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**(2001) 04 MAD CK 0047**

**Madras High Court**

**Case No:** Cril. R.C. No"s. 118 and 119 of 2001

Suganthi Suresh Kumar

APPELLANT

Vs

Jagadeesan

RESPONDENT

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**Date of Decision:** April 20, 2001

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 28, 29, 325, 357, 386
- Negotiable Instruments Act, 1881 (NI) - Section 133, 138

**Citation:** (2001) 2 ALT(Cri) 142 : (2001) 3 RCR(Criminal) 87

**Hon'ble Judges:** Malai Subramanian, J

**Bench:** Single Bench

**Advocate:** Mr. R. Regupathi, for the Appellant; Mr. T. Muruganantham, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

1. The petitioner and respondent in CRL.R.C.Nos. 118 and 119 of 2001 are one and the same. The petitioner is the complainant in C.C.Nos.561

and 562 of 1999 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai. The learned Magistrate after holding the accused/respondent

guilty of an offence u/s 138 of negotiable Instruments Act chose to impose the sentence of imprisonment till the raising of the court and a sentence

of fine of Rs.5,000, in default to suffer S.I. for two weeks in both the cases. Aggrieved by the inadequacy of sentence, these revisions have been

filed by the complainant for enhancement of sentence and to order compensation to the complainant.

2. The amount involved in two cheques issued by the respondent in the case relating to C.C.No.561 of 1999 is Rs.1,80,000 and the three cheques

involved in C.C.No. 562 of 1999 are for an amount of Rs.2,70,000. The main grievance of the petitioner in both the cases is that though the cheques were issued for Rs. 1,80,000 and Rs.2,70,000 respectively, the learned Magistrate passed only a sentence of imprisonment till the raising of the court and a fine of Rs.5,000 only, in both the cases. The learned counsel appearing for the respondent/accused submits that the power of Magistrates is restricted to only Rs.5,000 under the head "fine" as per section 29 Cr.p.C. and therefore there is no question of enhancement of sentence of fine. Though, the learned counsel for the petitioner submits that the sentence of imprisonment is formal in this case, still by enhancing the sentence of imprisonment, no benefit is going to reach the complainant/ petitioner. Therefore, the main thrust of his argument is that the accused/respondent may be ordered to pay compensation at least to the value of the cheques involved in both the cases.

3. In-so-far as the power of Magistrate to impose a fine of not more than Rs.5,000 is concerned, that has been settled by the Hon"ble Supreme Court in the case of Pankajbhai Nagjibhai Patel v. State of Gujarat and another, 2001 (1) CTC 368. Though Section 325 Cr.p.C. empowers the Magistrate to submit his proceedings to the Chief judicial Magistrate, if he is of the opinion that the accused ought to receive a punishment more severe than that which such. Magistrate is empowered to inflict, that course was not adopted by the learned Magistrate; may be because he has not formed such an opinion that the accused deserved severe punishment and it is very much evident when he has imposed only a sentence of imprisonment till the raising of the court. But so far as the sentence of fine is concerned, he had imposed the maximum within his power.

4. The purpose of enacting Section 138 of N.I. Act is to enhance the acceptability of cheque in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficient arrangements by the drawer. Though, the fine of twice the amount of cheque can be imposed u/s 138 of Negotiable Instruments Act, the power of Magistrate is restricted. Under such circumstances, the court shall lean towards ordering payment of compensation instead of imposing fine. Now-a-days, it is brought to the notice of this Court that, most of the Magistrates

dealing with such types of cases are so lenient and the accused are left out with a fine of meagre sum of Rs.5,000 only, after imposition of imprisonment till the raising of the court. The object of the provision and the stringent punishment contemplated therein, has been lost sight of by the courts concerned. This court, in the case of Janagi v. Lakshmi, 1999 (1) MWN 213 has categorically observed as follows:

The very object of introducing this provision is to bring about honesty and credibility in such transactions. If a person, who has committed such an offence is to be treated so lightly and let off with a flea bite sentence, then the purpose of enactment will be defeated. Provisions regarding punishment should not be made an empty formality, unless there are strong and persuasive grounds, a lighter view cannot be taken in such cases. A punishment of imprisonment for six days in a case involving issuance of a cheque for a sum of Rs.60,000 is nothing but mockery of justice. Justice should not only be done to the accused but also to the complainant.

