

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: CrIM No. 83/2024 in
CRAA No. 83/2017

Choudhary Piara Singh, age 78 years Appellant(s)
Managing Director M/S Good Luck Finance Corp.
Hire Purchase Financer,
8-B Nehru Market, Jammu

Through :- Mr. Ajay K Gandotra, Advocate

Vs

Kuldeep Singh S/O Sh. Wakil SinghRespondent(s)
R/O Village Gagore Camp, P/O Vijaypur, Tehsil Samba

Through :-

CORAM:
HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

ORDER
01.02.2024

CrIM No. 83/2024

01. This application has been moved by the applicant/appellant, seeking clarification to paragraph 28 which is the operative part of judgment dated 06.06.2023 passed by this Court in CRAA No. 83/2017 titled, 'Choudhary Piara Singh vs. Kuldeep Singh' in view of order dated 30.11.2023 passed by learned Sub Judge/Special Railway Magistrate, Jammu, in pursuance of judgment and order.

02. Since the other side is not required to be heard in this application, as his rights shall not be affected in any manner, it is proposed to take up this application for final disposal at the motion stage.

03. Learned counsel appearing for the applicant/appellant submits that the applicant had preferred a complaint under Section 138 of Negotiable Instruments Act, before the trial court, however, after conducting a full dressed trial, non-applicant/accused-Kuldeep Singh was acquitted by the trial court; that the applicant being complainant and aggrieved thereof, filed acquittal appeal CRAA No. 83/2017 before this Court and this Court vide judgment dated 06.06.2023 reversed the findings recorded by the trial court and recorded conviction of the non-applicant/accused, for the commission of offence punishable under Section 138 of N.I. Act and sentenced him to payment of fine of Rs. 1.00 lac, with a direction to the trial court for follow up action.

04. Learned counsel appearing for the applicant/appellant further submits that the trial court has misconstrued the direction of follow up, after recovery of the fine amount, as instead of paying fine as compensation to the appellant/complainant, has decided to remit the same to the Government Exchequer. He has further submitted that after a long drawn litigation, which was purely of a personal nature between the parties and not against the State, has resulted into a futile exercise, as no benefit has been drawn by the complainant in pursuance of his complaint and thereafter the appeal before this Court, as he has not been compensated in the matter. He has further submitted that though the complainant would have resorted to a civil remedy by filing the recovery suit, however, the applicant/appellant may not be in a position to go for that remedy on account of limitation.

05. Though, there is no specific statutory provision contained in the Negotiable Instruments Act with regard to dealing with the amount recovered as fine, but there are certain provisions with regard to compensation to be paid to the complainant, besides imposing fine by the Magistrate, on conclusion of the trial or even for interim compensation during the trial. Since the dispute in the complaint under Section 138 of N.I Act is purely of a personal nature between the parties as the injury was alleged to have been caused to the complainant and it does not relate to the State. Therefore, in the considered opinion of this Court, the complainant is certainly required to be compensated having lost his money, in case he is not compensated and the fine imposed is remitted to the Government Treasury, he shall be left high and dry.

06. The Hon'ble Apex Court of India in case titled, '**R. Vijayan vs. Baby & Anr.**' reported as **2012 (1) SCC 260** held in paragraphs 16 and 17, which being relevant to the subject, are extracted as under:-

"16. Having reached that stage, if some Magistrates go by the traditional view that the criminal proceedings are for imposing punishment on the accused, either imprisonment or fine or both, and there is no need to compensate the complainant, particularly if the complainant is not a victim in the real sense, but is a well-to-do financier or financing institution, difficulties and complications arise. In those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. As the provisions of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all the cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. Direction to pay compensation by way of restitution in regard to the loss on account of dishonor of the cheque should be practical and realistic, which would mean

not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts, not only increase the credibility of cheque as a negotiable instrument, but also the credibility of courts of justice.

