



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL REVISION PETITION No. 996 OF 2016

BETWEEN:

M/S. BANAVATHY & COMPANY
REPRESENTED BY ITS PROPRIETOR
V.N.KALYANASUNDARAM
S/O V.NARAYANA RAO
AGED ABOUT 63 YEARS
OCC. BUSINESS, R/O B-238 6TH CROSS
1ST STAGE PIE BANGALORE - 560 058.

...PETITIONER

(BY SMT. SONA VAKKUND, ADVOCATE)

AND:

1. MAHAEER ELECTRO MECH (P) LTD
COMPANY INCORPORATED UNDER
THE CO'S ACT 1956
No.1592, 1ST FLOOR, 1ST A CROSS
3RD A MAIN ROAD
1ST STAGE, 2ND PHASE, CHANDRALAYOUT
BANGALORE - 40
REPRESENTED BY ITS MANAGING DIRECTOR
P.SHARATH KUMAR K.H.
S/O K.N.HALAPPA
AGED ABOUT 50 YEARS.
2. RAJENDRA PRASAD
S/O K.N. HALAPPA
AGED ABOUT 47 YEARS
No.1592, 1ST FLOOR, 1ST A CROSS





3RD A MAIN ROAD
1ST STAGE, 2ND PHASE, CHANDRALAYOUT,
BANGALORE - 40.

3. SHARATH PRASAD
No.606, 4TH B CROSS, 8TH MAIN RPC LAYOUT
VIJAYANAGAR, BANGALORE - 560 040.

...RESPONDENTS

(BY SRI DINESH GOANKAR, ADVOCATE - ABSENT)

THIS CRL.RP IS FILED UNDER SECTION 397 READ WITH SECTION 401 Cr.P.C PRAYING TO SET ASIDE THE ORDER PASSED IN JUDGMENT AND ORDER PASSED BY LXVI ADDL. CITY CIVIL AND S.J., BANGALORE (CCH-67) DATED 30.04.2016 IN CRL.A.No.968/2014 MODIFYING THE JUDGMENT AND ORDER PASSED IN C.C.No.25343/2010 ON THE FILE OF THE XX ACMM, BANGALORE DATED 06.08.2014.

THIS PETITION COMING ON FOR DICTATING ORDER THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL ORDER

This revision petition is directed against the judgment dated 30.04.2016 passed in Crl.A.No.968/2014 by the LXVI Additional City Civil and Sessions Judge, Bangalore where under judgment of conviction dated 06.08.2014 passed in C.C.No.25343/2010 by XX ACMM, Bangalore has been affirmed and sentence has been reduced from Rs.7,10,000/- to Rs.4,70,000/-.



2. Heard learned counsel for the petitioner. Learned counsel respondent remained absent.

3. The case of the petitioner/complainant before the trial Court was that the complainant is the proprietor of reputed firm dealing in manufacture of Station Battery Charge, L.V & M.V. Control Panels, required in the field of generation and distribution of electric power. Accused Nos.2 and 3 are Directors of Accused No.1 – firm and they have placed orders on behalf of Accused No.1 – firm for the purpose of purchase of Station Battery Charger, LTAC Panels and DEDBs as per KPTCL specifications for the projects at Haradanahalli and Bheriya Sub Stations under two purchase orders both dated 09.01.2007 directing the complainant to deliver the goods. The complainant has supplied the goods as per invoice No.039 dated 03.08.2009 and the accused was totally due of Rs.5,68,194/- towards the payment. Hence, the accused firm has issued two cheques bearing No.550385 dated 25.08.2009 for Rs.3,88,017/- and another cheque bearing No.550387 dated 10.08.2009 for



Rs.79,151/- drawn on SBI Rajajinagar Industrial Estate, Bangalore. When the complainant presented the said cheques for encashment they have been dishonoured for the reason "Not Arranged for." The complainant got issued legal notice and inspite of service of legal notice, accused persons failed to pay cheque amount within 15 days. Therefore, the complainant initiated proceedings against the accused persons for the offence punishable under Section 138 of the N.I.Act.

