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Reserved on :24.04.2026
Pronounced on :04.06.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 04TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.5718 OF 2026

BETWEEN:

MR.DINESH MALPANI
S/O LATE MR.JAMNA DAS MALPANI
AGED ABOUT 53 YEARS
R/AT NO.1091/92,
SOBHA CARNATION
GREEN GLEN LAYOUT,
SARJAPUR ROAD, BELLANDUR
BENGALURU – 560 103.

PRESENTLY UNDER JUDICIAL CUSTODY AT
CENTRAL PRISON,
PARAPANA AGRAHARA
BENGALURU – 560 068
FROM 29.09.2026.

... PETITIONER

(BY SMT.KEERTHI REDDY, ADVOCATE FOR
SRI ADBHUTH J.KAUSHIK, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
THROUGH ITS ADDITIONAL CHIEF SECRETARY
(HOME) AND SECRETARY TO GOVERNMENT (PCAS)

DEPARTMENT OF HOME
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2 . THE CHIEF SUPERINTENDENT
CENTRAL PRISON-BANGALORE
PARAPANA AGRAHARA
BENGALURU – 560 068.

3. M/S.JUPITER CAPITAL PVT. LTD.,
HAVING ITS REGISTERED OFFICE AT:
JUPITER INNOVISION CENTRE
NO.54, RICHMOND ROAD
BENGALURU – 560 025
REPRESENTED BY
DEPUTY CHIEF FINANCIAL OFFICER
MR.ASHWANI GUPTA
(REGISTERED BY COMPANIES ACT)

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1 AND R-2;
SRI VIKRAM HUILGOL, SR.ADVOCATE A/W
SMT.AMRITA SHIVAPRASAD, ADVOCATE FOR R-3)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF B.N.S.S, PRAYING TO 1. REDUCE THE DEFAULT SENTENCE TO 3 MONTHS ALTOGETHER IN THE THREE CASES BEING C.C.NO.15234/2021, C.C.NO.15235/2021 AND C.C.NO.15236/2021 PASSED BY THE HONBLE XVII ADDL. SMALL CAUSES AND ACMM, MAYOHALL UNIT, BENGALURU; 2. TO HOLD THAT PETITIONER HAS SATISFIED THE DEFAULT IMPRISONMENT GIVEN IN C.C.NO.15234/2021, C.C.NO.15235/2021 AND C.C.NO.15236/2021, DATED 14.12.2023 PASSED BY THE HON'BLE XVII ADDL. SMALL CAUSES AND ACMM, MAYOHALL UNIT,

BENGALURU, AT ANNEXURE-A, A1 AND A2 BY SERVING THE SENTENCE FOR BEYOND 3 MONTHS ARISING OUT OF SAME TRANSACTION AND SOLITARY STATUTORY DEMAND NOTICE DATED 11.09.2020 ISSUED TO IT; 3. DIRECT THAT IN TERMS OF SECTION 65 OF THE INDIAN PENAL CODE, NOW SECTION 24 OF THE BHARATIYA NYAYA SANHITA, 2023, SINCE THE DEFAULT SENTENCE CANNOT BE MORE THAN ONE FOURTH OF THE MAXIMUM PUNISHMENT IN AN OFFENCE, THE PETITIONER MAY BE RELEASED IMMEDIATELY UPON COMPLETION OF 6 MONTHS FROM 29.09.2025, i.e., 29.03.2026; 4. ISSUE A DIRECTION TO THE RESPONDENT NO.2 TO IMMEDIATELY RELEASE THE PETITIONER FROM JUDICIAL CUSTODY IN THE INTEREST OF JUSTICE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.04.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner–accused is before this Court, seeking his immediate release from judicial custody, by way of a reduction in the default sentence of imprisonment, imposed for non-payment of the fine amount awarded by the trial Court, upon his conviction for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (‘the Act’ for short) in C.C. No. 15234 of 2021, C.C. No. 15235 of 2021, and C.C. No. 15236 of 2021.

2. Facts in brief, germane, are as follows:

2.1. On 22-12-2017 the 3rd respondent and the petitioner enter into a loan agreement, in terms of which the 3rd respondent agreed to lend an amount of Rs.10 crores to the petitioner. An amount of Rs.5,96,00,000/- was disbursed immediately to the 3rd respondent in terms of the agreement. By 15-08-2020 the petitioner was required to repay the outstanding amount. In furtherance of such repayment along with interest, the petitioner issued three cheques for an amount of Rs.50 lakhs, Rs.3.5 crores and Rs.5 crores for repayment of the loan amount along with interest. All the three cheques presented on the same day get dishonoured for want of sufficient funds. On 11-09-2020, the 3rd respondent/Company issued a statutory demand notice under Section 138 of the Act following the dishonour of the cheques. In response, the petitioner informs the 3rd respondent of his financial inability to repay the loan amount and the severe hardships faced by him and his family. Subsequently, the 3rd respondent initiates proceedings before the concerned Court by filing three separate complaints. Three separate criminal cases were registered on cognizance being taken, in C.C.No.15234 of 2021, 15235 of 2021

and 15236 of 2021. All the three cheques were issued out of a single transaction. The petitioner was convicted for the offence punishable under Section 138 of the Act and sentenced in the following manner:

(i) In C.C.No.15234/2021, filed for the dishonour of cheque No.000253 for an amount of Rs.50 lakhs, the petitioner was directed to pay a fine of ₹61,67,000/-, of which ₹10,000/- was payable to the State as compensation under Section 357(1)(b) Cr.P.C. In default of payment of the fine, he was to undergo simple imprisonment for a period of 3 months.

(ii) In C.C.No.15235/2021, filed for the dishonour of cheque No.000254 for an amount of Rs.3.5 Crores, the petitioner was directed to pay a fine of ₹4,31,66,670/-, of which ₹10,000/- was payable to the State as compensation under Section 357(1)(b) Cr.P.C. In default of payment of the fine, he was to undergo simple imprisonment for a period of 3 months.

(iii) In C.C.No.15236/2021, filed for the dishonour of cheque No.000255 for an amount of Rs.5 Crores, the petitioner was directed to pay a fine of ₹6,16,67,000/-, of which ₹10,000/- was payable to the State as compensation under Section 357(1)(b) Cr.P.C. In default of payment of the fine, he was to undergo simple imprisonment for a period of 3 months.

2.2. The petitioner is said to have defaulted in payment of the fine amount, as he was not ready to repay the same. Therefore, by way of separate orders passed on the same day i.e., on 29-05-

2025, in all the three cases, he was directed to undergo default sentence of 3 months of simple imprisonment. On 06-11-2025, separate orders under Section 421(1) of the Cr.P.C. for the attachment of the property of the petitioner were passed in C.C.No.15235/2021 and C.C.No.15236/2021. Aggrieved, the petitioner has filed the present criminal petition seeking the following reliefs:

> "I. To reduce the default sentence to 3 months altogether in the three cases being C.C. No. 15234/2021, C.C. No. 15235/2021 and C.C. No. 15236/2021, passed by the XVII Addl. Small Causes and A.C.M.M, Mayo Hall Unit, Bengaluru in the interest of justice or in the alternate
>
> II. To hold that Petitioner has satisfied the default imprisonment given in C.C. No. 15234/2021, C.C. No. 15232/2021 and C.C.No.152356/2021 Passed by the XVII Addl. Small Causes and A.C.M.M, Mayo Hall Unit, Bengaluru dated 14.12.2023 at Annexure-A, A1 and A2 by serving the sentence for beyond 3 months arising out of same transaction and solitary statutory demand notice dated 11.09.2020 issued to it, in the interest of Justice.
>
> In the alternative:
>
> III. To direct that in terms of section 65 of the Indian Penal Code, now Section 24 of the Bharatiya Nyaya Sanhita, 2023, since the Default sentence cannot be more than one fourth of the maximum punishment in an offence, the Petitioner may be released immediately upon completion of 6 months from 29.09.2025, i.e., 29.03.2026 an

IV. Issue a direction to the Respondent No.2 to immediately release the Petitioner from Judicial Custody in the interest of Justice.

V. Pass any order/direction/direction has deem fit in the facts and circumstance of the case, in the interest of Justice."

3. Heard Smt. Keerthi Reddy, learned counsel appearing for petitioner, Sri B. N. Jagadeesha, learned Additional State Public Prosecutor appearing for respondent Nos.1 and 2 and Sri. Vikram Huilgol, learned senior counsel appearing for respondent No.3.