In spite of such an observation made by this Court, tendency of the trial Court has not improved resulting in filing of very many revisions for enhancement of sentence.

5. There can be no dispute in-so-far as the sentence of imprisonment is concerned that it should be commensurate with the gravity of the crime and the trial courts have to bear in mind the above observation of this court and deal with the offenders by imposing proper sentence, except for the consideration of the old age, infirmity, sickness and such other reason that may mitigate the gravity of sentence.

6. Coming to the question of compensation, the learned counsel appearing for the petitioner submits that either this Court can order payment of compensation by the respondent or the matter may be remanded back to the trial Court for awarding proper sentence. These two revisions are directed not against conviction, but for enhancement of sentence. In an appeal or revision against conviction, this court can set aside either the finding or the sentence or both. But, in-so-far as the revision or appeal for enhancement of the sentence is concerned, it can only alter the nature or the extent of the sentence so as to enhance the same, in-so-far as the sentence of fine is concerned, as this court is controlled by the law declared

by the Supreme Court in the case of K. Bhaskaran v. Sankaran Vaidhyan Balan and another, 1997 (7) SCC 510 this Court cannot impose a

sentence of fine beyond Rs.5,000. In the said case it has been held as follows:

The trial in this case was held before a Judicial Magistrate of the First Class who could not have imposed a fine exceeding Rs.5000 besides

imprisonment. The High Court while convicting the accused in the same case could not impose a sentence of fine exceeding the said limit.

Moreover, Second proviso to section 386 Cr.P.C. reads that the appellate Court shall not inflict greater punishment for the offence, which in its

opinion, the accused has committed than might have been inflicted for that offences by the court passing the order or sentence under appeal. After

all, the exercise of powers of revision contemplated u/s 401 Cr.P.C. is subject to the limitations and restrictions found in Section 386 Cr.P.C.

Therefore, it is abundantly clear that this court cannot inflict greater punishment than might have been inflicted for that offence by the court passing

the order or sentence. Therefore, imposition of more fine beyond Rs.5,000 is not within the powers of this court.

7. The next phase of argument levelled by the learned counsel appearing for the petitioner is that this court can act u/s 357 to compensate the

victim namely, the complainant/petitioner. Of course, there is no bar for this court to exercise the powers u/s 357 while sitting on revision, but this

exercise of power shall be in conformity with the provisions found in the statute. The power of awarding compensation to the complainant has been

dealt with in two phases in Section 357 of the code. When sentence of fine is imposed, the trial Court as well as this court can order the whole or

any part of the fine recovered to be paid by way of compensation, if any loss or injury was caused by, the offence. In-so-far as this clause of

Section 357 is concerned, since the last proviso to Section 386 conditions exercise of power, this Court cannot impose a sentence of fine beyond

Rs.5,000 in this case, the trial Court has imposed a sentence of fine of Rs.5,000 in both the cases. Therefore, this Court cannot act u/s 357(1)

Cr.P.C.

8. Corning to Section 357(3) Cr.P.C., compensation can be ordered only when a Court imposes a sentence, of which fine does not form a pan.

When once sentence of fine has been imposed, unless the same is set aside, this Court also cannot order payment of compensation for any amount

beyond Rs.5,000. While discussing this aspect, the Hon'ble Supreme court in Sarwan Singh and Others Vs. State of Punjab, in the case of, has

held that Section 357(3) Cr.P.C. holds that when a Court imposes a sentence of which fine does not form a part, the court may direct the accused

person, when passing judgment, 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. It would further say that the object of the Section

therefore, is to provide compensation payable to the persons who are entitled to recover ""damages from the person sentenced even though fine

does not form part of the sentence. When the Apex Court says that the objection of Section is to provide compensation even though fine does not

form a part of the sentence, it could not be construed that compensation u/s 357(3) Cr.P.C. can be ordered to be paid, even where a sentence of

fine has been imposed.