4. The Proprietor of the complainant has been examined as PW.1 and got marked Exs.P1 to P15. The statement of accused persons has been recorded under Section 313 of Cr.P.C. Accused No.2 has been examined as DW.1 and got marked Exs.D1 to D18. The trial Court after hearing arguments on both sides and appreciating the evidence on record has convicted accused Nos.1 to 3 for the offence punishable under Section 138 of the N.I.Act and sentenced to a pay a fine of Rs.7,10,000/- and in default, Accused Nos.2 and 3 shall suffer simple imprisonment for



one year. The trial Court has directed payment of compensation of Rs.7,00,000/- to the complainant out of the fine amount and Rs.10,000/- to be defrayed to the State for the expenses incurred in the prosecution. The said judgment of conviction and order of sentence has been challenged by the accused before the Sessions Court in Crl.A.No.968/2014. The learned Sessions Judge by judgment dated 30.04.2016 has affirmed the conviction of accused persons for the offence punishable under Section 138 of the N.I.Act, but has reduced the fine amount from Rs.7,10,000/- to Rs.4,70,000/- and ordered payment of compensation of Rs.4,67,200/- out of the fine amount to the complainant and remaining amount to be defrayed to the State. Aggrieved by the said reduction in fine/compensation, the complainant has preferred this revision petition.

5. Learned counsel for the petitioner would contend that the transaction between the petitioner/complainant and respondents/accused Nos.1 to 3 is a commercial transaction and considering the same the trial Court has awarded fine



and compensation taking into calculation of interest on the cheque amount. He further submits that there was no prayer of the accused persons before the appellate Court for reduction of fine amount. The appellate Court has not assigned proper reasons for reduction of fine/compensation. She has placed reliance on the decision of Hon'ble Apex Court in the case of (i) ***R.Vijayan vs. Baby and another (AIR 2012 SC 528)*** (ii) ***Sathyan Ayyappa Sathyan v. Yousu and another (2007 Crl.L.J.2590)*** (iii) Decision of High Court of Kerala in ***Crl.Rev.P.No.844/2011*** and (iv) a decision of co-ordinate Bench of this Court in ***A.V.Poojappa vs. Dr.S.K.Vagdevi*** in ***Crl.R.P.No.13/2020*** disposed on 04.06.2025.

6. Learned counsel for the petitioner further contended that as the transaction between the petitioner and respondent is a commercial transaction and cheque is issued for making payment of purchase of material the trial Court has rightly awarded fine/compensation amount taking into consideration Section 80 of the N.I.Act. There are no proper



reasons assigned by the appellate Court for reduction of fine/compensation. With this she prayed for setting aside the order of the appellate Court regarding reduction of fine/compensation amount and restoration of fine/compensation as awarded by the trial Court.

7. Having heard the learned counsels, this Court has perused impugned judgments and trial Court records.

8. The N.I.Act do not prescribe the criteria for the determination of quantum of fine to be imposed, but the discretion is given to the Courts to impose suitable fine taking note of several circumstances including the amount of cheque and also the time consumed for the trial of the case and other attending circumstances.

9. The co-ordinate Bench of this Court in **A.V.Poojappa (supra)** has considered the aspects to be taken into consideration while imposing fine for the offence under Section 138 of the N.I.Act and the relevant portion reads thus:



"24. While imposing the punishment, the Courts are required to examine the following aspects:

1. The quantum of the loan

2. The defence taken by the accused, more particularly whether he has taken a false defence and failed to prove the same.

3. Whether the accused has dragged on the matter unnecessarily and thereby delayed the disposal of the case at the stage of trial, appeal, revision and before the Hon'ble Supreme Court.

4. Whether the transaction relates to business between the parties or the parties are business class who would have utilized the amount for their business and flourish, or

5. In other cases, the returns the loan amount would have brought, if it was kept in a fixed deposit in a nationalised bank etc,

25. Of course, this list is not exhaustive and there may be other justifiable reasons for fixing the quantum of fine."



10. In the decision of Hon'ble Apex Court rendered in the case of **R.Vijayan (supra)** the Apex Court took note of the fact that the object of Chapter-XVII of Negotiable Instruments Act, which prescribes punishment for the dishonour of the cheque is both punitive as well as compensatory and restitutive. The Hon'ble Apex Court has further observed that Chapter-XVII of the N.I. Act is an unique exercise which blurs the dividing line between civil and criminal jurisdictions and it provides a single forum and single proceeding for enforcement of criminal liability and also for the enforcement of the civil liability i.e., for realisation of the cheque amount and thereby obviating the need for the creditor to move to different forums for the relief.

