®

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 1043 OF 2022

BETWEEN:

MR. SUSHIL KUMAR CHURIWALA,
AGED ABOUT 70 YEARS,
S/O SITARAM CHURIWALA,
C/O SILKTEX LIMITED,
NO.34, K.R. COLONY,
2ND FLOOR, DOMLUR LAYOUT,
BANGALORE - 560 071.

...PETITIONER

(BY SRI. HEMACHANDRA R. RAI, ADVOCATE FOR
SRI. NEHRU M.N, ADVOCATE)

AND:

MR. AKSHAY BANSAL,
AGED ABOUT 40 YEARS,
S/O LALIT BANSAL,
R/AT NO.771, 9TH MAIN,
3RD BLOCK, KORAMANGALA,
BANGALORE - 560 034.

...RESPONDENT

(BY SRI. BRIJESH EDUPUGANTI, ADVOCATE FOR
SRI. RAMAKRISHNAN S, ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION PASSED IN C.C.NO.54198/2017 DATED 16.10.2018 BY THE HONOURABLE XV ADDITIONAL SMALL CAUSES JUDGE AND XXIII ADDL.C.M.M, MEMBER, MACT, BANGALORE AND

FURTHER BE PLEASED CRL.A.NO.25215/2018 DATED 24.12.2021 PASSED BY THE XIII ADDL. CITY CIVIL AND SESSIONS JUDGE, MAYO HALL UNIT, BANGALORE (CCH-22).

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

CORAM: HON'BLE MR JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri.Hemachandra R. Pai, learned counsel appearing on behalf of Sri.M.N.Nehru, learned counsel for the revision petitioner and Sri.Brijesh Edupuganti, learned counsel appearing on behalf of Sri.Ramakrishnan S., learned counsel for the respondent.

2. Accused filed a revision petition challenging the order passed in CC No.54198/2017 dated 16.10.2018 on the file of XV Additional Judge and 23rd CMM, Court of Small Causes, Mayo Hall Unit, Bengaluru which was confirmed in Crl.A.No.25215/2018 dated 24.12.2021 on the file of XIII Additional City Civil and Sessions Judge, Mayo Hall Unit, Bengaluru (CCH-22) for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. Operative portion of the order passed by the learned Trail Magistrate and order passed by the Learned Judge in the First Appellate Court reads as under:

ORDER IN CC NO.54198/2017:

"Accused found guilty for the offence punishable under Section 138 of the NI Act.

Acting under Section 255(2) of Cr.P.C. I hereby convict the accused for the offence punishable under Section 138 of the NI Act and sentence him to undergo simple imprisonment for 6 months and shall pay fine of Rs.10,000/- and in default of payment of fine, he shall further undergo simple imprisonment for 30 days.

Acting under Section 357 of Cr.P.C. I hereby direct the accused to pay compensation of Rs.22,00,000/- to the complainant within 2 months from the date of this order. Failing which, the complainant is at liberty to recover the said amount as per Section 421 of Cr.P.C."

ORDER IN Crl.A.No.25215/2018:

"The appeal filed U/s 374(3) r/w Section 386 of Cr.P.C. by the appellant/accused is dismissed.

The judgment passed in CC No.54198/2017 on 16/10/2018 by the XV Addl. Judge and 23rd CMM, Court of Small Causes, Mayo Hall Unit, Bengaluru is confirmed.

The order of suspension of sentence passed by this Court U/s 389 of CRPC stands cancelled.

Send back lower court records along with certified copy of Judgment of this appeal."

4. Sri.M.N.Nehru, learned counsel submits that entire amount in a sum of Rs.22,00,000/- has been deposited as under:

i. Rs.4,40,000/- on 08.03.2019
ii. Rs.17,60,000/- on 07.01.2022

5. However, before the deposit of compensation amount could be made, accused was arrested pursuant to the warrant issued by the learned Trial Magistrate and accused was sent to the judicial custody on 02.08.2022. He was ordered to be released from the judicial custody on 10.08.2022 passed by this Court. Thereafter, accused was actually released from the judicial custody on 15.08.2022. Therefore, learned counsel for the revision petitioner while accepting the order of conviction seeks the modification in respect of sentence of six months imprisonment ordered by the learned Trial Magistrate and to waive sum of Rs.10,000/- which has been ordered to be paid as defraying expenses of the state.

6. Since the operative portion of the order passed by the learned Trial Magistrate comprises of two parts namely recording the order of conviction and order of payment of fine amount and imprisonment apart from compensation in a sum of Rs.22,00,000/- acting under section 357 of Cr.P.C., this Court, in this revision, is now confined only with regard to the order of sentence of simple imprisonment of six months in addition to payment of fine in a sum of Rs.10,000/- with default sentence of 30 days.

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

8. Now coming to the submission of revision petitioner that setting aside the imprisonment for a period of six months, learned counsel for the respondent submits that said submission on behalf of the accused/revision petitioner cannot be countenanced in law on two folds.