4.1. The learned counsel appearing for petitioner Smt. Keerthi Reddy would contend that the maximum imprisonment to a convicted person under Section 138 of the Act is 2 years. As a necessary corollary upon a joint reading of Section 65 of the IPC/Section 8 of the present regime, the BNS r/w Section 138 of the Act, the maximum default sentence that the petitioner could have been directed to undergo could not have exceeded 1/4th of the term of 2 years, which would be not more than 6 months.

4.2. The contention of the learned counsel further is that the offence under the Act being quasi-criminal and less serious in nature, the petitioner deserves to not be tried and viewed under the lens of a criminal act and instead, a lenient view must be taken. She would contend that the 3rd respondent has deliberately filed three different complaints to harass the petitioner and the entire amount of consideration is arising out of a single loan agreement. She would seek to place reliance upon the judgment of the Apex Court in the case of **K. PRANIL REDDY v. STATE OF TELANGANA** and that of the High Court of Delhi in the case of **SANJAY VASUDEVA v. STATE OF NCT, DELHI**, which would bear consideration *qua* their relevance during the course of the order. Further, she would also state that the petitioner is financially incapable of repaying the fine amount and his continued incarceration in the jail is causing hardships to his family members.

5. Contrariwise, the learned senior counsel representing the 3rd respondent-complainant would refute the submissions in contending that default sentences in payment of fine cannot be directed to be undergone concurrently, they must be undergone

consecutively. Therefore, the petitioner must undergo 9 months imprisonment for default in the fine amount and not 6 months, as is contended. He would submit that 3 cases were presented and hence, 3 independent cases were registered, as each cheque was a new and independent cause of action. He would seek to place reliance upon the judgments of the Apex Court in the case of **SUMIT BANSAL v. MGI DEVELOPERS & PROMOTERS** reported in **(2026) SCC OnLine SC 49** and in the case of **SHARAD HIRU KOLAMBE v. STATE OF MAHARASHTRA** reported in **(2018) 18 SCC 718**, which would also bear consideration during the course of the order.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts, the underlying transaction, and every link in the chain of events are a matter of record. The commercial relationship between the parties having fallen into disarray, the cheques issued by the petitioner in favour of the

complainant came to be dishonoured upon presentation, thereby setting into motion proceedings for the offence punishable under Section 138 of the Negotiable Instruments Act. The criminal process, thus triggered, culminated in the conviction of the petitioner by orders dated 14-12-2023 passed by the jurisdictional Court. **The convictions were rendered in three distinct calendar cases, each arising from a separate dishonoured cheque, though all emanated from a singular financial transaction rooted in one loan agreement.** The orders of conviction, grave in consequence and substantial in monetary burden, read as follows:

C.C. No. 15234/2021:

> "**ORDER**
>
> Acting U/Sec.255(2) of Cr.P.C. the accused is found guilty for the offence punishable under Sec.138 of N.I. Act and he is sentenced to pay a fine of Rs.61,67,000/- (Rupees Sixty one lakhs sixty seven thousand Only). **In default to pay fine, the accused shall undergo simple imprisonment for a period of three months.**
>
> Further, acting U/Sec.357(1)(b) of Cr.P.C., out of the fine amount, a sum of Rs.10,000/- (Rupees Five Thousands Only) on recovery shall be paid as compensation to the state…"
>
> *(sic)*

C.C. No. 15235/2021:

"**ORDER**

Acting U/Sec.255(2) of Cr.P.C. the accused is found guilty for the offence punishable under Sec.138 of N.I. Act and he is sentenced to pay a fine of Rs.4,31,66,670/- (Rupees Four crore thirty one lakh sixty six thousand six hundred and seventy Only). **In default to pay fine, the accused shall undergo Simple imprisonment for a period of three months.**

Further, acting U/Sec.357(1)(b) of Cr.P.C., out of the fine amount, a sum of Rs.10,000/- (Rupees Five Thousand Only) on recovery shall be paid as compensation to the state…"

(sic)

C.C. No. 15236/2021:

"**ORDER**

Acting U/Sec.255(2) of Cr.P.C. the accused is found guilty for the offence punishable under Sec.138 of N.I. Act and he is sentenced to pay a fine of Rs.6,16,67,000/- (Rupees Six crores sixteen lakhs sixty seven thousand Only). **In default to pay fine, the accused shall undergo simple imprisonment for a period of three months.**

Further, acting U/Sec.357(1)(b) of Cr.P.C., out of the fine amount, a sum of Rs.10,000/- (Rupees Five Thousand Only) on recovery shall be paid as compensation to the state..."

(sic)

Nearly two years after the pronouncement of conviction, the petitioner having neither liquidated the fine amounts nor evinced willingness to satisfy the liability imposed by law,

the learned Magistrate directed him to undergo the sentence in default, namely, simple imprisonment for a period of three months in each of the calendar cases, by separate orders dated 29-09-2025. The tenor of those orders unmistakably reveals that, despite specific inquiry by the Court, **the accused declined to remit the fine amounts, compelling the Court to activate the coercive consequence statutorily attached to such default. Consequently, conviction warrants were issued and the petitioner was committed to judicial custody for undergoing the default sentence.** The said orders read as follows:

C.C. No. 15234/2021:

> "Accused is produced by HC 10912, PC 19511 of Bellanduru police at 3.45 pm, as per the order dt: 11.09.2025 on FLW.
>
> **On inquiry accused is not ready to pay the fine*** amount of Rs.61,67,000/-. Hence as per the aforesaid order accused has suffer sentence that is simple imprisonment for a period of three months.**
>
> Issue conviction warrant to that effect.
>
> Hence, accused is handed over to HC 10912, PC 19511 of Bellanduru police with a direction to hand over the accused to the Jailer Parappana Agrahara, Bengaluru to suffer the sentence and report the compliance."

C.C. No. 15235/2021:

"Accused is produced by HC 10912, PC 19511 of Bellanduru police at 3:45pm, as per the order dt:11.09.2025 on FLW.

On inquiry accused is not ready to pay the fine amount of Rs.4,31,66,670/-. Hence as per the aforesaid order accused has suffer sentence that is simple imprisonment for a period of three months.

Issue conviction warrant to that effect.

Hence, accused is handed over to HC 10912, PC 19511 of Bellanduru police with a direction to hand over the accused to the Jailer Parappana Agrahara, Bengaluru to suffer the sentence and report the compliance."

C.C. No. 15236/2021:

"Accused is produced by HC 10912, PC 19511 of Bellanduru police at 3.45pm, as per the order dt: 11.09.2025 on FLW.

Counsel for accused present.

On inquiry accused is not ready to pay the fine amount of Rs.6,16,67,000/-. Hence as per the aforesaid order accused has suffer sentence that is simple imprisonment for a period of three months.

Issue conviction warrant to that effect.

Hence, accused is handed over to HC 10912, PC 19511 of Bellanduru police with a direction to hand over the accused to the Jailer Parappana Agrahara, Bengaluru, to suffer the sentence and report the compliance."

(Emphasis added at each instance)

Simultaneously, the learned Magistrate also invoked the machinery of Section 421(1) of the Code of Criminal Procedure and directed attachment proceedings against the properties of the petitioner in all the three calendar cases. The petitioner, having already suffered incarceration for a cumulative period of six months in two of the cases, now stands before this Court seeking enlargement from judicial custody, contending that the continued incarceration transgresses the statutory limitations engrafted under criminal jurisprudence.

THE ISSUE:

8. **The pivotal issue that therefore falls for consideration is, whether the imposition of separate default sentences in three distinct prosecutions, all springing from one indivisible transaction, results in a punitive excess contrary to the mandate of Section 65 of the Indian Penal Code, now mirrored in Section 8(3) of the BNS, thereby entitling the petitioner to immediate release from custody.** To appreciate the contours of the controversy, it becomes

imperative to notice Section 65 of the IPC and its corresponding provision under the BNS. They read as follows:

Section 65 of the IPC:

> "**65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable**.—The term for which the Court directs the offender to be imprisoned in default of payment of a **fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine"**
>
> …. …. ….

