

Gopinathan Vs. Sivadasan

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Court : Kerala

Decided On : Sep-27-2006

Reported in : 2006(4)KLT779

Judge : R. Basant, J.

Acts : Negotiable Instruments Act, 1881 - Sections 7, 8, 9, 13, 13(1), 14, 78, 118, 138, 139 and 142; Limitation Act - Sections 18; [Contract Act, 1872](#) - Sections 25(3)

Appeal No. : Crl. R.P. No. 3225 of 2006

Appellant : Gopinathan

Respondent : Sivadasan

Advocate for Def. : Jai George, Public Prosecutor

Advocate for Pet/Ap. : P.N. Ravindran, Adv.

Judgement :

ORDER

R. Basant, J.

1. Is the presumption under Section 139 available to a payee? Is such presumption available only to a holder? Does a holder under Section 139 include a

payee? These interesting questions are raised in this revision petition which is directed against a concurrent verdict of guilty, conviction and sentence in a prosecution under Section 138 of the N.I. Act.

2. There are two cheques involved for the amounts of Rs. 2,50,000/- and Rs. 1,60,000/- both dated 15.6.1999. The petitioner now faces a sentence of S.I. for a period of one month. There is also a direction to pay an amount of Rs. 3,00,000/- as compensation. No default sentence is seen imposed.

3. The signatures in the cheques are admitted. The notice of demand, Ext.P7, succeeded in evading Ext.P8 reply, in which the liability for payment was disputed. The complainant examined himself as PW1 and proved Exts.P1 to P10. The accused did not adduce any defence evidence - oral or documentary. In Ext.P8 reply notice and in the course of the trial, the accused took up a fairly definite and specific stand. Transaction between the parties was admitted. Handing over of both cheques after they were duly filled up was also admitted. But the accused took up a contention that the real transaction was for an amount of Rs. 2 lakhs only. He pleaded that though the transaction was for Rs. 2 lakhs he was constrained to hand over Ext.P1 cheque for Rs. 2.5 lakhs. According to him, subsequently he had paid interest every month of at the rate of Rs. 6,000/- p.m. Admittedly such payment was not continued and there was default in payment of interest. It is thereupon that the second cheque, Ext.P2, for an amount of Rs. 1.6 lakhs was allegedly issued by the petitioner to the complainant. In short, the petitioner contended that the initial transaction was not for Rs. 2.5 lakhs. He further contended that the cheque for Rs. 1.6 lakhs though admittedly issued, the complainant was not entitled to receive such an excessive amount by way of interest.

4. The courts below, in these circumstances, concurrently came to the conclusion that the complainant has succeeded in establishing all elements of the offence punishable under Section 138 of the N.I. Act. Accordingly they proceeded to pass the impugned concurrent judgments.

5. When this revision petition came up for hearing, the learned Counsel for the petitioner has advanced various contentions, some not even raised before the

court below. The counsel advances three specific contentions. They are:

(1) The liability, to discharge which the cheques are allegedly issued, is barred by limitation and therefore the cheques do not come within the sweep of Section 138 of the N.I. Act.

(2) Simultaneous continuous presumptions under Sections 118 and 139 cannot be drawn in respect of a promissory note and a subsequent cheque issued for the alleged discharge of the liability under the promissory note.

(3) The presumption under Section 139 of the N.I. Act is not available at all to a payee and only a holder is entitled for the advantage of such presumption.

6. Point No. I: The question as to whether Section 138 of the N.I. Act is at all applicable to a cheque issued for the discharge of a time barred debt, according to me, cannot any more be canvassed before this Court in view of the authentic pronouncement of the Division Bench in Ramakrishnan v. Parthasaradhy : 2003(2)KLT613 . The counsel doubts the correctness of the said decision and contends that in that decision the validity under Section 18 of the Limitation Act of the acknowledgment after the elapse of the period of limitation has not been considered properly. The counsel contends that there can be no valid acknowledgment of liability under Section 18 when the period of limitation has already expired. The counsel therefore prays that the matter may be referred to a Division Bench, where the petitioner will be in a position to request the Division Bench to make a reference to a Full Bench.