11. The Hon'ble Apex Court has reiterated that the apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of cheque along with compensation. The Hon'ble Supreme Court has further observed that a



stage has reached when most of the complainants in particular the financial institutions view the proceedings under Section 138 of N.I. Act as a proceeding for recovery of the cheque amount and therefore, the punishment of the drawer of the cheque for the offence of dishonour become secondary. The Apex Court opined that if traditional view of imposing punishment only is taken into consideration, the purpose of the enactment will not be served and therefore directed that in all cases of conviction for the offence under Section 138 of N.I. Act, all the Courts shall uniformly exercise the power of levy of fine keeping view of the cheque

amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss and payment of such amount as compensation. The Hon'ble Apex Court has reiterated that direction to pay compensation by way of restitution in regard to the loss on account of the 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, which would only increase the credibility of cheque as negotiable instrument, but also the credibility of Court of Justice. In this regard, in the decision of the Hon'ble Apex Court in the case of **R Vijayan** referred to above, in paras No.16 to 19, the Hon'ble Apex Court has observed as hereunder:-

"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 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 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. 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 dishonour 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.

18. One other solution is a further amendment to the provision of Chapter XVII so that in all cases where there is a conviction, there should be a consequential levy of fine of an amount sufficient to cover the cheque amount and interest thereon at a fixed rate of 9% per annum interest, followed by award of such sum as compensation from the fine amount. This would lead to uniformity in decisions, avoid multiplicity of proceedings (one for enforcing civil liability and another for enforcing criminal liability) and achieve the object of Chapter XVII of the Act, which is to increase the credibility of the instrument. This is however a matter for the Law Commission of India to consider”.



12. The above view is reaffirmed by the Hon'ble Apex Court in the case of **Bir Singh v/s Mukesh Kumar (2019) 4 SCC 197** in the following words:-

"25. In R. Vijayan vs. Baby and Another this Court observed that the object of Chapter XVII of the Negotiable Instruments Act is both punitive as also compensatory and restitutive. It provides a single forum and single proceeding for enforcement of criminal liability by reason of dishonour of cheque and for enforcement of the civil liability for realization of the cheque amount, thereby obviating the need for the creditor to move two different fora for relief. 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.

26. In R. Vijayan vs. Baby and another (supra) this Court observed that unless there were special circumstances, in all cases of conviction, the Court should uniformly exercise the power to levy fine up to twice the cheque amount and keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss, direct payment of such amount as compensation. This Court rightly observed that uniformity and consistency in deciding similar cases by different



courts not only increases the credibility of the cheque as a Negotiable Instrument but also the credibility of the Courts of Justice.”

13. The Hon’ble Apex Court in the case of **Mainuddin Abdul Sattar Shaikh v/s Vijay D. Salvi (2015) 9 SCC 622** reiterated the law laid down in the case of **R.Vijayan** (supra) and while sentencing the accused to pay fine double the cheque amount directed to pay interest at the rate of 9% per annum on double the cheque amount and relevant observation reads thus:

15. We, therefore, award compensation to the extent of twice the cheque amount and simple interest thereon at 9% per annum to the complainant. Accordingly, the respondent Vijay D Salvi is sentenced to undergo simple imprisonment for a period of five months for the offence under Section 138 of the NI Act. Considering the fact that the cheque amount is Rs.74,200/-, we direct the respondent Vijay D Salvi to pay a compensation of Rs.1,48,400/- (Rupees one lakh forty-eight thousand four hundred only) with simple interest thereon at 9% per annum, to the complainant-appellant. In default of payment of the said compensation, the respondent will have to undergo simple imprisonment for a period of six months.

14. The Hon’ble Apex Court in the case of **Kalamani Tex and another v/s P. Balasubramanian (2021)5 SCC**



283 has reiterated the need of consistency and observed as under:-

"19. As regards the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of the NIA is not only punitive but also compensatory and restitutive. The provisions of N.I.A. envision a single window for criminal liability for dishonour of cheque as well as civil liability for realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding compensation and unless there exist special circumstances, the Courts should uniformly levy fine up to twice the cheque amount along with simple interest at the rate of 9% per annum".