Section 8 of the BNS:

> "**8. Amount of fine, liability in default of payment of fine, etc**.—(1) Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.
>
> (2) In every case of an offence—
>
> (*a*) punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment;
>
> (*b*) punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,
>
> it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, in which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

(3) The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

(4) The imprisonment which the Court imposes in default of payment of a fine or in default of community service may be of any description to which the offender might have been sentenced for the offence.

(5) If the offence is punishable with fine or community service, the imprisonment which the Court imposes in default of payment of the fine or in default of community service shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine or in default of community service, shall not exceed,—

(*a*) two months when the amount of the fine does not exceed five thousand rupees;

(*b*) four months when the amount of the fine does not exceed ten thousand rupees; and

(*c*) one year in any other case.

(6)(a) The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law;

(b) If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration

A is sentenced to a fine of one thousand rupees and to four months' imprisonment in default of payment. Here, if seven hundred and fifty rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged

> as soon as the first month has expired. If seven hundred and fifty rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If five hundred rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If five hundred rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.
>
> (7) The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts."

Section 65 of the IPC, now reincarnated as Section 8(3) of the BNS, embodies a salutary restraint upon the sentencing power of criminal Courts. The provision ordains that where an offence is punishable with both imprisonment and fine, the term of imprisonment imposed in default of payment of fine shall not exceed one-fourth of the maximum term of imprisonment prescribed for that offence. The legislative intent underlying the provision is luminous: imprisonment in default is not to assume the character of a

disproportionately oppressive penalty, but is intended merely as a coercive mechanism to secure payment of fine.

9. Equally germane are Section 30 of the Cr.P.C. and its successor provision, Section 24 of the BNSS, which further circumscribe the authority of a Magistrate while imposing imprisonment in default of payment of fine. They read as follows:

Section 30 of the Cr.P.C.:

> **"30. Sentence of imprisonment in default of fine.**— (1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law:
>
> Provided that the term—
>
> (a) is not in excess of the powers of the Magistrate under Section 29;
>
> **(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.**
>
> (2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under Section 29."

Section 24 of the BNSS:

> "**24. Sentence of imprisonment in default of fine.**— (1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law:
>
> Provided that the term—
>
> (a) is not in excess of the powers of the Magistrate under Section 23;
>
> **(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.**
>
> (2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under Section 23."

The aforesaid provisions reiterate that the sentence in default cannot travel beyond one-fourth of the term of imprisonment which the Magistrate is otherwise competent to impose for the substantive offence. Thus, the statutory architecture unmistakably reveals a legislative anxiety against excessive incarceration merely on account of inability or unwillingness to discharge a pecuniary liability.

10. Section 138 of the Negotiable Instruments Act prescribes a maximum punishment of two years' imprisonment, or fine extending to twice the cheque amount, or both. Consequently, when Section 65 of the IPC and Section 8(3) of the BNS are read in conjunction with the penal framework of Section 138, the outer limit of imprisonment in default of payment of fine would be six months in each case. In the case at hand, the petitioner has suffered convictions in three separate prosecutions and, upon failure to satisfy the fine amounts imposed therein, has been directed to undergo default imprisonment of three months in each case. The learned counsel for petitioner Smt. Keerthi Reddy would contend that the cumulative operation of these sentences visits him with an unduly harsh and excessive punishment, offending the spirit and mandate of Section 65 of the IPC and Section 8(3) of the BNS. The issue, however, no longer *res integra*, stands illumined by a long and consistent line of judicial pronouncements by various High Courts while interpreting the scope and sweep of imprisonment in default of payment of fine vis-à-vis prosecutions under Section 138 of the Negotiable Instruments Act.

JUDICIAL LANDSCAPE

11.1. In the case of **K. PRANIL REDDY v. STATE OF TELANGANA[1],** while navigating the delicate intersection between punitive consequence and humane justice, the Apex Court has held as follows:

"…. …. ….

> 5. Before us the learned counsel for the appellant has submitted that the appellant is financially unable to comply with the directions of payment of compensation/ fine amount, by the Trial Court and affirmed by the High Court. He further states that the appellant has already undergone more than 13 months of imprisonment, which is evident from the custody certificate which shows that the appellant has been in custody since 6th October, 2023. The limited submission of the learned counsel for the appellant is for reduction in the default sentence of three months imposed for each of the eight cases, which was directed by the High Court to run consecutively.
>
> **6. In the facts and circumstances of the case and in particular, the medical condition of the appellant, as the appellant is a heart patient and has been undergoing regular treatment and recently he was hospitalized and now back in jail and as explained under Section 65 of the Indian penal Code, 1860, the default sentence cannot exceed one- fourth of the term of imprisonment.**
>
> **7. Applying this principle and considering the facts and circumstances of the case, we reduce the default sentence from three months to one month in each of the eight cases. Thus, the total sentence of the appellant**

[1] **Crl.A. No. 004874 - 004881/2024, Disposed on 26-11-2024**

> **which he will now have to undergo would be six months substantive and eight months in default sentences, totaling fourteen months.**
>
> **8. Since the appellant has already been in custody for over thirteen months, he will be released upon completing fourteen months of imprisonment in total.**
>
> 9. To the above extent, the impugned order passed by the High Court shall stand modified."

The High Court of Telangana, in the aforesaid pronouncement, tempered the rigour of law with the compassion that must invariably animate judicial discretion. Noticing that the appellant therein had already undergone incarceration for more than thirteen months and was suffering from serious cardiac ailments, the High Court invoked the mandate of Section 65 of the Indian Penal Code and reduced the default sentence from three months to one month in each of the eight cases. The Court thus underscored that imprisonment in default of payment of fine cannot be permitted to assume a disproportionately punitive character, especially where circumstances reveal financial incapacity and grave medical adversity.

11.2. In the case of **SANJAY VASUDEVA v. STATE[2],** the High Court of Delhi rendered an elaborate exposition on the nature, scope and limits of imprisonment in default of payment of fine under Section 138 of the Negotiable Instruments Act. The Delhi High Court observed thus:

> "**ANALYSIS AND DISCUSSION**
>
> **11.** First and foremost, the question that requires redressal here is framed as below:—
>
> • Whether, in the event of in multiple cheque dishonors, cumulative default imprisonment for non-payment of fine under Section 138 of the Negotiable Instruments Act, 1881 (NI Act), can exceed the cumulative substantive sentence limit?
>
> **11.1** Let us first see relevant part of Section 138 of the Negotiable Instruments Act which for ease of reference is reproduced herein below:
>
> > "***138. Dishonour of cheque for insufficiency, etc., of funds in the account***.—
> >
> > *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other*

[2] **2025 SCC ONLINE DEL 6733**

provisions of this Act, 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 the cheque, or with both.***.

x-x-x-x-x"

(Emphasis Supplied)

11.2. A perusal of above section shows that it does not provide for sentence of imprisonment in default of payment of fine.

11.3. Before proceeding further, to be noted here that the petition was filed in 2023 and has remained pending since then. In the meantime, the Bhartiya Nagrik Suraksha Sanhita, 2023 (for short-BNSS) came into force with effect from 01.07.2024. In view of this and the savings provisions in section 531 of the BNSS Sanhita, the case is being dealt with reference to the relevant provisions of the Code of Criminal Procedure. However recitals of the various sections are from BNSS, as other than change of number of the sections the contents thereof are same, be it Cr. P.C. or BNSS.

11.4. As would be seen, under Section 24 of the BNSS [Sentence of imprisonment in default of fine - Section 30 of Cr. P.C.] the Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law. Statutory limits on default imprisonment are thus prescribed under the BNSS. **Section 24, BNSS [Section 30, CrPC] provides that default imprisonment cannot exceed one-fourth of the maximum substantive term the Magistrate can impose. For Section 138 cases, where the maximum imprisonment is two years, the default term, therefore, cannot exceed six months.**

11.5 Cautious approach is required to avoid disproportionate outcomes, such as awarding maximum substantive imprisonment along with maximum fine and maximum default imprisonment. For, such a recourse would tend to blur the line between coercion and punishment. I am of the view that, default imprisonment

should be imposed on a case-by-case basis, considering the ability to pay, and ought not to be used as a tool of enhancement of punishment. Ordinarily, the trial court should adopt a judicial approach to first assess the convict's financial capacity, instead of mechanically imposing default imprisonment in a case under section 138.

11.6 One would have to, therefore, essentially look into the relationship between the substantive provisions of the NIA and the procedural framework of BNSS, particularly regarding default imprisonment for unpaid fines.