7. The same argument has been considered by this Court in Ramakrishnan v. Gangadharan Nair and Anr. ILR 2006 (3) Kerala 657 : 2006 (3) KLT SN 134 P 100. According to me, it would be incorrect to hold that the Division Bench held in Ramakrishnan (supra) that an acknowledgment after the elapse of the period of limitation is valid under Section 18 of the Limitation Act and for that reason Section 138 of the N.I. Act will be applicable to a cheque issued for the discharge of a time barred liability. The rationale of the Division Bench is made very clear in paragraph 15, which I extract below:

For the purpose of the present case, it does not appear to be necessary to go into this matter (i.e. the validity of the acknowledgment under Section 18 of the Limitation Act) in detail. It may, however, be mentioned that under Section 25(3), a promise can be made even in a case where the limitation for recovery of the amount has already expired. Such a promise has to be in writing. It can be in the form of a cheque. When a cheque is delivered to the payee, the person is entitled to present the cheque to the bank and seek payment. In such an event, if the cheque is dishonoured, the liability under Section 138 would arise. It would not be permissible for the accused to contend that the liability was not legally enforceable.

The foundation of that decision is certainly not on the alleged erroneous assumption that a cheque issued even after the period of limitation constitutes a valid acknowledgment under Section 18. If I have understood the rationale correctly, it is that Section 138 of the N.I. Act can apply only to a cheque drawn. Drawal of the cheque includes the acts of writing the cheque, signing the same and issue (delivery) thereof. Before a cheque is thus drawn and the drawal becomes complete by delivery, there must inevitably be a prior writing and signing of the cheque. The cheque, as held by the Division Bench, can certainly be held to contain a promise to pay a liability, which is time barred. Such a promise, Section 25(3) of the Contract Act makes it crystal clear, cannot be held to be invalid on the ground that the liability is barred and the cheque is not supported by consideration.

8. I shall, for the purpose of arguments in this case, assume that the liability is time barred. I say so because no such specific plea is raised before the courts below. Even assuming it to be time barred, when the cheque is written and signed, there is a promise to pay the amount to the payee, through the drawee of course. Such promise, even if the liability is barred, is valid and enforceable under law in view of Section 25(3) of the Contract Act. Thereafter when the delivery takes place, the drawal is completed. Such cheque drawn is issued for the discharge of a liability, which is promised under the cheque itself. That being so, I do not find any reason to refer the matter to a Division Bench for further consideration. The argument of the learned Counsel for the petitioner that there must be another agreement - other than the cheque - in order to reckon the promise in the cheque to be a valid

agreement for the purpose of Section 25(3) cannot obviously be accepted. The promise made in the cheque is an enforceable agreement as is declared in Section 25(3) of the Contract Act. The cheque issued (delivered) for the discharge of the said promise/liability is thus perfectly within the sweep of Section 138.

9. In this context it will not be inapposite to note that the Supreme Court in *A.V. Murthy v. B.S. Nagabasavanna* : 2002 CriLJ1479 , in paragraph 5 had adverted to this aspect. The observations therein also tend to support the conclusion of the Division Bench in Ramakrishnan referred earlier. However, I do note that the Supreme Court has not expressed any final opinion or conclusion on that aspect and it only noted that on this ground - that the liability is barred by limitation and the cheque is issued for the discharge of such a liability, a prosecution cannot be and need not be quashed. The challenge raised on this first ground must, in these circumstances, fail.

10. The second contention raised is that the presumption under Section 139 cannot be raised again when such cheque is issued for the discharge of the liability under a promissory note. The short argument is that a presumption under Section 118 can be drawn in respect of a promissory note when the liability under that promissory note is sought to be enforced. There cannot be a drawal of a further presumption. I find no principle, statutory provision or precedent to support this argument. When the cheque is issued for the due discharge of a liability under the promissory note, I can find nothing which can detract against the presumption under Sections 118 and 139 of the N.I. Act in respect of that cheque notwithstanding the fact that a presumption under Section 118 could have been raised if the liability under the Promissory note were sought to be enforced. It is not necessary for me in this revision petition to consider the question whether after the issue of the cheque for discharge of the liability, presumption under Section 118 can still be drawn in respect of the promissory note. I express no opinion on that question as it is not germane for consideration of the dispute before me. In these circumstances the second contention raised that presumption under Sections 118 and 139 of the N.I. Act cannot be invoked when the cheque in question is issued for the discharge of a liability already existing under the promissory note cannot be accepted. The challenge on the second ground does

also hence fail.

11. The third and the most crucial contention that has been raised in this revision petition is that the presumption under Section 139 of the N.I. Act is not available to a payee. The counsel contends that the Legislature has carefully worded Section 139 to exclude the payee and that is why the presumption is made available only to the holder of the cheque. The counsel carries the argument further and contends that so far as a payee is concerned, he is already armed with the presumption under Section 118(a) of the N.I. Act, whereas the holder will not be having such a presumption to his advantage. It is hence, contends the counsel, that the Legislature had limited the availability of the presumption under Section 139 to the holder only and not the payee. He builds up his arguments on the basis of the language of Section 139 which I extract below:

Section 139: Presumption in favour of holder:- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability.