15. Co-ordinate Bench of this Court in the case of **IDEB Buildcon Private Limited, Bengaluru & others v/s Narinder Malik 2016 SCC OnLine Kar 9383** by relying upon the decisions rendered in the case of 'R.Vijayan' and 'Mainuddin' held that while determining the quantum of fine one cannot forget the time taken in prosecuting the case in the trial Court, First Appellate Court and Revisional Court and if no interest is awarded on the compensation awarded



by the trial Court and if the litigation goes on for several years it would be as good as doing injustice to the payee of the cheque. In this regard in para-14 of this judgment, it is observed as under:-

"14. One cannot forget the time taken in prosecuting the case in the trial Court, first appellate Court and in revisional Court. If no interest is awarded on the compensation awarded by the trial Court and the litigation goes on for several years, it would be as good as doing injustice to the drawee of the cheque i.e., complainant. This aspect of the matter has been taken into consideration by the Hon'ble Apex Court in the decision rendered in the case of Mainuddin Abdul Sattar Shaikh".

16. In the aforesaid decision after making the above observation confirmed the order on sentence passed directing the payment of interest on the compensation amount till the payment.

17. The High Court of Jammu & Kashmir and Ladakh at Srinagar in the case of **Yasir Amin Khan v/s Abdul Rashid Ganie (2021 SCC Online J & K 934)** by reiterating the decision of the Hon'ble Supreme Court



rendered in the case of **R.Vijayan (supra)** reiterated the need of uniformity and consistency in the matter of imposing sentence on fine. Further, the Court observed that the complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail and therefore it is the compensatory aspect of the remedy which should be given priority over the punitive aspect.

18. The High Court of Kerala in the case of **M.Shabeer vs. Anitha Bajee (Crl.Rev.Pet No.624/2022 decided on 08.07.2022)** has observed thus:

23.The statute does not provide such accumulation beyond twice the cheque amount. Therefore, in order to avoid payment of fine more than double the cheque amount, which is impermissible as per Section 138 of the N.I.Act, the trial Court should quantify the amount to a definite sum calculating interest @ 9% per annum following the ratio in **Vijayan's** case, without exceeding twice the cheque amount, (supra) and the said amount shall be imposed as fine. In view of the matter, I am inclined to modify the sentence, so as to maintain the same within the statutory limit.



19. In the case relied upon by the learned counsel for the petitioner in the case of **Sathyan Ayyappa Sathyan (supra)**, the Kerala High Court has observed thus:

15. This Court had occasion earlier in Anilkumar v. Shammy 2002 (3) KLT 852 to consider the same question. The question was answered in para-14 in the following words:

"14. The contention that Section 357(3) of the Criminal Procedure Code permits payment of "compensation" only and that the amount due under the cheque cannot be reckoned as compensation for the purpose of Section 357(3) does not also appeal to me at all. According to me the expression "compensation" is used under Section 357(3) not in any technical sense, and must certainly include payment due to the victim under the cheque in respect of which the offence under Section 138 of the Negotiable Instruments Act is committed. It is unnecessary, considering the purpose which Section 357(3) has to serve, to import any special or technical meaning to the expression "compensation" used there."

16. In that case the play of Sections 80 and 117 of the N.I. Act was omitted to be considered. I extract Section 117 of the N.I. Act below:



"117. Rules as to compensation -- The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque by any party liable to the holder or any indorsee, shall be determined by the following rules:-

(a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(b) xxx xxx xxx

(c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at eighteen per centum per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment:

(d) xxx xxx xxx

(e) xxx xxx xxx.

(emphasis supplied)

((b), (d) and (e) omitted as not particularly relevant in the context)

The relevant clauses are: Sections 117(a) and 117(c). Section 117(c) of the N.I. Act is not applicable to a drawer and it is applicable only to an indorser. Section 117(a) of the N.I. Act stipulates that the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in



presenting, noting and protesting it. The crucial question is whether interest can be said to be "the amount due upon the instrument". It will be proper straightaway to refer to Section 80 of the N.I. Act which deals with payment of interest when no rate of interest is specified. I extract Section 80 of the NI Act below:

"80. Interest when no rate specified.- When no rate of interest is specified in the instrument interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought have been paid by the party charged, until tender or realisation of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs."

17. Section 80 of the N.I. Act is applicable to all instruments. There is no definition for the expression "instrument" in the N.I. Act. But the expression "negotiable instrument" is defined in Section 13 of the N.I. Act. The "instrument" referred to in Section 80 of the N.I. Act must necessarily refer to "negotiable instruments" which by definition means a promissory note, bill of exchange or cheque payable either to order or to bearer. The cheque is hence a negotiable instrument and consequently an instrument to which Section 80 of the N.I. Act would apply.