11.7 At the core lies the distinction between substantive punishment and default imprisonment. Section 138 of the NI Act prescribes a maximum punishment of two years' imprisonment, a fine up to twice the cheque amount, or both, but does not specify the consequence of non-payment of fine. Unlike Section 138 supra, Section 8(2) of BNS [Amount of Fine, liability in default of payment of fine, etc. - Section 64 of IPC], 24 of BNSS [Sentence of imprisonment in default of fine-Section 30 of CrPC] and Section 471 BNSS [Money ordered to be paid recoverable as fine - Section 431 Cr. P.C.] explicitly provide consequences of non-payment of fine. Sections *ibid*, for ease of reference produced here under:—

Section 8 BNS:

8. Amount of fine, liability in default of payment of fine, etc.—

(1) Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

(2) In every case of an offence-

(a) punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment;

(b) punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, in which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

(3) The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

(4) The imprisonment which the Court imposes in default of payment of a fine or in default of community service may be of any description to which the offender might have been sentenced for the offence.

(5) If the offence is punishable with fine or community sendee, the imprisonment which the Court imposes in default of payment of the fine or in default of community sendee shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine or in default of community sendee, shall not exceed,—

(a) two months when the amount of the fine does not exceed five thousand rupees; and

(b) four months when the amount of the fine does not exceed ten thousand rupees; and

(c) one year in any other case.

(6)(a) The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law;

(b) If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional

to the part of the fine still unpaid, the imprisonment shall terminate.

Section 24 BNSS:

"***24. Sentence of imprisonment in default of fine****.—(1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law:*

Provided that the term—

(a) is not in excess of the powers of the Magistrate under section 23;

(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 23."

Section 471 BNSS:

(d). Money ordered to be paid recoverable as a fine*.—Any money (other than a fine) payable by virtue of any order made under this Sanhita, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:*

Provided that section 461 shall, in its application to an order under section 400, by virtue of this section, be construed as if in the proviso to sub-section (1) of section 461, after the words and figures "under section 395", the words and figures "or an order for payment of costs under section 400" had been inserted.

11.8 In all these sections, a common thread/intent runs through i.e. default imprisonment is not an

additional punishment for the offence, but a coercive measure to secure compliance with the court's monetary order. It seems to be more as remedial rather than punitive. Likewise, under Section 138, default imprisonment is not punishment for cheque dishonour, but a consequence of non-compliance of payment of fine, ensuring the two-year cap remains intact. In other words, it is not forced by court of law, but rather a choice by a defaulter, opting consciously not to pay fine.

11.9 However, what seems to compound the problem for fine defaulter, as is the case herein also, is the non-obstante clause of section 138 i.e. "*without prejudice to any other provisions of this Act*". This phrase acts as a legislative bridge, enabling enforcement of fines through existing procedures, including default imprisonment, without altering the punishment limit in Section 138. But the said phrase in Section 138 is not to be read as if it authorises additional sentence/punishment. It merely serves to preserve the applicability of other legal mechanisms i.e. procedural tools under the BNSS.

11.10 As noted, the legislative intent behind Section 138 is primarily remedial rather than penal. The provision aims to ensure trust in commercial transactions, and provide compensatory justice, not to impose punitive excesses. Purpose of coercive measures like default imprisonment ought to be resorted proportionately. Excessive or automatic imprisonment is fraught with danger of leading to a debtors' prison model, thus impinging the rights under Articles 14 and 21 of the Constitution. Default imprisonment hence remains a procedural enforcement tool rather than a disguised punitive measure.

11.11 This being the position in law, the use of default imprisonment does not violate legislative intent, as it is procedural, collateral, and most of it all, it is optional/conditional on non-payment, and not part of the substantive sentence for cheque dishonour. The

argument of the learned counsel for the petitioner to the contrary, is thus rejected. The question of law framed above is also answered accordingly.

12. At this stage I may also hasten to add, that the Supreme Court in the Judgment titled *Sharad Hiru Kolambe* v. *The State of Maharashtra [(2018) 18 SCC 718]* has held that there is no power with the court to order the default sentences to run concurrently. Argument to the contrary, as canvassed by the Ld. Counsel for Petitioner, is, therefore, being noted only to be rejected.

13. Adverting now to procedural tool in case of the default of payment of the fine i.e. section 395 BNSS [Order to pay compensation - 357 Cr. P.C.].

For ready reference, Section 395 is as under:

> "***395. Order to pay compensation***.—*(1) When a Court imposes a sentence offine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—*
>
> *(a) in defraying the expenses properly incurred in the prosecution*;
>
> *(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court*;
>
> *(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death*;
>
> *(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal*

breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section."

13.1 It thus provides that when a Court imposes a sentence of fine or a sentence (including sentence of death) of which fine forms a part, the Court may, when passing the judgment/order the whole or any part of the fine be recovered, *inter alia*, for payment to any person as compensation for any loss or injury caused by the offence, when said compensation is, in the opinion of the court, recoverable by the sufferer in a civil court.

13.2 In light of above, section 143(A) of the Negotiable Instruments Act, 1881 be also seen before proceeding further, which is as under:

"***143A. Power to direct interim compensation***.—

(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent, of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

13.3 It thus provides that the amount of fine imposed under section 138 or the amount of compensation awarded under section 395 of BNSS shall be reduced by the amount paid or recovered as interim compensation under this section.

13.4 From a combined reading of the aforesaid provisions of the NIA and the BNSS, it seems that in cases under the Act, when a Court imposes a sentence of fine or a sentence of which fine forms a part, the Court may, when passing the judgment, order the whole or any part of the fine recovered, inter alia, 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 civil court.

13.5 It is obvious that in the tables annexed with the petitioner's nominal roll supra, the word 'compensation' under the column 'fine' against various entries actually denotes the fine and the same was/is to be paid as compensation to the complainants. There seems nothing wrong with the same.

13.6 I, therefore, also reject the contention of the learned counsel for the petitioner that the aggregate/combined period of the substantive imprisonment and default imprisonment cannot exceed the maximum prescribed maximum two years' period of substantive sentence for the offence.

14. During arguments, learned counsel for the petitioner also contended that a sentence of imprisonment in default of payment of fine could not have been imposed in these cases since the conviction was under Section 138 of NIA since it does not provide for sentence of imprisonment in default of payment of fine. I am not inclined to entertain this contention, either. The reasons are:

14.1 Firstly; in this *lis*, the petition does not contain any challenge to the legality of order of sentence of imprisonment of default of payment of fine or to the award of compensation to the complainants. The petitioner only seeks indulgence to set him free either by way of equalizing the sentences already undergone in default of payment of fine as ordered and/or otherwise pass appropriate orders to reduce the same. Entertaining this contention at this belated stage would mean springing a surprise for the opposite side, which would be unjust and unfair.

14.2 Secondly; for its determination, the relevant Court orders imposing the penalty of fine and in default of payment of fine, to undergo various terms of imprisonment, would have to be seen. Those relevant Court orders have not been brought on record. In their absence, it does not seem appropriate for this

Court to examine and decide upon the challenge to their legality/validity, let alone accept such challenge. In the circumstances, this contention put forth by the learned counsel for the petitioner is not entertained at this stage.

15. Having said that, I must, however, also take note that, in support of his contention i.e. in default of payment of fine, additional sentence of imprisonment cannot be imposed under Section 138, learned counsel for the petitioner relied upon *P.T. Ratnakaran* v. *V.K. Prabhakara [(2006) 9 SCC 784]*. I find that this contention raised by the learned counsel for the petitioner otherwise of considerable interest warranting a debate. This contention, not outrightly without substance and is worthy of serious consideration, is, therefore, being examined hereinafter, with a disclaimer that it purely in the abstract and for academic discussion.

15.1 Moving on, when we analyse the inter play of BNSS, NI Act and BNS, it is borne out that Section 8(2) of BNS [Amount of fine, liability in default of payment of fine, etc. - S. 64 of IPC] provides for the sentence in default of payment of the fine i.e. the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of (in addition to) any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence. Applying the same analogy, I would interpret section 138 to hold that for the offences under the Negotiable Instruments Act, the sentence of imprisonment in default of payment of fine shall be in excess of (in addition to) any other imprisonment to which he may have been sentenced. In other words, for the offence under section 138 of the Act, the imprisonment in default of payment of fine shall be in excess of (in addition to) any other imprisonment to which he may have been sentenced.