9. Primarily, since the act contemplates imposition of fine and imprisonment or imprisonment or both, in a given case even without filing the revision petition insofar as the inadequacy of the compensation amount, complainant can support the order of the learned Trial Magistrate insofar as imprisonment portion is concerned and therefore, revision petition needs to be dismissed.

10. Secondly, since the amount in a sum of Rs.22,00,000/- is paid over a period of time, taking note of the object of the Negotiable Instrument Act in allowing double the fine amount as the compensation amount and the imprisonment also being contemplated, the compensation amount needs enhancement in case the revision petitioner wants to get the imprisonment set aside.

11. In support of his arguments, learned counsel for the respondent has placed reliance on following judgments wherein it has been held as under:

a. ***Kishan Rao v. Shankargouda*** reported ***in (2018) 8 SCC 165*** wherein in paragraph Nos.12 and 13 is held as under:

12. This Court has time and again examined the scope of Sections 397/401 CrPC and the ground for exercising the revisional jurisdiction by the High Court. In State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452 : 1999 SCC (Cri) 275] , while considering the scope of the revisional jurisdiction of the High Court this Court has laid down the following: (SCC pp. 454-55, para 5)

> *"5. … In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in*

interfering with the conviction of the respondent by reappreciating the oral evidence. …"

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123 : (2015) 2 SCC (Cri) 19] . This Court held that the High Court in exercise of revisional jurisdiction shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. Following has been laid down in para 14: (SCC p. 135)

"14. … Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction."

b. ***Amit Kapoor v. Ramesh Chander*** reported in ***(2012) 9 SCC 460*** wherein in paragraph Nos.12 and 20 is held as under:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression "prevent abuse of process of any court or otherwise to secure the ends of justice", the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions

of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused."

c. ***Rajneesh Aggarwal v. Amit J. Bhalla*** reported in ***(2001) 1 SCC 631*** wherein in paragraph No.7 is held as under:

"7. So far as the question of deposit of the money during the pendency of these appeals is concerned, we may state that in course of hearing the parties wanted to settle the matter in Court and it is in that connection, to prove the bona fides, the respondent deposited the amount covered under all the three cheques in the Court, but the complainant's counsel insisted that if there is going to be a settlement, then all the pending cases between the parties should be settled, which was, however not agreed to by the respondent and, therefore, the matter could not be settled. So far as the criminal complaint is concerned, once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the court trying the offence. But by no stretch of imagination, a criminal proceeding could be quashed on account of deposit of money in the court or that an order of quashing of criminal proceeding, which is otherwise unsustainable in law, could be sustained because of the deposit of money in this Court. In this

view of the matter, the so-called deposit of money by the respondent in this Court is of no consequence."

d. ***Raj Reddy Kallem v. State of Haryana*** reported in ***(2024) 8 SCC 588*** wherein in paragraph Nos.9, 10, 14 to 16 and 21 to 24 is held as under:

9. *On 14-3-2023 [Raj Reddy Kallem v. State of Haryana, 2023 SCC OnLine SC 1942] , this Court passed an interim order directing the appellant to deposit Rs 20 lakhs before the trial court and sought a compliance report from the trial court. This Court order dated 14-3-2023 [Raj Reddy Kallem v. State of Haryana, 2023 SCC OnLine SC 1942] reads as follows : (Raj Reddy Kallem case [Raj Reddy Kallem v. State of Haryana, 2023 SCC OnLine SC 1942] , SCC OnLine SC paras 1-4)*

> *"1. The petitioner shall deposit the sum of Rs 20 lakhs before the trial court within two weeks. The trial court shall pass an order recording the deposit and also indicate whether the petitioner has duly complied with the present order.*
>
> *2. A copy of this order shall be communicated directly to the Judicial Magistrate First Class, Ambala (seized of Criminal Case No. 78 of 2014 arising out of FIR 35 of 2014).*
>
> *3. The trial court shall then report compliance to the Registry to this Court.*
>
> *4. List after three weeks."*

10. Pursuant to the aforesaid order of this Court, the appellant submitted two cheques of amount Rs 10 lakhs each before the trial court and the trial court

forwarded a compliance report to this Court mentioning that the appellant has duly complied with the interim order dated 14-3-2023 [Raj Reddy Kallem v. State of Haryana, 2023 SCC OnLine SC 1942] . Thereafter, on the next date of hearing on 8-8-2023, this Court recorded [Raj Reddy Kallem v. State of Haryana, 2023 SCC OnLine SC 1944] the compliance of its previous order and directed the appellant to further deposit Rs 10 lakhs towards interest for delayed payment. To make the matter clear, we would like to reproduce that interim order [Raj Reddy Kallem v. State of Haryana, 2023 SCC OnLine SC 1944] of this Court, which read as follows : (Raj Reddy Kallem case [Raj Reddy Kallem v. State of Haryana, 2023 SCC OnLine SC 1944] , SCC OnLine SC paras 1-2)