(emphasis supplied)

12. For various reasons I am unable to accept this contention. First of all I must note that Section 118(a) does not enact any presumption in favour of the holder. It is a presumption against the maker or drawer or indorser and not a presumption specifically in favour of the payee, the holder or the holder in due course. It reads as follows:

Section 118: Presumption as to negotiable instruments:-- Until the contrary is proved, the following presumptions shall be made:

(a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration

A careful reading of Section 118(a) must convey to the court that the said presumption is only against the drawer or the maker or the acceptor, endorser etc. of the negotiable instrument. That presumption can be availed by any one who requires and needs the advantage of the said presumption if he is otherwise entitled to invoke the same. It would therefore be incorrect in law to limit the presumption under Section 118(a) only to a payee and not to a holder.

13. I must also note that in a prosecution under Section 138 of the N.I. Act the presumption under Section 118(a) is not sufficient or adequate for a complainant. Under Section 118, a presumption of consideration is drawn against the maker of the drawer of the cheque. Under Section 138 it is not enough if there is a presumption of consideration. Consideration of a particular variety must be shown to exist, i.e. that consideration was the discharge of a legally enforceable debt/liability. It would hence be incorrect to build up any argument from the premise that the presumption under Section 118(a) will be available only to the payee or that such presumption is sufficient for the payee to see him through in a prosecution under Section 138. In a prosecution under Section 138, where the presumption under Section 139 can be drawn it is superfluous and unnecessary to draw or bank on the presumption under Section 118(a). As the graver presumption - of existence of consideration of a specified variety, is available it is certainly not necessary at all to go back to the presumption under Section 118(a) of the Act.

14. It is then contended that the language of Section 138 and 142 make it crystal clear that a holder' is different from a 'payee'. This argument is built on the use of the expression 'payee' and 'holder in due course' separately and differently in Sections 138 and 142. I do take note of the repetition of the expressions 'payee' and 'holder in due course' in Sections 138 and 142. What is significant, according to me, is that both Sections 138 and 142 do refer only to the holder in due course, in addition to the payee and not the holder. Going back to the definition of 'holder in due course' in Section 9 of the N.I. Act, which I extract below, by specific words of inclusion the 'payee' is included in the sweep of expression 'holder in due course'.

Section 9. 'Holder in due course'-- 'Holder in due course' means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorsee thereof if (payable to order) before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

(emphasis supplied)

Thus the holder in due course includes payee. Going by the definition in Section 9, use of both these expressions simultaneously in Sections 138 and 142 cannot convey to the court any intention of the Legislature to treat the payee and the holder differently for the purpose of Sections 138 and 142. Why did the Legislature knowing fully well that the holder in due course would include the payee as stipulated in Section 9, repeat those words? A very relevant question. But I must say that no particular relevant and significant reason can be deciphered for use of both these expressions differently in Sections 138 and 142 when the expression, 'holder in due course' specifically by definition itself includes the 'payee' also. Obviously, by way of clarification and to avoid doubt, those expressions must have been repeated in Sections 138 and 142. At any rate, such use of both these expressions cannot at all enable the court to distinguish between the holder and payee, in so far as availability of the presumption under Section 139 of the Act is concerned, which is the crucial argument advanced by the learned Counsel for the petitioner.

15. It will not be inapposite in this context again to refer to the aspect that under Section 138 only the drawer of the cheque is made liable. It is crucial that a payee or an endorser is not made liable under Section 138 of the Act for any dishonour of the cheque which he has endorsed or negotiated. The presumption which is required for a successful prosecution under Section 138 is hence only a presumption against the drawer and that the drawal was made only for the discharge of a legally enforceable debt/liability. In these circumstances, considering the purpose of Section 138 it cannot be assumed that it was intended to distinguish between the holder and the payee in so far as the presumption

under Section 139 is concerned.

16. We now come to the definition of the expression 'payee' and 'holder' in Sections 7 and 8 of the N.I. Act. I extract the expressions payee and holder in Sections 7 and 8 below:

Section 7: 'Payee'. The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the 'payee'.