15.2 Before proceeding further, sections 4 and 5 of the BNSS may also be noted here, which read asunder:

> ***4. Trial of offences under the Bharatiya Nyaya Sanhita, 2023 and other laws***.—

(1) All offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

***5. Saving**.— Nothing contained in this Sanhita shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction and power conferred, or any special form of procedure prescribed by any other law for the time being in force*."

15.3 From a combined reading of sections 4 and 5 *ibid* and the provisions of the Act and the BNSS, it seems that in cases under the Act, when a Court imposes a sentence of fine or a sentence of which fine forms a part, the Court may recover it from such person as per the procedure laid down in BNSS/Cr.P.C.

15.4 Let us now see Section 24 of the BNSS [Section 30 of Cr. P.C.], which has relevance here. It appears in Chapter III captioned - POWER OF COURTS and at the cost of repetition, it reads as under:

***"24. Sentence of imprisonment in default offine**.—*

(1) The Court of a Magistrate may award such term of imprisonment in default of payment offine as is authorised by law:

Provided that the term---

(a) is not in excess of the powers of the Magistrate under section 23;

(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to

inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 23."

15.5 Under section *ibid*, a Magistrate is empowered to award a term of imprisonment in default of payment of a fine, as authorised by law. This means the sentence must be authorised by law. It's important to note that the power to award a sentence is one thing, while authorising the punishment is different.

15.6 Section 8(2) of the BNS [Section 64 of IPC]states that in every case of an offence punishable with imprisonment as well as fine, or in every case of an offence punishable with imprisonment or fine or with fine only, in which the offender is sentenced to fine, the court which sentences such offender shall direct that in default of payment of the fine, the offender shall suffer imprisonment for a certain term. This imprisonment shall be in excess of (in addition to) any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence.

15.7 However, unlike the BNS, there is no such specific provision in the Negotiable Instruments Act authorising the court to direct that in default of payment of the fine, the offender shall suffer imprisonment for a certain term.

15.8 This specific provision in Section 8(2) of BNS [section 64 IPC] is a case of authorisation by the relevant applicable law i.e. IPC to award appropriate term of imprisonment in default of payment of fine. Evidently, on that analogy, for the award of sentence of imprisonment in default of payment of fine, in cases

under other enactments/laws also, there should be the necessary authorisation in those other enactments/laws.

16 This brings us to the core question: can a court, upon conviction under Section 138, lawfully impose imprisonment in default of fine?

16.1 The Apex Court's judgment in *P.T. Ratnakaran* v. *V.K. Prabhakaran* (supra) relied upon by the learned counsel for the petitioner reads as under:

> "*1. Leave granted*.
>
> *2. We have heard counsel for the parties*.
>
> *3. The appellant has since deposited the sum of Rs. 50,000 (Rupees fifty thousand only) which is payable to the respondent. It is submitted on behalf of the appellant that a sentence of imprisonment in default of payment of fine could not have been imposed in the instant case since the conviction is under* ***Section 138 of the Negotiable Instruments Act which does not provide for sentence of imprisonment in default of payment of fine. Counsel for the respondents does not dispute the said legal proposition***.
>
> *4. Accordingly, this appeal is allowed and the sentence in default imposed on the appellant is set aside. Since the amount of Rs. 50,000 (Rupees fifty thousand only) has been deposited in the trial court, the respondents are at liberty to withdraw the said amount on a proper application being made before it*.
>
> *5. This appeal is allowed to the extent indicated above*."

16.2 The judgment, supra, indicates two points: i.e. (i) the amount deposited was not a statutory fine but payable to the complainant; (ii) the appellant had been directed to undergo imprisonment in default of such payment, which was set aside. Notably, Hon'ble Supreme Court did not expressly declare the law but accepted the contention without dissent from the respondent. This, at least implicitly, thus suggests that

a sentence of imprisonment in default of fine under Section 138 is impermissible.

16.3 It is significant to note that under Section 143A of the Negotiable Instruments Act, the Court may order the drawer of the cheque to pay interim compensation. However, the provision does not specifically contemplate a sentence of imprisonment in default of payment of fine under Section 138.

16.4 On an academic plane, my tentative view, therefore, is that such imprisonment cannot be imposed appears to be a persuasive argument. However, adopting this position wholesale would have significant consequences. It would invite challenges to default sentences not only under the Negotiable Instruments Act but also under several statutes prescribing fines without expressly authorising imprisonment in default. Moreover, if such view is adopted, the cascading consequences would be to open the floodgates to challenges seeking to quash default sentences, not only under the Negotiable Instruments Act but also under other statutes which prescribe fines but do not explicitly authorize imprisonment in default of payment. However, applying this view would have.

17. Be that as it may, in the present case, the petitioner stands convicted and sentenced in multiple cases under the Negotiable Instruments Act to terms of substantive imprisonment, coupled with fines, and, in default of payment of such fines, to further terms of imprisonment. Under the relief of quashing, the default sentences cannot be considered or granted for multiple reasons i.e.;

17.1 Firstly, the petition does not assail the legality of the orders imposing default sentences or the award of compensation to the complainants. The limited relief sought is indulgence—to release the petitioner by equalizing the sentences already undergone in default of fine or by reducing the same through appropriate orders.

17.2 Secondly, the orders imposing fines and directing imprisonment in default have not been placed on record. In

their absence, this Court cannot, and ought not, examine their legality or validity, much less strike them down.

17.3 Thirdly, a substantial period has elapsed since those orders were passed. At this belated stage, it would neither be just nor appropriate to unsettle finality by quashing such long-standing orders.

17.4 Fourthly—and most significantly—to hold that a conviction under Section 138 of the Negotiable Instruments Act, which does not expressly provide for default imprisonment, cannot entail such a sentence would have far-reaching and disruptive consequences. If such a view were adopted and applied for granting relief to the petitioner, it would open flood gates and trigger cascading impact not only under the Negotiable Instruments Act but also under other statutes where fines are prescribed without explicit provision for default imprisonment, yet courts have imposed such sentences. The ramifications would not only be enormous, the ripple effect widespread but the consequences may lead to nothing short of change of entire judicial landscape.

18. In this backdrop, although this Court has engaged in academic discussion, ibid, but it would neither be proper nor otherwise within the scope of instant petition to render a conclusive finding on —either affirming or rejecting the contention raised by learned counsel for the petitioner. Particularly when there is no such prayer and such a contention was urged for the first time during arguments. Accordingly, the question is left open for determination in an appropriate case in future.

CONCLUSION

19. Turning to the relief sought by the petitioner, it is indeed correct, as urged by the learned APP, that despite succeeding in protracted litigation, none of the 82 complainants have received compensation awarded by the Courts, owing to the petitioner's failure to deposit the fine amounts. However, I am firmly of the view that

it would be unjust and disproportionate to keep the petitioner incarcerated any further on account of default in payment of fine.

20. If the petitioner truly possessed the means to pay the fine, it is inconceivable that he would choose to languish in jail for its non-payment, fully aware that the complainants could still approach the Courts for recovery proceedings under law. Prolonged incarceration in such circumstances serves no legitimate purpose; it brings no real benefit to the complainants—save for a perverse and punitive sense of satisfaction, which the law does not countenance. As already stated, the settled legal position is that default sentences cannot be directed to run concurrently.

21. Accordingly, the facts and circumstances in the present case particularly the sheer adversity and poverty which the petitioner is currently suffering, make out a case where this court, in exercise of its inherent jurisdiction under section 528 of the BNSS, can reduce the sentence of imprisonment awarded in default of payment of fine and direct that sentences already undergone by the petitioner in default of payment of fine, be treated as the total punishment in default of payment of fine in the aforesaid 82 cases.

22. Consequently, the total of default sentence imprisonment in default of payment of fine in the 82 cases is reduced by proportionate staggering and equalised to the period of imprisonment already suffered by the Petitioner in default of payment of fine.

23. Before concluding, at the cost of repetition, I may observe that Section 461 BNSS [Warrant for levy of fine - Section 421 of Cr. P.C.] expressly empowers the Court, even after an offender has undergone imprisonment in default, to issue warrants for recovery of fine. This statutory mechanism ensures that liability for payment of fine survives the completion of the default sentence. Thus, the complainants are not remediless. I

may hasten to add here, as a clarification, that the instant order passed by this Court is not to be construed in any manner to mean that the petitioner is absolved of his liability to pay the fine amount. For its recovery, the State/concerned complainants shall be at liberty to proceed against the petitioner in accordance with law, including taking steps under Section 461 BNSS [Section 421 Cr. P.C.].