> *"1. It is submitted that the petitioner has deposited Rs 20 lakhs in trial court, having regard to the delay in payment (8 years). In the circumstances of the case, justice would demand that the petitioner deposits a further sum of Rs 10 lakhs towards interest for the delayed payment (working out to 6% p.a. for the last 8 years). This amount shall be deposited in Court within four weeks from today. The demand draft which has been deposited before the trial court shall be re-validated, in case it has expired in the meanwhile.*
>
> *2. List after six weeks."*

14. As per Section 147 of the NI Act, all offences punishable under the Negotiable Instruments Act are compoundable. However, unlike Section 320CrPC, the NI Act does not elaborate upon the manner in which offences should be compounded. To fill up this legislative gap, a three-Judge Bench of this Court in Damodar S. Prabhu v. Sayed Babalal H. [Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328] , passed some guidelines under Article 142 of the Constitution of India regarding compounding of

offence under Section 138 NI Act. But most importantly, in that case, this Court discussed the importance of compounding offence under Section 138 of the NI Act and also the legislative intent behind making the dishonour of cheque a crime by enacting a special law. This Court had observed that : (SCC p. 666, paras 4-5)

> *"4. … What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions.*
>
> *5. Invariably, the provision of a strong criminal remedy has encouraged the institution of a large number of cases that are relatable to the offence contemplated by Section 138 of the Act. So much so, that at present a disproportionately large number of cases involving the dishonour of cheques is choking our criminal justice system, especially at the level of Magistrates' Courts."*

15. Further, after citing authors pointing towards compensatory jurisprudence within the NI Act, this Court observed that : (Damodar S. Prabhu case [Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328] , SCC p. 670, para 18)

> *"18. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect."*

16. This Court has time and again reiterated that in cases of Section 138 of the NI Act, the accused must try for compounding at the initial stages instead of the later stage, however, there is no bar to seek the

compounding of the offence at later stages of criminal proceedings including after conviction, like the present case (see : K.M. Ibrahim v. K.P. Mohammed [K.M. Ibrahim v. K.P. Mohammed, (2010) 1 SCC 798 : (2010) 1 SCC (Civ) 263 : (2010) 1 SCC (Cri) 921] and O.P. Dholakia v. State of Haryana [O.P. Dholakia v. State of Haryana, (2000) 1 SCC 762 : 2000 SCC (Cri) 310]).

21. All the same, in this particular given case even though the complainant has been duly compensated by the accused yet the complainant does not agree for the compounding of the offence, the courts cannot compel the complainant to give "consent" for compounding of the matter. It is also true that mere repayment of the amount cannot mean that the appellant is absolved from the criminal liabilities under Section 138 of the NI Act. But this case has some peculiar facts as well.

22. In the present case, the appellant has already been in jail for more than 1 year before being released on bail and has also compensated the complainant. Further, in compliance of the order dated 8-8-2023 [Raj Reddy Kallem v. State of Haryana, 2023 SCC OnLine SC 1944] , the appellant has deposited an additional amount of Rs 10 lakhs. There is no purpose now to keep the proceedings pending in appeal before the lower appellate court.

23. Here, we would like to point out that quashing of a case is different from compounding. This Court in JIK Industries [JIK Industries Ltd. v. Amarlal V. Jumani, (2012) 3 SCC 255 : (2012) 2 SCC (Civ) 82 : (2012) 2 SCC (Cri) 125] distinguished the quashing of case from compounding in the following words : (SCC p. 269, para 43)

> *"43. Quashing of a case is different from compounding. In quashing the court applies it but in compounding it is primarily based on consent of the injured party.*

Therefore, the two cannot be equated."

24. In our opinion, if we allow the continuance of criminal appeals pending before the Additional Sessions Judge against the appellant's conviction then it would defeat all the efforts of this Court in the last year where this Court had monitored this matter and ensured that the complainant gets her money back."

e. ***Damodar S. Prabhu v. Sayed Babalal H.,*** reported in ***(2010) 5 SCC 663*** wherein in paragraph Nos.3,4 and 18 is held as under:

"3. However, there are some larger issues which can be appropriately addressed in the context of the present case. It may be recalled that Chapter XVII comprising Sections 138 to 142 was inserted into the Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988). The object of bringing Section 138 into the statute was to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. It was to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficient arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers. If the cheque is dishonoured for insufficiency of funds in the drawer's account or if it exceeds the amount arranged to be paid from that account, the drawer is to be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

4. It may be noted that when the offence was inserted in the statute in 1988, it carried the provision for imprisonment up to one year, which was revised to two years following the amendment to the Act in

2002. It is quite evident that the legislative intent was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two years provides a remedy of a punitive nature, the provision for imposing a "fine which may extend to twice the amount of the cheque" serves a compensatory purpose. What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions.

18. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice delivery. The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute. Furthermore, the written submissions filed on behalf of the learned Attorney General have stressed on the fact that unlike Section 320 CrPC, Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court."

f. ***R.Vijayan v. Baby And Another*** reported in ***(2012) 1 SCC 260*** wherein in paragraph Nos.17 to 19 is held as under:

"17. The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation under Section 357(1)(b) of the Code. Though a complaint under Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under Section 357(1)(b) of the Code and the provision for compounding the offences under Section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under Section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary.