9. The subsequent ruling of the Apex Court rendered in the case of Pankajbhai Nagjibhai Patel v. State of Gujarat and another, 2001 (1) CTC

368 makes the position clear. Their Lordships would hold that Whatever a Magistrate of a first class feels that the complainant should ,be

compensated, he can, after imposing a term of imprisonment, award compensation to the complainant for which no, limit is prescribed in Section

357 of the Code. Further in that case, their Lordships ordered as follows:

In the result, while retaining the sentence of imprisonment of six months we delete the fine portion from the sentence and direct the appellant to

pay compensation of Rs.83,000 to the respondent-complainant. The said amount shall be deposited with the trial court within six months failing

which the trial court shall resort to the steps permitted by law to realise it from the appellant.

From this it is abundantly clear that Section 357(3) Cr.P.C. can be invoked only when fine does not form a part and where the sentence of fine

had already been imposed, unless the sentence of fine is deleted, award of compensation cannot be ordered by this Court.

10. The last point that arises for consideration is as to whether this Court can delete the sentence of fine in a revision for enhancement of the sentence. Though, u/s 357(1) Cr.P.C., the amount of compensation forms part of the sentence of fine, u/s 357(3) Cr.P.C. it is separate and compensation can be awarded only where there was no sentence of fine. No useful purpose will be served in awarding compensation u/s 357(1) because the maximum fine amount itself has been imposed by the learned Magistrate. To invoke section 357(3), imposition of fine as a sentence is the hurdle, Section 386 Cr.P.C. speaks only about sentence and not about compensation. Awarding of compensation cannot be equated with enhancement of sentence. Suppose, if any offence is tried by a Sessions Judge, who has power to impose any sentence authorised by law, as provided by Section 28 Cr.P.C., then this court can enhance the fine amount out of which compensation can be ordered. But, in view of the embargo contained in Second proviso to Section 386 Cr.P.C., this Court cannot enhance the sentence of fine amount in this case and this Court also cannot delete the sentence of fine only to facilitate awarding of compensation u/s 357(3) Cr.P.C. at the request of the complainant/ revision petitioner, since such a power is not available u/s 386. This Court can only alter the nature or the extent of sentence or alter the nature and the extent of the sentence, but a fresh compensation cannot be awarded while exercising the powers of revision u/s 401 Cr.P.C. which envisages exercise of powers u/s 386 Cr.P.C.

11. The learned counsel also submitted that the matter may be remanded back to the trial court with a direction to. submit the proceedings before the Chief Judicial Magistrate for imposing enhanced punishment as envisaged u/s 325 Cr.P.C. To invoke Section 325 of the Code, the Magistrate should form an opinion that the accused ought to receive a punishment more severe than that which such Magistrate is Empowered to inflict, When the Magistrate has not chosen to act u/s 325, I am afraid, this court cannot compel the Magistrate to act u/s 325 Cr.P.C. The Supreme Court in Pankajbhai Nagjibhai Patel case, 2001 (1) CTC 368 has pointed out that if a Magistrate of first class thinks that the, fact situation in a particular

case warrants imposition of a sentence more severe than the limit fixed u/s 29 of the code, the legislature has taken care of such a situation also by

enacting Section 325 of the Code. Their Lordships would say that if proceedings are submitted to the Chief Judicial Magistrate u/s 325(1) of the

code, it is for the Chief Judicial Magistrate to pass such judgment, sentence or order in that case as he thinks fit; but the learned Magistrate has not

chosen to act u/s 325. Under such circumstances, I do not think that this Court will be justified at this stage to direct the Magistrate to submit the

proceedings before the Chief Judicial Magistrate for imposing the enhanced punishment.

12. In view of the above discussion, both the revision cases stand dismissed. The Judicial Magistrates are hereby directed to keep in mind the

object of providing stringent punishment and the guidelines given by the Apex court in Pankajbhai Nagjibhai Patel's case, 2001 (1) CTC 368

while awarding sentence on the accused, who is found guilty of an offence u/s 133 of Negotiable Instruments Act.