

**Ravindran Vs. P. Srichand**

**Ravindran Vs. P. Srichand**

**SooperKanoon Citation :** [sooperkanoon.com/822658](http://sooperkanoon.com/822658)

**Court :** Chennai

**Decided On :** Jun-23-2000

**Reported in :** 2000CriLJ4910

**Judge :** K. Natarajan, J.

**Acts :** [Negotiable Instruments Act, 1881](#) - Sections 138; Code of Criminal Procedure (CrPC) , 1974 - Sections 29(2) and 357(3)

**Appeal No. :** Cri. R.C. No. 1054 of 1998, Cri. R.P. No. 1054 of 1998 and Cri. M.P. No. 7844 of 1998

**Appellant :** Ravindran

**Respondent :** P. Srichand

**Advocate for Def. :** Uma Venkataraman, Adv.

**Advocate for Pet/Ap. :** S. Swamidoss Manoharan, Adv.

**Judgement :**

ORDER

**K. Natarajan, J.**

1. This criminal revision petition has been filed against the order of VIIIth Additional Sessions Judge, Chennai dated 11-9-1998 modifying the conviction and sentence

passed by the XIth Metropolitan Magistrate, Chennai under Section 138 of the Negotiable Instruments Act.

2. The brief facts are :-

On the complaint of the respondent, the revision petitioner/accused was tried for an offence under Section 138 of the Negotiable Instruments Act by the XIth Metropolitan Magistrate, Saidapet, Chennai on the ground that the accused issued a cheque for Rs. 1,25,000/- which got bounced from the Bank. The learned trial Magistrate found the accused guilty and imposed a sentence of three months simple imprisonment and also a fine of Rs. 1,25,000/-, in default to undergo simple imprisonment for three months.

3. On appeal, the learned VIIth Additional Sessions Judge, Chennai set aside the order of imprisonment for three months, but confirmed the sentence of the fine of Rs. 1,25,000/-.

4. The learned counsel for the revision petitioner urged a legal submission relying on the decision of the Supreme Court of India in K. Bhaskaran v. Sankaran Vaidhyan Balan reported in : 1999 CriLJ4606 . The Supreme Court had observed therein that even though the Negotiable Instruments Act has provided that fine amounting to twice the cheque can be imposed by the Magistrate, the limit of fine that can be imposed by a First Class Magistrate as provided under Section 29(2) of the Code of Criminal Procedure also should be taken into account and had held that a First Class Magistrate cannot impose a fine more than Rs. 5000/-. It is useful to refer to paragraphs 28 to 31 of the ruling of the Supreme Court, which is extracted below :-

28. In this context a reference to Section 29(2) of the Code is necessary as it contains a limitation for the Magistrate of first class in the matter of imposing fine as a sentence or as a part of the sentence. Section 29(2) reads thus:-

The Court of a Magistrate, of the first class may pass a sentence of imprisonment for a term not exceeding three years or of fine not exceeding five thousand rupees or of both. 29. The trial in this case was held before a Judicial Magistrate of first

class who could not have imposed a fine exceeding Rs. 5000/- besides imprisonment. The High Court while convicting the accused in the same case could not impose a sentence of fine exceeding the said limit.

30. It is true, if a Judicial Magistrate of first class were to order compensation to be paid to the complainant from out of the fine released the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of rupees five thousand.

31. However, the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code. It is well to remember that this Court has emphasised the need for making liberal use of that provision. Hari Krishna and State of Haryana v. Sukhbir Singh : 1989 CriLJ116 No limit is mentioned in the sub-section and, therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus even if the trial was before a Court of Magistrate of first class in respect of a cheque which covers an amount exceeding Rs. 5000/- the Court has power to award compensation to be paid to the complainant.

The said ruling of the Supreme Court has been pronounced on 29-1-1999, whereas the judgment in this case has been pronounced by the Metropolitan Magistrate, on 25-3-1998. Therefore, it is obvious that the learned Magistrate and the learned counsel for both the sides could not have been aware of the ruling of the Supreme Court, as it came into existence later. In the said judgment, the learned Judges of the Supreme Court had directed the matter to be sent to the trial Court for appropriate orders taking into consideration the provision under Section 29(2) of the Code of Criminal Procedure and the observation made in their judgment. In the present case also, I am of the view that the matter has to be sent back to the trial Court to pass appropriate orders taking into consideration the provision under Section 29(2) of the Code of Criminal Procedure and also the principle of law enunciated by the Supreme Court of India.

5. On a consideration of the submissions made by the learned counsel for both the sides and the records of the case, I am of the view that no other legal error except

the question of sentence has been committed by the learned trial Magistrate and, therefore, there is no need to order de novo trial.

6. In the result, the conviction of the offence under Section 138 of the Negotiable Instruments Act imposed on the revision petitioner is maintained and the modified sentence awarded by the VIIth Additional Sessions Judge is set aside. The matter shall be sent to the trial Magistrate to pass orders regarding sentence and award of compensation, if any, deemed necessary. The revision petition is ordered accordingly. Consequently, the connected miscellaneous petition is closed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**