18. 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 up to 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.

19. 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 dishonour 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 the 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."

g. ***Yasir Amin Khan v. Abdul Rashid Ganie*** reported in ***2021 SCC ONLINE J&K 934*** wherein in paragraph Nos.8, 9, 14, 15 and 18 is held as under:

8. In Section 138 of N.I. Act, the word "or" has been employed which would mean discretion has been conferred in the matter of sentencing the person convicted for offence under Section 138 of N.I. Act. However, while exercising this discretion, the trial Court must be alive to the object of the enactment i.e., N.I. Act, particularly the object of engrafting Section 138 in the said Act. The prime object of enacting Chapter XVII, which was inserted in the N.I. Act by Act 66 of 1988 w.e.f 01.04.1989, is to control and discourage the menace of cheque bouncing in the course of commercial transactions and to encourage the culture of use of cheques and enhancing the credibility of the instrument. This was very aptly noticed by the Hon'ble Supreme Court in the case of Damoder S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663. Paragraphs (3) and (4) of the judgment are

noteworthy in this regard and are, thus, reproduced hereunder:

> *"3. However, there are some larger issues which can be appropriately addressed in the context of the present case. It may be recalled that Chapter XVII comprising Sections 138 to 142 was inserted into the Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988). The object of bringing Section 138 into the statute was to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. It was to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficient arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers. If the cheque is dishonoured for insufficiency of funds in the drawer's account or if it exceeds the amount arranged to be paid from that account, the drawer is to be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both".*
>
> *"4 It may be noted that when the offence was inserted in the statute in 1988, it carried the provision for imprisonment up to one year, which was revised to two years following the amendment to the Act in 2002. It is quite evident that the legislative intent was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two years provides a remedy of a punitive nature, the provision for imposing a fine which may extend to twice the amount of the cheque serves a compensatory purpose. What must be remembered is that the*

dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions".

(underlined by me)

9. Later in paragraphs (17) and 18 of the said judgment, the Hon'ble Supreme Court, referring to recently published commentary on the topic of Section 138 of N.I. Act, made very apt observations. It was noticed by the Hon'ble Supreme that Unlike other forms of crime, the punishment for commission of offence under Section 138 of N. I. Act is not a means of seeking retribution, but is more a means to ensure payment of money and, therefore, in respect of offence of dishonor of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. For ready reference, the observations of the Hon'ble Supreme Court in paragraphs (17) and (18) are reproduced:

"17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act. Unlike that for other forms of crime, the punishment here (in so far as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque. If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on

the other, we will find that the bulk was settled and only a miniscule number continued."

18. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice-delivery. The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute. Furthermore, the written submissions filed on behalf of the learned Attorney General have stressed on the fact that unlike Section 320 of the CrPC, Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court"

(emphasis supplied)

14. In a later case of R. Vijayan v. Baby, (2012) 1 SCC 260, their Lordships of Hon'ble Supreme Court culled out the following principle from the provisions of Chapter XVII of N.I. Act which states as under:

"The provision for levy of fine which is linked to the cheque amount and may extend to twice the amount of the cheque (section 138) thereby rendering section 357(3) virtually infructuous in so far as cheque dishonour cases are concerned".

15. The Hon'ble Supreme Court in the later part of the said judgment while alluding to the intention of the Legislature for enacting Section 138 held thus:

> *"17. The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation under section 357(1)(b) of the Code. Though a complaint under section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount, (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under section 357 (1)(b) of the Code and the provision for compounding the offences under section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary".*

"18. 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-todo 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".

"19. 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 dishonour 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".

(underlined by me to supply emphasis)

18. Indisputably, the Legislature has given discretion to the Magistrate to impose a sentence of fine which may extend to double the amount of cheque and, therefore, the sentence of fine whenever imposed by the Criminal Court upon conviction of accused under Section 138 of N.I. Act must be sufficient enough to adequately compensate the complainant. The amount of cheque and the date from which the amount under the cheque has become payable along with payment of reasonable interest may serve as good guide in this

regard. To be consistent and uniform, it is always advisable to impose a fine equivalent to the amount of cheque plus at least 6% interest per annum from the date of cheque till the date of judgment of conviction. However, before inflicting such fine, the trial Magistrate must eschew the amount of interim compensation, if any, paid under Section 143A of N.I. Act or such other sum which the accused might have paid during the trial or otherwise towards discharge of liability. It may or may not accompany the sentence of simple imprisonment. It is purely in the discretion of the trial Magistrate but having regarding to the object of legislation, it shall be appropriate if the sentence of imprisonment imposed is kept at the minimum unless, of course, the conduct of accused demands otherwise."

13. In reply, Sri.M.N.Nehru, learned counsel contended that in the absence of revision petition filed by the complainant seeking enhanced compensation amount, directing the revision petitioner to pay enhanced fine amount cannot be ordered in a revision petition filed by the accused and sought for allowing the revision petition by setting aside the period of imprisonment of six months.

14. Having heard the parties in detail, this Court perused the material on record meticulously.

15. On such perusal of the material on record, it is crystal clear that three cheques were given by accused

which admittedly came to be dishonoured. Therefore, conviction order is just and proper.