24. The default sentence imposed on the applicant has become excessively harsh, albeit unintentionally. Illustratively, if this case had involved only a single cheque of Rs. 1.3 crores, the petitioner's position would have been far less onerous. Ignoring the period of imprisonment already undergone would effectively subject the applicant to what is virtually a life sentence—approximately 17 years [8 + 9=17], He has already endured seven years and ten months in custody, and yet, under the default sentence, he is required to serve an additional nine years and several months. Such an outcome is manifestly disproportionate and cannot be justified.

25. The petition is thus allowed in the above terms. A copy of this order shall be forthwith transmitted by the registry to the Superintendent of Jail for immediate compliance. The Jail Superintendent shall act upon the authenticated copy of this order without delay. Subject to verification by the competent authority of the completion of substantive sentences of imprisonment in the 82 cases as per the nominal roll. The Petitioner shall be released from custody and set at liberty forthwith, if no longer required in any other case."

The Delhi High Court, in the aforesaid decision, embarked upon a profound examination of the conceptual distinction between substantive punishment and imprisonment in

default of payment of fine. The Court observed that default imprisonment is not an additional punishment for the offence of cheque dishonour, but merely a coercive and procedural mechanism intended to secure compliance with the monetary mandate of the Court.

11.2.1. The High Court cautioned that Courts must remain vigilant against transforming the law into a de facto debtors' prison regime, for excessive or mechanical imposition of default imprisonment would imperil the constitutional guarantees enshrined under Articles 14 and 21 of the Constitution. The Court poignantly observed that prolonged detention of a convict merely for inability to satisfy a pecuniary liability serves no meaningful societal purpose and risks collapsing the distinction between enforcement and vengeance.

11.2.2. The facts in the said case before the Delhi High Court was that, the petitioner had been convicted in as many as 82 complaints under Section 138 of the Act and had already undergone

incarceration for nearly seven years and ten months. The cumulative default sentences, if enforced in their entirety, would have compelled him to remain in prison for almost seventeen years. The Court described such an outcome as manifestly disproportionate, unconscionably harsh and wholly irreconcilable with constitutional values. Consequently, exercising its inherent jurisdiction under Section 528 of the BNSS, the Delhi High Court reduced and equalised the default sentences to the period already undergone by the petitioner and directed his immediate release from custody.

11.2.3. The High Court further illuminated that even after a convict undergoes imprisonment in default of payment of fine, the liability to pay the amount does not evaporate into oblivion. The machinery of Section 421 of the Cr.P.C., now Section 461 of the BNSS, continues to empower the State and the complainant to recover the amount in accordance with law. Therefore, continued incarceration, despite the availability of statutory recovery mechanisms, would amount to an excessive and constitutionally suspect deprivation of personal liberty.

11.3. In the case of **CYRUS NOSHIRWAN KARTAK v. STATE OF MAHARASHTRA**[3], the High Court of Bombay authoritatively interpreted the contours of Section 65 of the IPC vis-à-vis imprisonment in default of payment of compensation and held as follows:

> "…. …. ….
>
> "**13.** I have given anxious consideration to the aforesaid submissions canvassed across the bar. Before adverting to the core controversy that crops up for consideration, it may be apposite to note few uncontroverted facts. Incontrovertibly, the complainant had lodged 17 complaints for the offence punishable under Section 138 read with Section 141 of the Act, 1881, against Accused 1 company and the Petitioner (A2), on one and the same day and before the same Court. Indisputably, all those complaints were decided on the same day i.e. 9-5-2017 by separate judgments. Accused 1 and 2 were found guilty of the offence punishable under Section 138 read with Section 141 of the Act, 1881. The Petitioner (A2) was sentenced to suffer simple imprisonment for 15 months and Accused 1 and the Petitioner were directed to pay compensation specified in each of the complaints under Section 357(3) of the Code and in default of payment of compensation, the Petitioner (A2) was sentenced to suffer Simple Imprisonment for 12 months in each of the complaints. The learned Magistrate directed that the substantive sentence in all the 17 complaints would run concurrently. Sentence in default of payment of compensation would, however, run consecutively. It is not in dispute that, in the appeals preferred by the accused, the learned Additional Sessions Judge found no reason to interfere with the judgments

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and orders passed by the learned Magistrate, even in regard to the sentence.

14. In the backdrop of the aforesaid facts, the first question that comes to the fore is, whether the accused could have been prosecuted and punished separately in 17 distinct complaints. The answer to the aforesaid question hinges upon a further question as to whether, all the 60 cheques were drawn as a part of one and the same transaction. It would be contextually relevant to note the case set up by the complainant in the statutory demand notice, which preceded the complaints, and the averments in the complaints. In the statutory notice, it was claimed that, towards the price of the goods sold and delivered by the complainant to Accused 1 Company, a sum of Rs 22,68,07,788, was due and payable and towards the discharge of the said liability, the accused has drawn distinct cheques referred to in each of the complaints.

15. Likewise, in the complaints, it was alleged that a sum of Rs 22,68,07,788 was outstanding towards the goods sold and delivered by the complainant to Accused 1, and the cheques drawn towards the payment of the price of the goods sold and delivered were dishonoured on presentment. It could be urged that, though the total outstanding amount was the same, the cheques drawn towards the discharge of the liability in part, in each of the complaints were presented and dishonoured on different dates giving rise to distinct causes of action for lodging separate complaints.

16. Nonetheless, were the courts below required to pose unto themselves the question as to whether, despite finding the accused guilty of the offences punishable under Sections 138 read with Section 141 of the Act, in all the 17 complaints, the accused could have been sentenced to suffer imprisonment on one count of the charge and awarded consolidated compensation on the basis of the aggregate amount covered by the dishonoured cheques, and, consecutively, one sentence in default of payment of compensation ?

17. Mr Karia attempted to demonstrate that, 17 complaints pertained to different transactions evidenced by distinct invoices and delivery challans. A chart of the invoices and delivery challans, which formed the underlying transactions in the discharge of liability towards which the cheques included in different complaints were drawn, was sought to be tendered for the perusal of the Court.

18. True, this court in exercise of its supervisory writ jurisdiction may not delve into the thickets of facts as if the very order of conviction for the offence punishable under Section 138 read with Section 141 of the Act, 1881, was under challenge. That question could have been legitimately examined; more elaborately, in the challenge to the orders passed by the learned Sessions Judge in the appeals if the accused assailed the same by filing properly constituted proceedings.

19. Ordinarily, the rule of single transaction is resorted to in the matter of issue of direction to run the sentences concurrently or consecutively. Under Section 427 of the Code, 1973, the Court is vested with the discretion to determine whether the sentence would run consecutively or concurrently. The exercise of discretion is informed by the peculiar facts of the case and the predominant factor is, whether the offences have allegedly been committed as a part of the same transaction.

20. I**n the case of *Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti* v. *Asstt. Collector of Customs*4, the Supreme Court expounded that the provisions contained in Section 427 relates to administration of criminal justice and provides procedure for sentencing. The sentencing court is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or consecutive ? The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive**

sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

21. In the case of *State of Punjab* v. *Madan Lal*[5], where the accused was convicted for the offence punishable under Section 138 of the Act in three complaints, and sentenced to suffer imprisonment, without giving benefit of Section 427 of the Code, the Supreme Court upheld the order of the High Court that the sentence imposed by the Court in all the three complaints shall run concurrently.

22. In the case of *V.K. Bansal* (supra), the Supreme Court enunciated that, under Section 427(1) the court has the power and discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along the judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the Courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed and the fact-situation in which the question of concurrent running of the sentences arises.

23. The Supreme Court culled out the proposition, as under:

> "16. In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor."

24. In the case at hand, the learned Magistrate has indeed given the benefit of the provisions contained in Section 427 of the Code, in the matter of the substantive sentence of imprisonment of 15 months ordered to be suffered in each of the 17 complaints. However, the controversy arose on account of the award of the distinct compensation in each of the complaints and even more significantly on account of imposition of 12 months sentence in default of payment of compensation in each of the complaints.

