

2014 PLRonline 0208 (SC)

SUPREME COURT OF INDIA

(Before : Ranjana Prakash Desai J; N.V. Ramana J)

H. Pukhraj v. D. Parasmal

Criminal Appeal No. 1789 of 2014 (Arising out of Special Leave Petition (Crl.) No. 6483 of 2013)

06.08.2014

Negotiable Instruments Act, 1881 Section 138 - Provisions of Chapter XVII of the NI Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount keeping in view the cheque amount and the simple interest thereon at nine per cent 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 dishonour 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.

Vipul Jai and Vipin Kumar Jai, Advocates for the Appellant; Nanita Sharma and Vivek Sharma, (AC), Advocates for the Respondent

ORDER

Leave granted. The Appellant is the complainant. The Respondent is the accused. For the disposal of this case, it is not necessary to give details of the facts of the case. Suffice it to say that a cheque in the sum of Rs. 6,19,488/- (Rupees six lakh nineteen thousand four hundred and eighty eight only) was issued by the Respondent to the Appellant. The cheque is dated 11/04/2003. When it was presented for encashment on the same day, it bounced. The Appellant filed complaint on 27/05/2003. The trial was conducted by the Judicial Magistrate No. V, Coimbatore. Learned Magistrate by order dated 05/09/2005 convicted the Respondent under Section 138 of the Negotiable Instruments Act ("the NI Act") and sentenced him to undergo six months imprisonment and also to pay fine of Rs. 4,000/-, in default, to undergo three months further imprisonment. Being aggrieved by this judgment, the Respondent preferred an appeal in the Court of Additional District Judge, Fast Track Court No. 1, Coimbatore. The learned Additional District Judge confirmed the conviction. However, the Additional District Judge modified the order of sentence. He reduced the sentence to three weeks. Being aggrieved by that, the Appellant approached the High Court making grievance about the inadequacy of the sentence. The High Court, by the impugned order confirmed the conviction. It, however, modified the order of sentence. The High Court directed the Respondent either to pay compensation of Rs. 2,00,000/- (Rupees two lakh only) to the Appellant or to undergo imprisonment for two months. The operative part of

the order could be quoted:

"5. From the foregoing discussions and perusing the judgment of both courts, this Court is of the view that the quantum of punishment is on the lower side, since the cheque amount a sum of Rs. 6,19,488/- is involved and the dishonour of the case had been proved below the courts, therefore, this Court is inclined to modify the adequate punishment is such this Court impose a sentence on the accused that he has to undergo two months simple imprisonment to pay compensation a sum of Rs. 2,00,000/-. The accused either has to pay the compensation amount or to undergo two months simple imprisonment as it is found to be appropriate in the instant case. This court directs the learned judicial Magistrate No. V, Coimbatore, to issue bailable warrant and secure him forthwith in order to undergo two months simple imprisonment. If the accused deposits the said compensation amount a sum of Rs. 2,00,000/- into the credit of C.C. No. 461 of 2003, on the file of Judicial Magistrate No. V, Coimbatore, before being remanded into the Judicial Custody then the accused will be set at liberty and the sentence by two months simple imprisonment would not be operated against the accused. If the accused remits the said compensation and it is open to the complainant to withdraw the said amount from the Trial Court along with a copy of this order. If the accused pays the said compensation amount, the fine amount shall be returned to him."

2. We have heard learned Counsel for the Appellant at some length. Though notice is served on the Respondent, he is not appearing either in person or through a lawyer. This Court, therefore, appointed Mrs. Nanita Sharma as amicus curiae. We have heard learned amicus curiae also.

3. Learned counsel for the Appellant severally assailed the impugned judgment. He submitted that the impugned order may be set aside and the Appellant may be adequately punished and substantial compensation amount may be directed to be paid to the Appellant. Learned counsel for the Appellant urged that this Court should ask the Respondent to pay double the cheque amount to the Appellant. Learned amicus curiae, on the other hand, submitted that no interference is necessary with the impugned order.

4. In Suganthi Suresh Kumar Vs. Jagdeeshan, this Court was considering the propriety of inadequate sentence imposed by courts on the accused charged under Section 138 of the NI Act. This Court expressed displeasure about courts imposing a flea-bite sentence on the accused. Following paragraph from the said judgment could be quoted:

"12. The total amount covered by the cheques involved in the present two cases was Rs. 4,50,000/-. There is no case for the Respondent that the said amount had been paid either during the pendency of the cases before the trial court or revision before the High Court or this Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flea-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid, it should be the look out of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The

very object of enactment of provisions like 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case.”

5. Again, in *R. Vijayan Vs. Baby and Another*, : 2011 (4) R.C.R. (Civil) 834 : 2011 (6) Recent Apex Judgments (R.A.J.) 19 : (2012) 1 SCC 260 this Court considered the same question. This Court also examined the need to award compensation to the complainant. This Court was of the opinion that the traditional view that the criminal proceedings are for imposing punishment on the accused, either punishment 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, gives rise to difficulties and complications. This Court further observed that in those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. This Court further observed that as the provisions of Chapter XVII of the NI Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount keeping in view the cheque amount and the simple interest thereon at nine per cent per annum as the reasonable quantum of loss and direct payment of such amount as compensation. This Court further observed that the direction to pay compensation by way of restitution in regard to the loss on account of dishonour 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.

6. In light of the above judgments, we are of the opinion that the impugned order needs to be modified. Hence, we sentence the Respondent-accused to undergo simple imprisonment for a period of six months for offence under Section 138 of the NI Act. Considering the fact that the cheque amount is Rs. 6,19,488/- (Rupees six lakh nineteen thousand four hundred eighty eight only), we direct the Respondent-accused to pay compensation of Rs. 10,00,000/- (Rupees ten lakh only) to the Appellant. In default of payment of compensation, the Respondent-accused will have to undergo simple imprisonment for a period of six months.

7. We are informed that the Respondent-accused is still a free agent and he has not yet surrendered. Upon receipt of this order, learned Judicial Magistrate No. V, Coimbatore shall initiate appropriate action so that the Respondent is arrested forthwith.

8. Before parting with the case, we would like to thank Mrs. Nanita Sharma, learned amicus curiae, for assisting the Court in the matter. The appeal is disposed of in the afore-stated terms.