16. The fine amount of Rs.22,00,000/- is paid by the revision petitioner as referred to supra and therefore, this Court passed an order for release of the accused on 10.08.2022. Accused has undergone the sentence from 02.08.2022 to 15.08.2022.

17. Therefore, the precise question that needs to be answered by this Court in this revision is whether the Court is powerless in a given case to set aside the imprisonment unless the compensation amount is enhanced as is contended by learned counsel for the respondent.

18. It is settled principles of law and requires no emphasis that prime object of enacting the provision under Section 138 of the Negotiable Instruments Act is to recover the amount covered under the dishonored cheque at the earliest point of time rather than penalizing the accused.

19. Reasons are obvious inasmuch as if a cheque gets dishonored, the payee will suffer hardship in meeting his financial commitments. Therefore, the framers of legislation in Section 138 itself accorded the discretion for the learned Trial Magistrate to impose double the cheque amount as the fine or imprisonment for maximum period of two years or both.

20. Perhaps when the legislature incorporated Section 138 into the Negotiable Instruments Act, it did not envisage that enormous amount of litigation would mount over a period of time wherein Courts are burdened with the pendency of private complaints filed under Section 138 of the Negotiable Instruments Act.

21. Interesting to note that statistics depict that more than 33 Lakh cases were pending as on 13.04.2022. Hon'ble High Courts across the country and Hon'ble Apex Court did notice the huge pendency and expressed concern not only towards the genuine complainants but also the economy of the country.

22. Repeated directions and guidelines are issued for the prosecution of criminal cases filed under Section 138 of the Negotiable Instrument Act *vis-à-vis*, the accused who is charge sheeted with the other penal provisions including Indian Panel Code provisions.

23. Taking note of these developments, Hon'ble Apex Court in the case of ***Indian Bank Association & Ors v. Union of India & Ors*** reported in ***(2014) 5 SCC 590,*** took a pragmatic view in understanding the scope and ambit of the criminal trial for an offence punishable under Section 138 of the Negotiable Instruments Act and has formulated five important directions in the said judgment.

24. These directions are culled out here under for ready reference:

> *"23. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the criminal courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given:*

23.1. The Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinise the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

23.2. The MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. The court, in appropriate cases, may take the assistance of the police or the nearby court to serve notice on the accused. For notice of appearance, a short date be fixed. If the summons is received back unserved, immediate follow-up action be taken.

23.3. The court may indicate in the summons that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, the court may pass appropriate orders at the earliest.

23.4. The court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 CrPC to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for recalling a witness for cross-examination.

23.5. The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses instead of examining them in the court. The witnesses to the complaint and the accused must be available for cross-examination as and when there is direction to this effect by the court."

25. Even after such directions have been issued by Hon'ble Apex Court in the case of ***Indian Bank Association*** supra, huge pendency of the criminal prosecution under Section 138 of the Negotiable Instruments Act could not be reduced.

26. Therefore, Hon'ble Apex Court decided to *suo moto* register a Public Interest Litigation in WP (Criminal) No.2/2020 (PIL-W) passed an order on 16.04.2021, whereby following directions were issued to all the Hon'ble High Courts across the country to formulate guidelines for disposal of the criminal prosecutions under Section 138 of the Negotiable Instruments Act:

> *"24. The upshot of the above discussion leads us to the following conclusions:*
>
> *1) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.*

2) *Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.*

3) *For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.*

4) *We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.*

5) *The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.*

6) *Judgments of this Court in Adalat Prasad (supra) and Subramanium Sethuraman (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.*

7) *Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in Meters and Instruments (supra) do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of this Court dated 10.03.2021.*

8) *All other points, which have been raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned*

Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee."

27. Taking note of the object that is sought to be achieved by enacting Section 138 as penal provision under the Negotiable Instrument Act and its application, approximately for a period of four decades and result thereof would go to show that criminal Courts across the country are required to exercise different mindset while dealing with the criminal prosecution under Section 138 of the Negotiable Instruments Act.

28. In this regard, it is worthy to note the principles of law enunciated by the Hon'ble Apex Court in the case of ***R. Vijayan vs. Baby And Another***, reported in **(2012) 1 SCC 260**, at paragraphs 17 and 18 in the said judgment it has been held as under:

"17. *The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation under Section 357(1)(b) of the Code. Though a complaint under*

Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under Section 357(1)(b) of the Code and the provision for compounding the offences under Section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under Section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary.

18. *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 up to 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."