25. In regard to the imposition of the sentence of imprisonment of 12 months in default of payment of compensation, the pivotal questions that arise for consideration (i) could the learned Magistrate have awarded imprisonment of 12 months in default of payment of compensation ? (ii) whether the order to run sentences in default of payment of compensation consecutively, was legally sustainable ? And (iii) whether the award of excessive sentence of imprisonment in default of payment of compensation was justifiable ?

Limits of sentence in default of payment of fine:

26. A brief recourse to the provisions of the Criminal Procedure Code, 1973 and the Penal Code, 1860, becomes necessary. Section 30 of the Code, 1973, deals with the sentence of imprisonment in default of fine. It reads as under:

> "**30. Sentence of imprisonment in default of fine.** - (1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law:
>
> Provided that the term:
>
> (*a*) is not in excess of the powers of the Magistrate under Section 29;
>
> (*b*) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to

inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under Section 29."

27. Section 65 of the Penal Code, 1860 prescribes limit of imprisonment for non-payment of fine. It reads as under:

"**65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable -** The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine."

28. A conjoint reading of the aforesaid provisions would indicate that the Magistrate is empowered to award imprisonment in default of payment of fine, as is authorized by law. The proviso to sub-section (1), however, restricts the power of the Magistrate to impose sentence in default of payment of fine. Firstly, it shall not be in excess of the powers of the Magistrate under Section 29. Secondly, where the imprisonment has been awarded as a part of the substantive sentence, default sentence shall not exceed 1/4th of the term of the imprisonment, which the Magistrate is competent to inflict as punishment for the offence for which the accused is found guilty.

29. Section 65 of the Penal Code, 1860, contains an interdict against sentencing the accused to imprisonment in default of payment of fine, by providing that such imprisonment shall not exceed the 1/4th of the imprisonment which is the maximum term of the sentence. Cumulatively, the imprisonment in default of payment of fine shall not exceed:

(1) 1/4th of the maximum term of imprisonment provided for the offence in question,

(2) 1/4th of the term of imprisonment, which the Magistrate is competent to inflict as punishment, even though the offence may entail greater punishment. For example, an offence punishable under Section 326 IPC entailed punishment of imprisonment which may extend to life and, yet, the Magistrate of First Class cannot impose a sentence of imprisonment for a term not exceeding three years,

(3) the powers of the Magistrate under Section 29.

30. Reverting to the case at hand, the offence punishable under Section 138 of the NI Act, 1881 entails punishment which may extend to two years, or with fine which may extend to twice the amount of cheque or with both. In view of the provisions contained in Section 65 IPC read with Section 30 of the Code, 1973, the maximum sentence in default of payment of fine or compensation awarded for the commission of an offence punishable under Section 138 of the NI Act, 1881 would be six months. The learned Magistrate was, thus, in error in imposing the sentence of 12 months imprisonment in default of payment of compensation awarded under Section 357(3) of the Code, 1973. Sentence of 12 months imprisonment is clearly in teeth of the mandate contained in Section 65 IPC and Section 30 of the Code, 1973. These mandates are absolute.

31. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of *M.B. Manjegowda* v. *State of Karnataka*6, wherein the Supreme Court enunciated that the mandate of Section 65 IPC is absolutely clear and no default sentence can be awarded in excess of ¼th of the maximum punishment prescribed for the offence concerned.

32. In view of the aforesaid position in law, the imposition of 12 months imprisonment in default of payment of compensation by the learned Magistrate was clearly illegal. The learned Additional Sessions Judge also failed to notice the legal infirmity in the sentence in default of payment of compensation imposed by the learned Magistrate.

Default Sentence: Consecutive or Concurrent:

33. The legal position on the aspect of the sentences in default in payment of fine running consecutively and not concurrently, is well recognized. To start with, Section 64 of the Penal Code, 1860 provides that, it shall be competent to the Court which sentences the offender to direct by the sentence that, in default of payment fo fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence. Section 64 of the Penal Code, thus, mandates that the sentence awarded for non-payment of fine, shall be in excess of any other imprisonment to which the accused may have been sentenced.

34. Sub-section (2) of Section 30 of the Code, provides that the imprisonment awarded under the said section may be in addition to the substantive sentence of imprisonment for the maximum term awardable by the Magistrate under Section 29. Section 428 of the Code further clarifies the position by excluding the imprisonment in default of payment of fine, from the ambit of set off to which the accused is entitled to on account of the period of detention undergone by him during the investigation, inquiry or trial of the case. Therefore, the sentences in default of payment of fine or compensation, cannot be made to run concurrently.

35. In the case of *Sharad Hiru Kolambe* v. *State of MaharashtraZ*, the Supreme Court has held that the default sentences cannot be directed to run concurrently.

Term of Default Sentence:

Justifiability of the nature of the sentence in default of payment of fine or compensation ?

36. This leads me to the justifiability of the award of 12 months imprisonment in default of payment of compensation. A sentence in default of payment of fine is in the nature of disapprobation of the conduct of the accused in not complying with the order of the Court to pay the fine or compensation. The sentence in default of payment of compensation is not a device to enhance the substantive sentence which the Court is empowered to inflict by way of punishment. A substantive sentence of imprisonment, as a part of punishment for the offence, and, a sentence in default of payment of fine are qualitatively different. A default sentence stands on a different footing. Default sentence is essentially by way of penalty for the failure to abide the order of the Court to pay fine or compensation. Therefore, while imposing a sentence in default of payment of fine, the Court should be alive to the object of the measure of the sentence in default. It can never be imposed by way of an additional punishment.

37. In the case of *Shanti Lal* v. *State of Madhya Pradesh8*, **the Supreme Court postulated the object of sentence in default of payment of fine and the considerations which ought to weigh in Court in imposing the default sentence.** The observations in para 31 read as under:

> "31……T**he term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in**

> **other appropriate judicial proceedings or otherwise. A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but the duty of the court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine."**
>
> (emphasis supplied)

38. Following the aforesaid pronouncement, in the case of *Sahejadkhan Mahebubkhan Pathan* v. *State of Gujarat*[9], **the Supreme Court interfered with the order of imposition of three years imprisonment in default of payment of fine of Rs 1.5 Lakhs, for having committed the offences punishable under the NDPS Act, 1985 and reduced it to six months.** The Supreme Court reiterated the position in law, as under:

> "12. It is clear and reiterated that the term of imprisonment in default of payment of fine is not a sentence. To put it clear, it is a penalty which a person incurs on account of non-payment of fine. On the other hand, if sentence is imposed, undoubtedly, an offender must undergo unless it is modified or varied in part or whole in the judicial proceedings. However, the imprisonment ordered in default of payment of fine stands on a different footing. When such default sentence is imposed, a person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. Accordingly, he can always avoid to undergo imprisonment in default of payment of fine by paying such an amount. In such circumstance, we are of the view that it is the duty of the Court to keep in view the nature of offence, circumstances in which it was committed, the position of the offender and other relevant considerations such as pecuniary circumstances of the accused person as to character and magnitude of the offence before ordering the offender to suffer imprisonment in default of payment of fine. The provisions of Sections 63 to 70 IPC make it clear that an amount of fine

> should not be harsh or excessive. We also reiterate that where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases."
>
> (emphasis supplied)

39. In the case of *Sharad Hiru Kolambe* (supra), the Supreme Court clarified that if the term of imprisonment in default of payment of fine is a penalty which a person incurs on account of non-payment of fine and is not a sentence in strict sense, imposition of such default sentence is completely different and qualitatively distinct from a substantive sentence. In the said case as well, the Supreme Court interfered with the order of imposition of default sentence of three years imprisonment for non-payment of fine for having committed the offences under MCOCA, and reduced it to one year.

40. It is true, the offence punishable under Section 138 of the NI Act, 1881, stands on a slightly different pedestal. Ordinarily, the justice of the case demands that the drawer of the cheque be directed to pay the fine or compensation, as the case may be, to compensate the payee. The prescription of punishment for the dishonour of a cheque is predominantly for the purpose of ensuring the sanctity of the cheque as a negotiable instrument in the commercial transactions. The penal measure primarily subserves the end of compensatory justice rather than retributive or punitive element. Nonetheless, while imposing the compensation, the Court ought to have due regard to the situation in life of the parties, especially that of accused. The circumstances peculiar to the accused are of critical salience while determining the quantum of sentence of imprisonment in default of payment of fine or compensation. The maximum permissible sentence in default of payment of compensation may be legitimate. However, the Court must pose unto itself a question whether that would be reasonable and justifiable in the facts and circumstances of the given case, for there is an essential distinction between the permissibility of the action and justifiability thereof.