Section 8: 'Holder'. The 'holder' of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

17. A negotiable instrument is defined in Section 13 'to include a promissory note, bill of exchange or cheque payable either to order or to bearer.' This is clear from Section 13(1). A cheque is a negotiable instrument. Four types of cheques can be contemplated.

(1) A cheque, which is payable to the payee alone, or

(2) which is payable to the payee or order, or

(3) which is payable to the payee or the bearer, or

(4) which is payable to the bearer.

All these four will be valid cheques in accordance with the provisions of the N.I. Act.

18. We now come to the expression 'negotiation' in Section 14, which reads as follows:

Section 14: Negotiation. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

A cheque to the 'payee' or the 'payee or order' can be endorsed in favour of another. A cheque in favour of the payee or bearer can be negotiated by simple

delivery. A cheque payable to a bearer becomes payable to any one who bears the cheque. The cheques though addressed to the 'payee' alone, or 'payee or order' or 'payee or bearer' may validly come into the hands of another by negotiation i.e. by endorsement and delivery or delivery simpliciter depending upon the nature of the direction in the cheque. A cheque in favour of the bearer can be negotiated by the bearer by valid delivery to another.

19. We have now got to consider the definition of the expression 'holder' in Section 8. An analysis of the definition in Section 8 shows that for a person to be the holder, there must be two specific requirements satisfied. They are:

(1) such holder must be entitled in his own name to the possession of the cheque and

(2) he must be entitled to receive and recover the amount due thereon from the parties thereto.

20. It is by now trite that the expression 'entitled in his own name' does not require or insist that the name of the holder must be there in the instrument. The crucial ingredient is 'entitlement for possession in his own name' and not the availability of his name in the instrument. A bearer, whose name is not shown in the cheque, will still be a holder if he has title to the cheque, i.e. if he is entitled to receive the amount under a cheque, i.e. if the cheque has come into his hand on proper negotiation. If he is a thief or the possessor of a lost instrument he will not be entitled to possess the same in his own name.

21. So far as the second ingredient is concerned, the counsel builds up an argument that in order to be the holder, the person claiming to be a holder must be entitled to receive and recover the amount due thereon from the parties thereto. Who are the parties to a cheque? Definitely the drawer of the cheque, i.e. the account holder and the drawee of the cheque i.e. the bank, are the primary parties to the cheque. The cheque is a bill of exchange, under which the drawer orders the drawee to pay the amount to the 'payee', the payee or order', the payee or bearer' or the bearer. The counsel contends that the payee must also be reckoned as a party to the cheque. From that he proceeds to the next argument that the

payee cannot be the holder because being a party to the cheque, he cannot be held to be entitled to receive or recover the amount from the parties (all the parties) thereto. The contention appears to be impressive at the first blush.

22. The learned Counsel for the petitioner was heard at length. I am unable to accept the argument that the payee is a party to the cheque in the sense in which it is used in Section 8. For other purposes and in other contexts he may be a party to the cheque. He can be reckoned as the promisee under the cheque as earlier held in this judgment. But while considering the play of the definition of 'holder' in Section 8, I am of the opinion that he cannot be held to be a party to the cheque. A payee indisputably is entitled to recover the amount from the drawer or the drawee of the cheque. Therefore the payee must be held to be a person entitled to receive or recover the amount from the inevitable parties to a cheque viz. drawer and the drawee.

23. For the purpose of arguments I shall assume that the payee is also a party to a cheque. Even then the expression 'from the parties thereto' used in Section 8 cannot certainly be stretched to exclude the payee, who indisputably is entitled to recover the amount from either the drawee or the drawer. The expression 'from the parties thereto' cannot therefore cause any problem to the court in coming to the conclusion that the payee will be a holder for the purpose of Section 8. Even if the payee is reckoned as a party to the cheque he does not go out of the sweep of the definition of holder in Section 8 because he is entitled to recover the amount from the parties (other than himself) though not from all the parties, which would include himself.

24. It is not as though this inconvenience in the definition of holder is occurring to this Court for the first time. This unsatisfactory definition has been considered in several precedents as also in commentaries by learned authors. Reading of the eleventh report of the Law Commission will in this context be of great help. In paragraph 45, while dealing with the recommendations of the Law Commission for a modified definition of the expression holder, all these aspects have been adverted to by the Law Commission. The Law Commission has recommended a definition which would obviate the difficulty created by the unsatisfactory, clumsy

and cumbersome definition of holder in Section 8. Of course the suggested amendments have not so far been incorporated in the Act. What is important is that the Law Commission had hastened to observe that:

the changes introduced do not seek to alter the law but to obviate the conflict of judicial opinions and the criticism of commentators which the existing definition has given rise to.