18. How is the expression "amount due upon the instrument" to be construed? No specific precedent on this aspect is shown. But the commentaries reveal that the amount due upon the instrument must include the interest payable under Sections 79 and 80



of the N.I. Act. Bhashyam and Adiga's "The Negotiable Instruments Act" in the 17th Edition at page 629 speaks thus on the question:

"The amount due on the instrument is not merely the principal sum thereon, but also includes interest as calculated according to the rules in Sections 79 and 80, ante. It would have been better, if the section mentioned interest specifically, when interest is reserved that rate is payable. (Bills of Exchange Act, Section 57(1)(B); Re Gillespie (1886) 18 QBD 286 : 56 LT 599.)"

I am in complete agreement with this proposition. The expression 'amount due upon the instrument' cannot be read down to mean 'the amount shown as payable in the instrument'. Going by the context, purpose, purport and the language of the provision such reading down is impermissible. It must be given a reasonable and purposive interpretation to include the interest payable also.

20. Co-ordinate Bench of this Court in the case of **Mr.Sushil Kumar Churiwala v/s Mr. Akshay Bansal (2024 SCC OnLine Kar 2721)**, has set aside the imposition of fine of Rs.10,000/- awarded towards defraying the expenses of the State holding that in a proceeding under Section 138 of N.I. Act, the lis is privy to the party and no



state machinery is involved. The observation made reads as under:-

"At the out set, since the lis is privy of the party and no state machinery is involved, imposing the fine amount of Rs.10,000/- towards by the defraying expense of the State needs to be set aside".

Section 357 Cr.PC provides that when a court imposes sentence of fine, the Court may while passing judgment, order the whole or any part of the fine recovered to be applied in defraying the expenses properly incurred in the prosecution and also for payment of compensation.

The word 'fine' is normally used in legal phraseology for the penalty imposed and typically payable to the Treasury of the State. Therefore, whenever fine is imposed typically it shall go to the State and out of that fine amount, compensation can be awarded. Fine is a mode of punishment. Therefore, normally, when the fine is imposed, the first right upon the fine is to the State as it is a



punishment for the offence. While collecting the fine a portion can also be given as compensation to the victim. Further, even in a complaint filed for the offence punishable under Section 138 of N.I.Act, the role of the State is involved in adjudication of the dispute, execution of the summons, warrants, imprisonment of accused, etc,. Therefore the burden on the exchequer in a proceedings under Section 138 of N.I. Act cannot be ignored. Even in a civil suit the court will collect minimum court fee. Hence, the Court may not be powerless to appropriate a portion of the fine to the state as expenses incurred by it depending upon the proceedings of each case. In view of the above, observation made by the co-ordinate Bench appears to be not correct.

21. In case lesser interest is awarded and only default sentence is imposed, the rigor of offence under Section 138 will be diluted and thereby the object of the Statute will be defeated. If recovery and compensatory part is not taken care of while determining the quantum of sentence and



appropriate interest is not awarded, until the date of recovery of the entire amount, the complainant will be forced to file civil suit on the same subject matter. In view of Section 143(3) the trial for offence under Section 138 of N.I.Act has to be completed within six months. If the said provision is not adhered to and the trial for the offence under Section 138 of N.I.Act takes 4 to 5 years, in the mean time, the claim of the complainant for recovery of the cheque amount by filing civil suit becomes barred by limitation. Not only that the accused who is convicted for offence under Section 138 of N.I.Act challenges the same before the Sessions Court wherein the matter takes 2 to 3 years. The accused unsuccessful in the said appeal prefers revision petition before the High Court and it is seen that the disposal of revision takes more than 5 years. After all this if the complainant has to receive the fine/compensation as awarded by the trial Court, if it is cheque amount or little higher than the cheque amount, he will be at loss and put to injustice. Therefore, while passing the order of sentence



after determining the fine/compensation, the Court shall also pass an order to pay future interest @ 9% p.a. on the compensation amount payable to the complainant by fixing time of one/two months to deposit compensation amount so that even if the matter is challenged before the Sessions Court in appeal and High Court in revision the interest of the complainant will be protected.

22. In the case where amount is deposited pursuant to the orders passed under Section 143-A of N.I.Act, the Court can consider for exclusion of the interest on the amount deposited by the accused.

23. In the order on sentence, the Magistrate shall clarify the amount of compensation to be paid to the complainant from the amount of fine determined and ordered to be paid. In the total fine amount a nominal amount of Rs.5,000/- or Rs.10,000/- or any other sum (depending upon the use of state machinery for the adjudication and execution) may be appropriated to the exchequer of the State.