29. Likewise, it is also worth to rely upon the principles of law enunciated in the case of ***M/s. Gimpex Private Limited vs. Manoj Goel***, reported in **(2022) 11 SCC 705**, the relevant paragraphs of which are culled out hereunder:

"28*. The nature of the offence under Section 138 of the NI Act is quasi-criminal in that, while it arises out of a civil wrong, the law, however, imposes a criminal*

penalty in the form of imprisonment or fine. The purpose of the enactment is to provide security to creditors and instil confidence in the banking system of the country. The nature of the proceedings under Section 138 of the NI Act was considered by a three-Judge Bench decision of this Court in P. Mohanraj v. Shah Bros. Ispat (P) Ltd. [P. Mohanraj v. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258] , where R.F. Nariman, J., after adverting to the precedents of this Court, observed that : (SCC p. 317, para 53)

> *"53. A perusal of the judgment in IshwarlalBhagwandas [S.A.L. Narayan Row v. IshwarlalBhagwandas, (1966) 1 SCR 190 : AIR 1965 SC 1818] would show that a civil proceeding is not necessarily a proceeding which begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature. Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, it is clear that a Section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act."*

29. *Given that the primary purpose of Section 138 of the NI Act is to ensure compensation to the complainant, the NI Act also allows for parties to enter*

into a compromise, both during the pendency of the complaint and even after the conviction of the accused. The decision of this Court in Meters & Instruments (P) Ltd. v. Kanchan Mehta [Meters & Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC] summarises the objective of allowing compounding of an offence under Section 138 of the NI Act : (SCC p. 572, para 18)

> *"18.2. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court."*

30. *In Prakash Gupta v. SEBI [Prakash Gupta v. SEBI, (2021) 17 SCC 451] a two-Judge Bench of this Court of which one of us (D.Y. Chandrachud, J.) was a part, analysed the decision in Meters & Instruments [Meters & Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC] in the context of a discussion on whether compounding of an offence requires the consent of an aggrieved party (para 78). The decision in Meters & Instruments [Meters & Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC] is cited above in regard to the rationale behind compounding of offences punishable under Section 138. In Damodar S. Prabhu v. Sayed Babalal H. [Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663] a three-Judge Bench of this Court observed that the effect of an offence under Section 138 of the NI Act is limited to two private parties involved in a commercial transaction. However, the intent of the legislature in providing a criminal sanction for dishonour of cheques is to ensure the credibility of transactions involving*

negotiable instruments. The Court observed : (Damodar S. Prabhu case [Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663] , SCC p. 666, para 4)

> *"4. It may be noted that when the offence was inserted in the statute in 1988, it carried the provision for imprisonment up to one year, which was revised to two years following the amendment to the Act in 2002. It is quite evident that the legislative intent was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two years provides a remedy of a punitive nature, the provision for imposing a 'fine which may extend to twice the amount of the cheque' serves a compensatory purpose. What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions."*

31. *However, this Court also noted that the introduction of a criminal remedy has given rise to a worrying trend where cases under Section 138 of the NI Act are disproportionately burdening the criminal justice system. This Court observed : (Damodar S. Prabhu case [Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC] , SCC p. 666, para 5)*

> *"5. Invariably, the provision of a strong criminal remedy has encouraged the institution of a large number of cases that are relatable to the offence contemplated by Section 138 of the Act. So much*

so, that at present a disproportionately large number of cases involving the dishonour of cheques is choking our criminal justice system, especially at the level of Magistrates' Courts. As per the 213th Report of the Law Commission of India, more than 38 lakhs cheque bouncing cases were pending before various courts in the country as of October 2008. This is putting an unprecedented strain on our judicial system."

32. *Thus, under the shadow of Section 138 of the NI Act, parties are encouraged to settle the dispute resulting in ultimate closure of the case rather than continuing with a protracted litigation before the court. This is beneficial for the complainant as it results in early recovery of money; alteration of the terms of the contract for higher compensation and avoidance of litigation. Equally, the accused is benefitted as it leads to avoidance of a conviction and sentence or payment of a fine. It also leads to unburdening of the judicial system, which has a huge pendency of complaints filed under Section 138 of the NI Act.*

33. *In Damodar S. Prabhu [Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC] this Court had emphasised that the compensatory aspect of the remedy under Section 138 of the NI Act must be preferred and has encouraged litigants to resolve disputes amicably. The Court observed : (SCC pp. 670-73, paras 18-19 & 23)*

"18. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being

compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice delivery. The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute. Furthermore, the written submissions filed on behalf of the learned Attorney General have stressed on the fact that unlike Section 320CrPC, Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court.

19. As mentioned earlier, the learned Attorney General's submission is that in the absence of statutory guidance, parties are choosing compounding as a method of last resort instead of opting for it as soon as the Magistrates take cognizance of the complaints. One explanation for such behaviour could be that the accused persons are willing to take the chance of progressing through the various stages of litigation and then choose the route of settlement only when no other route remains. While such behaviour may be viewed as rational from the viewpoint of litigants, the hard facts are that the undue delay in opting for compounding contributes to the arrears pending before the courts at various levels. If the accused is willing to settle or compromise by way of compounding of the offence at a later stage of litigation, it is generally indicative of some merit in the complainant's case. In such cases it would be desirable if parties choose compounding during the earlier stages of litigation. If however, the accused has a valid

defence such as a mistake, forgery or coercion among other grounds, then the matter can be litigated through the specified forums.