17. We are conscious of the fact that proceedings under section 138 of the Act cannot be treated as civil suits for recovery of the cheque amount with interest. We are also conscious of the fact that compensation awarded under section 357(1)(b) is not intended to be an elaborate exercise taking note of interest etc. Our observations are necessitated due to the need to have uniformity and consistency in decision making. In same type of cheque dishonor cases, after convicting the accused, if some courts grant compensation and if some other courts do not grant compensation, the inconsistency, though perfectly acceptable in the eye of law, will give rise to certain amount of uncertainty in the minds of litigants about the functioning of courts. Citizens will not be able to arrange or regulate their affairs in a proper manner as they will not know whether they should simultaneously file a civil suit or not. The problem is aggravated having regard to the fact that in spite of section 143(3) of the Act requiring the complaints in regard to cheque dishonor cases under section 138 of the Act to be concluded within six months from the date of the filing of the complaint, such cases seldom reach finality before three or four years let alone six months. These cases give rise to complications where civil suits have not been filed within three years on account of the pendency of the criminal cases. While it is not the duty of criminal courts to ensure that successful complainants get the cheque amount also, it is their duty to have uniformity and consistency, with other courts dealing with similar cases.”

07. The Apex Court of India again in case titled **‘Bir Singh vs. Mukesh Kumar’** reported as (2019) 4 SCC 197 held in paragraph 25 of the judgment as extracted below:

“25. This Court expressed its anguish that some Magistrates went by the traditional view, that the criminal proceedings were for imposing punishment and did not exercise discretion to direct payment of compensation, causing considerable difficulty to the complainant, as invariably the limitation for filing civil cases would expire by the time the criminal case was decided.”

08. In a case titled, **‘Yasir Amin Khan vs. Abdul Rashid Ganie’** reported as 2021 (6) JKJ 99, this Court, while interpreting the intent and

object of section 138 N.I Act, has also observed that while imposing sentence under Section 138 of N.I Act, the Court should exercise its discretion, in granting compensation while imposing fine by having regard to section 357(3) of CrPC and give priority to the compensatory aspect of remedy.

09. From a reading of provisions of Section 138 of N.I Act in the context of landable object sought to be achieved by Chapter (vii) of N.I Act, it is abundantly clear that criminal Court while convicting an accused for commission of offence under Section 138 of N.I Act, cannot ignore compensatory aspect of remedy and a compensatory aspect can only be given due regard, if the sentence imposed is at least commensurate to the amount of cheque, if not more, so that fine, once imposed can be appropriated towards payment of compensation to the complainant, by having resort to Section 357 of CrPC 1973. The law with regard to grant of compensation under Section 356(3) of CrPC 1973 in the cases arising under Section 138 of N.I Act is now well settled. The object of Section 138 of N.I Act is not only punitive, but is compensatory as well. Apex Court in case of '*Suganthi Suresh Kumar vs. Jagdeeshan*', 2002(2) SCC 420 has held that the compensatory aspect must receive priority over the punitive aspect of Section 138 N.I Act.

10. Respondent/convict is stated to have already deposited the amount of Rs. 1.00 lac as fine, with the trial court vide GR No. 8719292 dated 30.11.2023 as indicated in the order passed by the learned trial court on 30.11.2023.

11. In view of the judgments quoted above and having regard to the aforesaid discussion, order/judgment dated 06.06.2023 is clarified with a direction to learned Trial Magistrate to pay compensation of the whole of the fine amount to the complainant as compensation. In case the fine amount is available with the trial court, the same be paid to the complainant and in case it has been remitted to the Government Exchequer, the same be withdrawn under rules, for making payment to the applicant/appellant as complainant. This order shall form part and shall be in continuation to judgment dated 06.06.2023 passed in CRAA No. 83/2017 and a copy of it shall be forwarded to the Trial Court for compliance.

12. With these observations, this application stands disposed of.

**(MA CHOWDHARY)
JUDGE**

JAMMU
01.02.2024
Meenakshi