25. Commentaries by Bhashyam & Adiga on the N.I. Act and Dr.P.W. Rege in the AIR Publication on Law of Negotiable Instruments also take note of this unhappy and unsatisfactory definition of the expression 'holder' in Section 8. To disabuse the unnecessary confusion the Law Commission went on to suggest a definition for the expression 'holder' as follows:

'holder' means the payee or indorsee of an instrument who is in possession of the instrument or the bearer thereof, but does not include a beneficial owner claiming through a benamidar.

26. The said definition, which the Law Commission stated, was not an alteration of the law, but only a re-statement of the obvious - to obviate the criticism about unsatisfactory definition, shows beyond the pale of controversy that a payee must come within the sweep of expression 'holder'.

27. As early as in 1930, in Narayanamoorthi and Anr. v. Vumamaheswaram and Ors. AIR 1930 Madras 197 a Bench of the Madras High Court following an earlier Full Bench decision of the Madras High Court in Subba Narayana Vathiyar v. Ramaswami Aiyar 1907 ILR (Madras) Vol. 30 page 88 had held that:

no one can sue on a negotiable instrument as holder unless he is named therein as the payee or unless he becomes entitled to it as endorsee or bearer.

The payee, endorsee or the bearer must, in these circumstances, be certainly held to be a holder under Section 8.

28. I do also refer to pages 181 and 183 of the commentaries by Dr.P.W. Rege in the AIR Commentaries in the Negotiable Instrument Act, First Edition, which show

further that the 'payee' will fall within the sweep of the expression 'holder'. At page 183, the Author Dr.P.W. Rege has stated thus:

It is needless to emphasise that in respect of any negotiable instrument the payee or the endorsee thereof would alone, apart from exceptional circumstances, be the 'holder' thereof as contemplated by this section of the Act.

(emphasis supplied)

29. Bhashyam & Adiga at page 769 in the latest 17th Edition has this to say on this aspect.

A person who cannot claim and does not have right to recover the amount due on the instrument, is not the holder. Thus, a person who can sue in his name is a holder. He may be the payee or one who becomes entitled to it as indorsee or becomes the bearer of an instrument payable to the bearer. The most significant words in the section are 'entitled in his own name'. Thus, the term 'holder' does not include a person who, though in possession of the instrument, has no right to recover the amount due thereon from the parties thereto.

(emphasis supplied)

30. It is not necessary to undertake an analysis of the various provisions of the Negotiable Instruments Act to come to the conclusion that if the payee is not included in the sweep of the expression 'holder' disastrous consequences will follow. I need only extract Section 78 of the Act, which deals with the question as to the person to whom payment must be made to discharge the maker or the acceptor of the liability under the instrument.

Section 78: To whom payment should be made: Subject to the provisions of Section 82, Clause , payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

If we were to take the view that the payee would not be the holder, though the cheque is shown to be payable to him, he will not be able to realise the amount

from the drawer of the cheque. Thus from all indications available, from principles, precedents and statutory provisions, the conclusion is inescapable that the holder includes the payee also.

31. It will be proper in this context to refer to the purpose of the presumption under Section 139. The presumption ensures to the benefit of the holder. He has to prove that he is the holder and once it is shown that he is the holder, he becomes the holder in due course by the presumption under Section 118(g). A person who has only possession and not entitlement will certainly be not a holder to satisfy the definition under Section 8. Whatever be the law in the United Kingdom under the Bills of Exchange Act, under the Indian law as it stands, a person who has mere possession and not entitlement to recover the amount under the cheque cannot be held to be a holder. A thief, possessor of a lost instrument etc. do not come within the sweep of holder. Such a payee and holder, who by presumption under Section 118(g) becomes a holder in due course in order to launch a prosecution under Section 138 must further show that the cheque was received for the due discharge of a legally enforceable debt/liability. It is for this purpose that Section 139 has been enacted. Without the presumption under Section 139 there will only be a presumption under Section 118(a) regarding consideration and under Section 118(g) that the holder is the holder in due course.

32. As already indicated, the mere proof of consideration is not sufficient to succeed in a prosecution under Section 139. Consideration must be of a specific variety. That is why the presumption under Section 139 is enacted and in a prosecution under Section 138 the advantage of that presumption can be taken by all holders, who are holders in due course also, including the payee.