***

23. We are also in agreement with the learned Attorney General's suggestions for controlling the filing of multiple complaints that are relatable to the same transaction. It was submitted that complaints are being increasingly filed in multiple jurisdictions in a vexatious manner which causes tremendous harassment and prejudice to the drawers of the cheque. For instance, in the same transaction pertaining to a loan taken on an instalment basis to be repaid in equated monthly instalments, several cheques are taken which are dated for each monthly instalment and upon the dishonour of each of such cheques, different complaints are being filed in different courts which may also have jurisdiction in relation to the complaint. In light of this submission, we direct that it should be mandatory for the complainant to disclose that no other complaint has been filed in any other court in respect of the same transaction. Such a disclosure should be made on a sworn affidavit which should accompany the complaint filed under Section 200CrPC. If it is found that such multiple complaints have been filed, orders for transfer of the complaint to the first court should be given, generally speaking, by the High Court after imposing heavy costs on the complainant for resorting to such a practice. These directions should be given effect prospectively."

34. *This concern has been reiterated recently by a Constitution Bench of this Court in Expeditious Trial of*

Cases Under Section 138 of NI Act 1881, In re [Expeditious Trial of Cases Under Section 138 of NI Act 1881, In re, (2021) 16 SCC 116] , where it was observed that : (SCC paras 5 & 23)

> *"5. The situation has not improved as courts continue to struggle with the humongous pendency of complaints under Section 138 of the Act. The preliminary report submitted by the learned Amici Curiae shows that as on 31-12-2019, the total number of criminal cases pending was 2.31 crores, out of which 35.16 lakhs pertained to Section 138 of the Act. The reasons for the backlog of cases, according to the learned Amici Curiae, is that while there is a steady increase in the institution of complaints every year, the rate of disposal does not match the rate of institution of complaints. Delay in disposal of the complaints under Section 138 of the Act has been due to reasons which we shall deal with in this order.*
>
> ***
>
> *23. Though we have referred all the other issues which are not decided herein to the Committee appointed by this Court on 10-3-2021 [Expeditious Trial of Cases Under Section 138 of NI Act 1881, In re, 2021 SCC OnLine SC 354] , it is necessary to deal with the complaints under Section 138 pending in appellate courts, High Courts and in this Court. We are informed by the learned Amici Curiae that cases pending at the appellate stage and before the High Courts and this Court can be settled through mediation. We request the High Courts to identify the pending revisions arising out of complaints filed under Section 138 of the Act and refer them to*

mediation at the earliest. The courts before which appeals against judgments in complaints under Section 138 of the Act are pending should be directed to make an effort to settle the disputes through mediation."

35. *The pendency of court proceedings under Section 138 of the NI Act and the multiplicity of complaints in which a cause of action arising from one transaction is litigated has dampened the ease of doing business in India, impacted business sentiments and hindered investments from investors. Recognising these issues, the Ministry of Finance by a notice [<https://financialservices.gov.in/sites/default/files/De criminalization%20-%20Public%20Comm ents.pdf>.] dated 8-6-2020, has sought comments regarding decriminalisation of minor offences, including Section 138 of the NI Act, to improve the business sentiment in the country."*

30. So also in the case of **P. Mohanraj vs. Shah Brothers Ispat Private Limited**, reported in ***(2021) 6 SCC 258***, wherein at paragraphs 49, 50 and 51 it has been held as under:

"49*. A cursory reading of Section 142 will again make it clear that the procedure under the CrPC has been departed from. First and foremost, no court is to take cognizance of an offence punishable under Section 138 except on a complaint made in writing by the payee or the holder in due course of the cheque — the victim. Further, the language of Section 142(1)(b) would again show the hybrid nature of these provisions*

inasmuch as a complaint must be made within one month of the date on which the "cause of action" under clause (c) of the proviso to Section 138 arises. The expression "cause of action" is a foreigner to criminal jurisprudence, and would apply only in civil cases to recover money. Chapter XIII CrPC, consisting of Sections 177 to 189, is a chapter dealing with the jurisdiction of the criminal courts in inquiries and trials. When the jurisdiction of a criminal court is spoken of by these sections, the expression "cause of action" is conspicuous by its absence.

***50**. By an Amendment Act of 2002, various other sections were added to this Chapter. Thus, under Section 143, it is lawful for a Magistrate to pass a sentence of imprisonment for a term not exceeding one year and a fine exceeding INR 5000 summarily. This provision is again an important pointer to the fact that the payment of compensation is at the heart of the provision in that a fine exceeding INR 5000, the sky being the limit, can be imposed by way of a summary trial which, after application of Section 357 CrPC, results in compensating the victim up to twice the amount of the bounced cheque. Under Section 144, the mode of service of summons is done as in civil cases, eschewing the mode contained in Sections 62 to 64 CrPC. Likewise, under Section 145, evidence is to be given by the complainant on affidavit, as it is given in civil proceedings, notwithstanding anything contained in the CrPC. Most importantly, by Section 147, offences under this Act are compoundable without any intervention of the court, as is required by Section 320(2) CrPC.*

***51**. By another amendment made in 2018, the hybrid nature of these provisions gets a further tilt towards a civil proceeding, by the power to direct interim*

compensation under Sections 143-A and 148 which are set out hereinbelow:

> *"143-A. Power to direct interim compensation.— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant—*
>
> *(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and*
>
> *(b) in any other case, upon framing of charge.*
>
> *(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.*
>
> *(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.*
>
> *(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.*

(5) The interim compensation payable under this section may be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under Section 138 or the amount of compensation awarded under Section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.