41. Applying these principles to the facts of the case, I find it rather difficult to accede to the submission of Mr Karia that the Petitioner must suffer six months imprisonment in default of payment of compensation in each of the cases. The implications of the submission of Mr Karia are that the Petitioner shall suffer substantive sentence of imprisonment of 15 months and in addition, shall suffer eight and half years of imprisonment in default of payment of compensation. The sole reason being the inability of the Petitioner to pay the amount of compensation, directed to be paid in each of the complaints.

42. The submission canvassed by Mr Karia, in the considered view of this Court, cannot be countenanced, if the guarantee of right to life and personal liberty under Article 21 is to be given such an expansive interpretation as it has received. A procedure which authorises the detention of the convict for default in payment of compensation for a term of eight and half years, when the substantive sentence of imprisonment is 15 months only, can only be said to be ex-facie unreasonable, excessively harsh and shockingly disproportionate to the non-compliance of the order to pay the compensation.

43. At this juncture, the purpose of imposition of sentence in default of payment of fine assumes salience. A system which detains the convict for his inability to pay the compensation ordered by the Court for an inordinately long period without anything more, may not pass the muster of reasonable and fair procedure. The approach to be adopted by the Court when a person is sought to be detained in a prison for failure to pay the amount ordered to be paid by the Court, delineated by the Supreme Court in the case of *Jolly George Varghese* v. *The Bank of Cochin*[10], albeit in a different context, deserves to be noted. In the context of the execution of the decree for payment of money by detaining the judgment debtor in prison, the Supreme Court enunciated the law, as under:

> **"10. Equally meaningful is the import of Art. 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Art. 21, read with Arts. 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. *Maneka Gandhi case* as developed further in *Sunil Batra* v. *Delhi administration*11, *Sita Ram* v. *State of U.P.*12 and *Sunil Batra* v. *Delhi administration*13 lays down the proposition. It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of daridra Narayana, is no crime and to 'recover' debts by the procedure of putting one in prison is too flagrantly violative of Art. 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Art. 11 of the Covenant. But this is precisely the interpretation we have put on the Proviso to s. 51 CPC and the lethal blow of Art. 21 cannot strike down the provision, as now interpreted."**
>
> (emphasis supplied)

44. The case of *Sanjay Vasudeva* (supra), on which reliance was placed by Mr Bharadwaj, appears to be on all four with the facts of the case at hand. In the said case, the accused therein was convicted in as many as 82 complaints for the offence punishable under Section 138 of the N.I. Act, 1881. Despite aggreging with the correctness of the submission that, none of the complainants have received the compensation awarded by the Courts owing to the accused's failure to deposit the fine amount, the learned Single Judge of the Delhi High Court, observed as under:

> **"19. Turning to the relief sought by the petitioner, it is indeed correct, as urged by the learned APP, that despite succeeding in protracted litigation, none of the 82 complainants have received compensation awarded by the Courts, owing to the petitioner's failure to deposit the fine amounts.**

However, I am firmly of the view that it would be unjust and disproportionate to keep the petitioner incarcerated any further on account of default in payment of fine.

.....

21. Accordingly, the facts and circumstances in the present case particularly the sheer adversity and poverty which the petitioner is currently suffering, make out a case where this court, in exercise of its inherent jurisdiction under Section 528 of the BNSS, can reduce the sentence of imprisonment awarded in default of payment of fine and direct that sentences already undergone by the petitioner in default of payment of fine, be treated as the total punishment in default of payment of fine in the aforesaid 82 cases.

.....

24. The default sentence imposed on the applicant has become excessively harsh, albeit unintentionally. Illustratively, if this case had involved only a single cheque of Rs 1.3 crores, the petitioner's position would have been far less onerous. Ignoring the period of imprisonment already undergone would effectively subject the applicant to what is virtually a life sentence—approximately 17 years [8 + 9 = 17]. He has already endured seven years and ten months in custody, and yet, under the default sentence, he is required to serve an additional nine years and several months. Such an outcome is manifestly disproportionate and cannot be justified."

45. The fact that the sentence in default of payment of fine, even if undergone by the accused, does not absolve the accused of the liability to pay the said amount is also a relevant consideration. Section 421 empowers the Court even if the offender has undergone imprisonment in default to issue a warrant for recovery of the compensation ordered to be paid under Section 357 of the Code. If the amount of compensation ordered to be paid to the complainant can still be recovered by resorting to the procedure envisaged by the Code, further detention of the Petitioner to undergo in default sentence appears wholly unsustainable.

> **46.** The imprisonment certificate dated 15-4-2026 issued by the Superintendent, Nashik Road Central Prison, indicates that the Petitioner has undergone total imprisonment of seven years, six months and five days. The Petitioner has earned remission of 719 days as of 31-3-2026. The total period of imprisonment undergone by the Petitioner including the admissible remission would, thus, come to nine years, six months and five days.
>
> **47. In the backdrop of the aforesaid position in law and the facts of the case, this Court considers the further detention of the Petitioner to serve the default sentence would be unjust, unconscionable and unjustifiable. I am, therefore, inclined to allow the Petition and modify the sentence in default of payment of compensation to the period of sentence already undergone by the Petitioner in default of payment of compensation in all the complaints.**"
>
> *(Emphasis supplied at each instance)*

The Bombay High Court, in a deeply reasoned judgment, held that Section 65 of the Indian Penal Code embodies a clear legislative interdict against excessive imprisonment in default of payment of fine. **The Court observed that the statutory ceiling under Section 65 is absolute in character and unequivocally mandates that imprisonment in default cannot exceed one-fourth of the maximum substantive sentence prescribed for the offence. Thus, in prosecutions under Section 138 of the Negotiable Instruments Act, where the maximum**

substantive punishment extends to two years, the default sentence cannot travel beyond six months.

11.3.1. **The High Court further expounded the intrinsic distinction between a substantive sentence and a default sentence. A substantive sentence, the Court observed, constitutes punishment for the commission of the offence itself; whereas imprisonment in default of payment of fine is merely a penal consequence arising from non-compliance with the Court's monetary direction. It is therefore coercive, regulatory and remedial in character, and can never be employed as a disguised instrument to enhance substantive punishment.**

11.3.2. Applying those principles to the facts before it, the Bombay High Court found that compelling the petitioner therein to undergo an additional eight and a half years of imprisonment merely in default of payment of compensation would be ex facie unreasonable, shockingly disproportionate and wholly indefensible in constitutional terms. Consequently, the Court held that further detention of the petitioner would be unjust, unconscionable and

devoid of legal justification, and accordingly modified the default sentence to the period already undergone.

12. In the light of the petitioner's demonstrated financial incapacity to satisfy the enormous fine amounts imposed upon him, the acute hardship and destitution suffered by his family during his prolonged incarceration, and the principles so luminously enunciated by the High Courts of Telangana, Delhi and Bombay in the aforesaid decisions, this Court is of the considered view that the petitioner has made out a compelling case for grant of relief.

13. The petition, therefore, merits acceptance with a declaration that the petitioner has undergone the sentence imposed upon him and is consequently entitled to be released from prison forthwith. It is, however, clarified that the proceedings initiated under Section 421(1) of the Code of Criminal Procedure for attachment and recovery against the properties of the petitioner shall continue independently and uninfluenced by the observations rendered herein. **The present adjudication concerns only the legality and proportionality of continued incarceration in default of payment of fine and shall not eclipse or dilute the**

statutory right of the complainant or the State to pursue recovery proceedings in accordance with law.

14. With the aforesaid observations, the following:

ORDER

(i) Criminal Petition stands **allowed** in the light of, and in consonance with, the observations and reasons recorded in the course of the order.

(ii) The aggregate default sentence of imprisonment imposed upon the petitioner is hereby proportionately staggered, moderated and consequently equalized to the period of imprisonment already undergone by him in default of payment of fine in C.C.No.15234/2021, C.C.No.15235/2021 and C.C.No.15236/2021.

(iii) In consequence thereof, the petitioner shall be enlarged from custody and set at liberty forthwith, and in any event, within a period of four days from the date of receipt of a certified copy of this order, provided his detention is not required in connection with any other case or proceedings pending against him.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ/SS