24. If substantive sentence of imprisonment is not imposed, Section 30(1)(b) of Cr.P.C. or Section 24(1)(b) of BNSS do not restrict the duration of default sentence that can be imposed. The restriction of one fourth of the term of imprisonment prescribed under Section 30(1)(b) of Cr.P.C. or Section 24(1)(b) of BNSS, is applicable only if substantive sentence of imprisonment is imposed. Therefore, it would be appropriate to impose maximum default sentence (but not more than the punishment which can be inflicted for the offence) to compel the accused to pay the fine amount without imposing substantive sentence of imprisonment.

25. Section 357(5) Cr.P.C. insists that if subsequent civil suit relating to the same matter is filed, the Civil Court shall take into account any sum paid or recovered as compensation under this Section. The said aspect has been considered by the Hon'ble Apex Court in the case of **D.Purushothama Reddy and another vs. K.Sateesh (2008) 8 SCC 505.**



26. In the case on hand, the learned Magistrate while considering imposition of fine has observed as under:

"16. POINT No.2: Admittedly the accused have issued Ex.P.1 and 2 cheques in relation to payment of the goods supplied by the complainant, no doubt it is purely a business transaction. The cheques in question were issued on 25.08.2009 and the complainant has struggling for recovery of the cheque amount for all these days and there was already lapse of nearly 5 years. According to Section 80 of N.I.Act when no rate of interest is specified in the instrument, interest on the amount due thereon shall be calculated at the rate of 18% per annum, from the date at which the same ought to have been paid by the party charged, until realization of the amount due thereon. If we calculated the interest at the rate of 18% on the cheque amount the interest amount will comes around more than Rs.6,00,000/-. Hence, this is fit case to award suitable compensation to the complainant."

27. Considering the said aspect the trial Court has sentenced accused to pay fine of Rs.7,10,000/- and out of that ordered payment of Rs.7,00,000/- as compensation to the complainant and Rs.10,000/- to be defrayed to the State



for the expenses incurred in the prosecution. The appellate Judge for reducing the sentence of fine/compensation out of the fine has observed as under:

13. In normal course of transaction in all cheque bouncing cases court have adopted to impose fine equivalent to cheque amount and pay compensation to complainant by taking major portion of fine amount to the complainant and remaining smaller amount will be taken as fine to state for prosecuting the case at the expense of State machinery. But in this case imposing 18% of interest on the cheque amount is exorbitant and against the normal course administered by court of law in providing justice to aggrieved party in accordance with law. Hence, this court find that if sentence passed by learned Trial Judge not altered it may cause prejudice to the case of the accused. Further in this case accused has not given chance of cross examining PW.1. It is also fatal to the case of accused in putforthing his case if any in cross examination of PW.1. Accordingly, this court hold point No.3 partly in the Affirmative.

28. On perusal of records there is cross-examination of PW.1 by the accused and therefore to that extent the observation of the appellate Court that there is no cross-examination is not correct. The appellate Court without assigning any reasons has reduced the fine/compensation amount. The trial Court taking into consideration that the



transaction between the complainant and accused is a commercial transaction and also taking into consideration Section 80 of the N.I.Act has rightly awarded fine of Rs.7,10,000/- and out of that Rs.7,00,000/- has to be paid as compensation to the complainant. Therefore, the appellate Court has erred in reducing the sentence of fine/compensation. The transaction between the petitioner/complainant and respondents/accused Nos.1 to 3 was business transaction that took place in the year 2009. The conclusion of trial has taken nearly four years. The matter which was taken in appeal has taken nearly 1½ years. The matter is pending before this Court since nearly 9 years. Since the complainant has not challenged the sentence of fine and award of compensation passed by the trial Court, the sentence of fine/compensation cannot be enhanced in the present revision petition. Therefore, the petitioner/complainant has to be satisfied with the fine/compensation awarded by the trial Court. For the reasons stated above, the following:



ORDER

- I) The revision petition is allowed.
- II) The impugned judgment of conviction dated 30.04.2016 passed in CrI.A.No.968/2014 by the LXVI Addl.City Civil and Sessions Judge, Bangalore City reducing the fine/compensation awarded by the trial Court is set-aside.
- III) The sentence of fine and award of compensation passed by the trial Court in the judgment dated 6.8.2014 passed in C.C.No.25343/2010 by the XX Addl.CMM, Bengaluru is affirmed.

The Registrar General is directed to circulate this order to all learned Magistrates.

**Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE**