2008 and the same was incorporated therein in the cancellation of sale agreement. Having taken note of this

admission in the reply notice as well as evidence available on record, there is a clear admission with regard to issuance of Cheque and the same is

towards earnest money which has been received under the sale agreement. Though it is contended that signature and contents of Ex.P1-Cheque not

belongs to him, but admission takes away the case of the accused.

16. The other contention of the complainant is that by bringing the rowdy elements, Cheque was collected by one Mico Manju and he threatened,

assaulted and taken him to Corporator and the Cheque which was obtained forcibly was misused. But, admittedly, answer is elicited from D.W.1 that

he has not given any complaint for taking the Cheque by force and misusing the same. The defence was not proved though it was contended that it

was taken forcibly by rowdy elements. It is admitted that Cheque was given towards cancellation of sale agreement for return of the earnest money.

Hence, the very contention of the learned counsel for the accused that the material has not been appreciated by both the Courts in a proper

perspective cannot be accepted. Having read the entire evidence of P.W.1 and also D.W.1, there is a clear admission on the part of the accused that

subject matter of Cheque was issued towards cancellation of agreement and return of earnest money and the contention that matter is civil in nature

cannot be accepted, once the issuance of Cheque has been admitted. Hence, I do not find any ground to interfere with the order of conviction and

sentence.

17. Now the question before this Court is with regard to enhancement of sentence is concerned. Admittedly, an appeal is filed before the First

Appellate Court and the First Appellate Court taking note of the material available on record, discussed in detailed whether the appeal is maintainable

and the First Appellate Court, while answering point No.1 in Crl.A.No.687/2014 filed by the complainant, taken note of the grounds urged in the

appeal and discussed with regard to Section 372 Cr.P.C. in view of amendment. The amendment also says Ã¢â‚¬Å“the victim shall have a right to prefer

an appeal against any order passed by the Court acquitting the accused or convicting for lesser offence or imposing inadequate compensation, as such

appeal shall lie to the Court to which an appeal ordinary lies against the order of conviction of such CourtÃ¢â‚¬. Referring this Section, learned counsel

would contend that the appeal is maintainable. The same is objected by the learned counsel for the respondent placing the order passed by this Court

in Crl.P.No.6072/2014 dated 24.02.2015, wherein the short point had arisen for consideration before this Court whether appeal can be maintained

against the judgment of acquittal for offence punishable under Section 138 of N.I. Act, before the jurisdictional Sessions Court under proviso to

Section 372 Cr.P.C. The First Appellate Court also taken note of reasoning given by this Court that a person under the complaint U/s. 138 of N.I. Act

cannot be termed as Ã¢â‚¬ËœVictimÃ¢â‚¬â„¢ defined U/s. 2(wa) Cr.P.C. This Court also taken note of proviso to Section 142 N.I. Act. The First Appellate

Court having considered the same, in paragraph No.36, comes to the conclusion that the word Ã¢â‚¬ËœComplaintÃ¢â‚¬â„¢ under proviso to Section 142 of N.I.

Act and the Ã¢â‚¬Ëœvictimâ€™ U/s. 2(wa) of Cr.P.C. are not one and the same. Hence, comes to the conclusion that appeal filed under proviso to Section

372 Cr.P.C. is not maintainable. In the case on hand also, the complainant has preferred the appeal for inadequate compensation awarded as per the

proviso to Section 372 Cr.P.C. Hence, the appeal is not maintainable. However, while passing the order, the First Appellate Court has given liberty to

prefer an appeal before the competent Court. Learned counsel referring the same would contend that in view of the said observation, the present

revision petition is filed before this Court, since the First Appellate Court comes to the conclusion that the appeal is not maintainable.

18. Having considered the grounds urged in the petition, it is not in dispute that an amendment was brought into Section 372 Cr.P.C. and the word

used in Section 372 Cr.P.C. is that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or

convicting for lesser offence or imposing inadequate compensation, as such appeal shall lie to the Court to which an appeal ordinary lies against the

order of conviction of such Court. It is also important to note that under Section 374 Cr.P.C., Ã¢â‚¬ËœAppeals from convictionsÃ¢â‚¬â„¢, an appeal lies to the

First Appellate Court as against the conviction and proviso of Section 377 Cr.P.C. is Ã¢â‚¬ËœAppeal by the State Government against sentenceÃ¢â‚¬â„¢. The

appeal provision is also made under Section 378 Cr.P.C. i.e., Ã¢â‚¬ËœAppeal in case of acquittalÃ¢â‚¬â„¢.

19. Now the question before this Court is what is the remedy to the complainant, if the complaint is filed under Section 200 invoking Section 138 of

N.I. Act and provision is only made to the State to file an appeal against the sentence. No doubt, Section 372 Cr.P.C. is also very clear that victim

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

inadequate compensation, the Court has to take note of the revisional provision to file the revision before the High Court under Section 401 Cr.P.C.

and also revisional powers of District and Sessions Court under Section 397 Cr.P.C.

20. Having read the powers enshrined under Section 401 Cr.P.C., this Court would like to extract the same, which reads as hereunder:

Ã¢â‚¬Å“401. High Court's powers of revision.Ã¢â‚¬"(1) In the case of any proceeding the record of which has been called for by itself or which

otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by

sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally

divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being

heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(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.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High

Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the

interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same

accordinglyÃ¢â‚¬â€‹.

21. This Court would like to rely upon Section 397 of Cr.P.C which reads as follows:

Ã¢â‚¬Å“Section 397 Ã¢â‚¬" Calling for records to exercise powers of revision

1. The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its

or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,

recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution

of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of

the record.

Explanation Ã¢â‚¬" All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be

inferior to the Sessions Judge for the purposes of this Sub-Section and of section 398.

2. The powers of revision conferred by Sub-Section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial

or other proceeding.

3. If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the

same person shall be entertained by the other of them.Ã¢â‚¬â€‹

22. Having read the proviso of Section 401 of Cr.P.C, it is clear that the High Court has got power to exercise revisional jurisdiction. The proviso of

sub-section (4) of Section 401 of Cr.P.C is very clear that 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 and the proviso of sub-section (5) of Section 401 of Cr.P.C is clear

that where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is

satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to

do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

23. The other provision of sub-section (1) of Section 397 of Cr.P.C is very clear that the High Court or any Sessions Judge may call for and examine

the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself

as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such

inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended and sub-section (3) of Section

397 of Cr.P.C is very clear that if any application under this section has been made by any person either to the High Court or to the Sessions Judge,

no further application by the same person shall be entertained by the other of them. Having read Section 397 of Cr.P.C, it is clear that both the High

Court or any Sessions Judge can exercise the power under Section 397 of Cr.P.C and powers are vest with both the High Court and Sessions Court.

24. In the case on hand it has to be noted that an appeal was field before the First Appellate Court and the First Appellate Court comes to the

conclusion that appeal not lies but again instead of giving liberty to file revision, it is mentioned that appeal can be filed hence, it appears that the same

is a mistake. In the present revision petition, the counsel for the petitioner invoked both Section 397 read with Section 401 of Cr.P.C. Having taken

note of the revisional jurisdiction, this Court has to examine the material available on record.

25. Now, the question before this Court is that whether this Court can enhance the sentence. Admittedly, the Trial Court while convicting the accused,

ordered to pay an amount of Rs.15,05,000/- and out of that amount, Rs.5,000/- is ordered to be paid to the State and remaining amount of

Rs.15,00,000/- is ordered to be paid to the complainant as compensation. It is important to note that the case of the complainant is that accused is

liable to pay an amount of Rs.15,00,000/- and hence, he issued the Cheque and the same was dishonoured with an endorsement Ã¢â‚¬Ëœfunds

insufficientÃ¢â‚¬â„¢ but the Trial Court only the Cheque amount is ordered to pay to the complainant and hence, filed this revision petition.

26. This Court in the judgment reported in ILR 2000 KAR 2588 in the case of B HARIKRISHNA vs MACRO LINKS PVT. LTD. AND

ANOTHER held that inadequacy of sentence of fine, the Courts must take in to consideration all aspects of the case including financial loss caused

and in this judgment detail discussion was made and referred the two provisions of the N.I. Act i.e., Sections 30 and 117 of N.I. Act. Under Section

30, the drawer of a cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of

dishonour has been given to, or received by, the drawer as provided under the NI Act. Section 117 prescribes rules as to compensation payable in

case of dishonour of promissory note, bill of exchange or Cheque, by any party liable to the holder or any indorsee. To determine the compensation the

rules are:

(a) The holder is entitled to the amount due under the instrument together with the expenses properly incurred in presenting, noting an protesting it;

(b) When the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at

the current rate of exchange between the two places;

(c) An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at (eighteen per centum) per

annum form the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(d) When the person charged and such indorser resides at different places, the indorser is entitled to receive such sum at the current rate of exchange

between the two places;

(e) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to

him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and he protest thereof (if any).

If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

27. This Court having considered Section 117 of N.I. Act referred above, comes to the conclusion that said provision is clear that the drawer of a

Cheque, is bound in case of dishonour of the Cheque, to compensate the holder in accordance with the rule under Section 117 at least to the tune of

Cheque amount and expenses or costs. Taking note of the said fact into consideration and also the aim and objects of N.I. Act especially Chapter

XVII thereof, held that sentence of fine, if imposed, ought to be the minimum equivalent to the amount of the Cheque and proportionate costs incurred

by the payee or holder in due course with outer limit of twice the Cheque amount.