***

148. Power of appellate court to order payment pending appeal against conviction.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under Section 138, the appellate court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under Section 143-A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The appellate court may direct the release of the amount deposited by the appellant to the

complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

31. Keeping in mind the above legal principles, in the first place, the accused who is the drawer of the cheque which got bounced should not be equated as an accused with any other penal provision. Therefore, Hon'ble Apex Court in the case of ***Indian Bank Association*** supra stated that accused needs to straight away execute a bond for his appearance. So also, there is- a clear departure from other prosecutions in other penal statutes, accused was bound to enter the plea of defence and criminal prosecution under section 138 of the Negotiable Instruments Act would commence with the defence evidence and not with the evidence of the

complainant, taking note of presumption available under section 139 of the Negotiable Instruments Act.

32. However in a given case, if the accused can demonstrate before the Court that he has got a good defence whereby he need not step into the witness box and from the available material on record, he can get the case closed by recording an order of acquittal, he is required to file an application under section 145(2) of the Negotiable Instruments Act making out a valid defence.

33. From the directions of Hon'ble Apex Court in the case of ***Indian Bank Association*** supra, it is clear that the prosecution under Section 138 of the Negotiable Instruments Act is in the nature of quasi civil and quasi criminal in nature.

34. Therefore, the Courts while exercising its discretion at the time of passing the appropriate sentence in a given case, is entitled to use its discretionary power in awarding imprisonment or fine or with both.

35. At any rate, an accused who has suffered an order of conviction in a prosecution under Section 138 of the Negotiable Instruments Act, should not be equated with that of a accused who has been convicted for other penal statutes.

36. In the light of the above discussions, the decisions that are relied upon by learned counsel for the respondent primarily dealt with the prosecution or conviction of an accused who has been charged with other penal provisions except in the case of ***Raj Reddy Kallem*** and ***Rajneesh Aggarwal*** supra.

37. Sum total of aforesaid principles of law enunciated in the decisions relied on by the accused would go to show that the Courts are not powerless in ordering the fine amount which would justify that the delay that is caused to the complainant.

38. Needless to emphasize that when the legislature has granted the power to a Magistrate to impose double the fine amount, legislature in its wisdom,

was aware of the provisions of Section 80 of the Negotiable Instruments Act, wherein the interest on a Negotiable Instrument where no interest is specified, is to be granted at the rate of 18% per annum, after the act was amended.

39. Taking note of the same, Hon'ble High Court of *Jammu and Kashmir and Ladakh* in the case of ***Yasir Amin Khan v. Abdul Rashid Ganie*** supra has directed the interest to be calculated atleast at 6% per annum and then directed additional fine amount to be paid by the accused for putting the *lis* at rest.

40. It is pertinent to note that such a power is available to the Hon'ble Apex Court under Article 142 of the Indian Constitution and same power cannot be exercised by the High Court as is held in Catena of Judicial Pronouncements.

41. Thus, this Court though sitting in the revisional jurisdiction, while appreciating the grounds urged on behalf of the accused/revision petitioner can very well

exercise its power to the sole factor namely whether in a given case, sentence ordered is appropriate sentence or not.

42. Even though the revisional powers are limited, Court enjoys the ample power in ordering an appropriate sentence as the *lis* is continued in this revision as well.

43. Keeping the above principles in the background when the factual aspects of the present case are analyzed since the accused/revision petitioner has already complied the payment of entire compensation amount of Rs.22,00,000/- as referred to supra and was in custody from 02.08.2022 to 15.08.2022, this Court is of the considered opinion that six months imprisonment ordered by the learned Trial Magistrate, in addition to the payment of the compensation amount needs to be set aside.

44. In view of the foregoing discussions, following:

ORDER

i. Revision petition is ***allowed in part***.

ii. While maintaining the order of conviction of the accused/revision petitioner for the offence punishable under Section 138 of the Negotiable Instrument Act, custody period from 02.08.2022 to 15.08.2022 is treated as period of imprisonment by setting aside the imprisonment of six months ordered by the learned Trial Magistrate confirmed by the learned Judge in the First Appellate Court.

iii. Since, the entire compensation amount is paid, fine amount of Rs.10,000/- imposed by the learned Trial Magistrate confirmed by the learned Judge in the First Appellate Court is here by set aside.

iv. Amount in deposit is ordered to be withdrawn by the complainant/respondent under due identification.

v. Since, the revision petition is now disposed of on merits, cash surety is ordered to be

withdrawn by revision petitioner under due identification.

Office is directed to return the Trial Court Records with copy of this order.

Sd/-
(V SRISHANANDA)
JUDGE

KAV
List No.: 1 Sl No.: 84
CT: BHK