33. The learned Counsel for the petitioner has drawn my attention to an article published in 2006(1) KLT 64 (Journal) by John Section Ralph, Advocate, titled 'Who is protected under Section 139 of the N.I. Act?'. The learned Counsel submits that it is the said article which had prompted him to pursue the argument on the lines canvassed by him. I am of the opinion that the assumption made in the said article that Section 118 is a presumption which will enure to the benefit of the payee alone is fundamentally incorrect. So is the assumption that a payee with

such presumption under Section 118(a) can succeed in a prosecution under Section 138.

34. The learned Counsel for the petitioner has fairly brought the decision in Chandra Babu v. Remani : 2003(2)KLT750 to my notice. The observations in paragraph 4 therein also show that the expression holder must take within its sweep the legal heirs of a payee, i.e. any person entitled to the possession of the cheque in his own right.

35. In the light of the above discussions, the contention raised on the third ground that the presumption under Section 139 is not available to the payee must also fall to the ground.

36. No other contentions are raised on merits. I am, in these circumstances, satisfied that the verdict of guilty and conviction are absolutely justified and do not warrant interference at all. The challenge on merits fails.

37. The learned Counsel for the petitioner then contends that leniency may be shown on the question of sentence. The counsel points out that there is a dispute as to whether the principal amount payable was Rs. 2,50,000/- or only Rs. 2 lakhs. He further contends that though handing over of the second cheque for Rs. 1.60 lakhs as amount allegedly payable towards interest is not disputed, it would not be proper or correct to direct payment of the entire amount by invoking the powers under Section 357(3) Cr.P.C. The counsel further submits that in fact a civil suit has already been filed claiming the amount due under the promissory note as also under these two cheques on the basis of the original consideration, to discharge which all these instruments were executed. The counsel prays that, at any rate, there may be no deterrent substantive sentence of imprisonment imposed on the petitioner.

38. I have considered all the relevant inputs. I find merit in the prayer for leniency. I have already adverted to the principles governing imposition of sentence in a prosecution under Section 138 of the N.I. Act in the decision in Anilkumar v. Shammy 2002 (3) KLT 852. In the facts and circumstances of the case, I do not find any compelling reasons which can persuade this Court to insist on imposition

of any deterrent substantive sentence of imprisonment on the petitioner. Leniency can be shown on the question of sentence, but subject to the compulsion of ensuring adequate and just compensation to the victim/complainant, who has been compelled to wait from 1999 and to fight two rounds of unnecessary legal battle for the redressal of his genuine grievances. I note that the court below has not directed payment of even the actual cheque amount of Rs. 4.10 lakhs, which is the total amount due under the two cheques in question. Only an amount of Rs. 3 lakhs is directed to be paid. I am not persuaded to agree that any further leniency deserves to be shown on the quantum of compensation directed to be paid. I note that the courts below have not imposed any default sentence. Though I am persuaded to spare the petitioner of any deterrent substantive sentence of imprisonment, I am satisfied that a toothless direction under Section 357(3) Cr.P.C. is not likely to ensure the ends of justice. It is therefore necessary that a default sentence ought to be imposed. This course, though it does not have the specific sanction of any statutory provision, is approved and recommended in the decisions reported in Hari Kishan & State of Haryana v. Sukhbir Singh : 1989 CriLJ116 and Suganthy Sureshkumar v. Jagasdeesh : 2002 CriLJ1003 .

39. In the nature of the relief which I propose to grant, it is not necessary to wait for issue and return of notice to the respondent.

40. In the result:

(a) This revision petition is allowed in part.

(b) The impugned verdict of guilty and conviction of the petitioner under Section 138 of the N.I. Act are upheld.

(c) But the sentence imposed is modified and reduced. In supersession of the sentence imposed on the petitioner by the courts below, he is sentenced to undergo imprisonment till rising of court. The direction for payment of compensation is upheld with the further rider that if there is default in payment of compensation, the petitioner shall undergo S.I. for a period of three months. If realised the entire amount shall be released to the complainant. Out of the compensation amount Rs. 15,000/- shall be credited to the costs incurred for the

prosecution of this two tier criminal litigation. The balance shall be credited towards the principal and interest due. If any decree is passed by the civil court, needless to say, credit shall be given to the amount of Rs. 2,85,000/- directed to be paid (if paid) towards principal and interest as directed in this order.

41. The petitioner shall appear before the learned Magistrate on or before 15.12.2006 to serve the modified sentence hereby imposed. The sentence shall not be executed till that date. If the petitioner does not so appear, the learned Magistrate shall thereafter proceed to take necessary steps to execute the modified sentence hereby imposed.

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