28. The Court also taken note of the judgment of the Apex Court in the case of BHASKARAN vs SHANKARAN VAIDHYAN BALAN AND

ANOTHER reported in VIII (1999) SLT 147 and in terms of the dictum it is held that Magistrate cannot impose a fine exceeding Rs.5,000/- and

the Apex Court held that impugned fine imposed in that case was by the Magistrate First Class and also discussed with regard to Section 29 of Cr.P.C

and clarified that though the power and jurisdiction of imposing fine is limited to Rs.5,000/-, it is open for the Magistrate to resort to Section 357

Cr.P.C for awarding compensation even exceeding Rs.5,000/- if the trial is before the Court of the Magistrate First Class and hence, it is held that

necessity of awarding compensation in the cases coming under Chapter XVII of the NI Act. Taking into note of the discussions made by the Court, it

is held that revision petition succeeds and the fine imposed is modified and enhanced from Rs.10,000/- to Rs.31,500/- with default clause to undergo

simple imprisonment for four months in case of non-payment of fine.

29. This Court also would like to rely upon the judgment of the High Court of Jammu & Kashmir and Ladakh at Srinagar pronounced on 22.11.2021 in

CRN(M) No.21&22/2020 in a similar set of facts and circumstances, a detail discussion was made to the scope of revision as well as Section 357

of Cr.P.C and also discussed in detail the judgment of the Apex Court in the case of BIR SINGH vs MUKESH KUMA rReported in (2019) 4

SCC 197 and the case of R VIJAYAN vs BABY AND ANOTHE Rreported in (2012) 1 SCC 260 which is referred by the petitionerÃ¢â‚¬â„¢s

counsel and allowed the revision petition and remanded the matter to the Trial Court for considering the imposition of sentence upon the respondent

making an observation that the Trial Court has miserably failed to take all these aspects into consideration and has awarded Rs.2.00 lac, to be paid as

compensation to the complainant, when admittedly the Cheque amount was to the tune of Rs.10.00 lacks.

30. This Court also in the judgment reported in 2004 SCC ONLINE KAR 21 9in the case of NAGARAJ vs GOWRAMM Adiscussed regarding

maintainability of the revision petition before Sessions judge for enhancement of sentence and held maintainable.

31. I have already pointed out that revision is maintainable under Section 397 of Cr.P.C and either the High Court or Sessions Court can exercise the

jurisdiction. In the case on hand also though appeal was dismissed, under the provisions of Section 397 of Cr.P.C, the High Court can exercise its

revisional jurisdiction.

32. The learned counsel for the petitioner also relied upon the case of R. VIJAYAN referred supra wherein in paragraph 17, the scope of Section 357

of Cr.P.C is discussed in detail and in paragraph 18 it is held that 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.

The Courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine up to 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.

33. The factual aspects of the case is that when the amount of Rs.20 lakh was taken and admitted and Cheque was issued for refund of amount of

Rs.15 lakh and the same was bounced, the Trial Court has not exercised its discretion instead of that only ordered to pay the Cheque amount and fails

to take note of Section 117 of N.I. Act. Even, the Apex Court in the case of R VIJAYAN referred supra held that at least simple interest thereon at

9% per annum as the reasonable quantum of loss would have been considered. In the case on hand also it has to be noted that transaction was taken

place in the year 2008 for sale consideration of Rs.40 lakh and sale did not come through, the fact that the accused received a sum of Rs.5 lakh

towards part sale consideration and also complainant had paid totally a sum of Rs.20 lakh agreeing to pay the remaining sale consideration after

getting the original documents. The fact that notice was issued and when, transaction did not come through, agreed to refund the amount of Rs.15 lakh

on demand. The fact that the Cheque was dishonoured is also not in dispute. Such being the case, when the amount was paid long back i.e., in the

year 2008, the Trial Court ought to have been taken note of the said fact into consideration. Hence, it is a fit case to exercise the revisional jurisdiction

to compensate the complainant for the amount he has paid since no dispute with regard to the payment of said amount is concerned. If any order is

passed, though it is case for awarding the double the amount of Cheque taking into note of the factual aspects of the case, it is appropriate to allow the

revision petiton in part filed by the complainant and enhance the compensation. Hence, I answer point No.1 as affirmative and point No.2 as negative.

Point No.3:

34. In view of the discussions made above, I pass the following:

ORDER

The criminal revision petition filed by the complainant in Crl.R.P.No.58/2016 is allowed and ordered to pay the compensation of Rs.22,10,000/- and out

of the said amount, ordered to pay an amount of Rs.22,00,000/- to the complainant and an amount of Rs.10,000/- shall vest with the State.

The criminal revision petition filed by the accused in Crl.R.P.No.438/2020 is dismissed.