

## COMPENSATION UNDER NEGOTIABLE INSTRUMENTS ACT AND CONSEQUENCES

By

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In our country because of the amendment of the Negotiable Instruments Act to Section 138 many cases of dishonour of cheques have been pooled up and many Courts in our Country are burdened with those cases. The proceedings under Section 138 of Negotiable Instruments Act are summary in nature and the legislature has given wide powers to the concerned judicial Magistrate of First Class to impose fine of double the cheque amount in order to curb the white collar offenders and to punish them severely. So that the other persons will be afraid of issuing cheques without having sufficient funds in their account. The intention of Legislature is beneficial to the holder of the cheque *i.e.* if any cheque is bounced and if he succeeds in proving the essential ingredients under Section 138 of Negotiable Instruments Act the accused there in will be punished by the Court by imprisonment for a period of one year and a fine double the cheque amount and thereby there is every possibility for him to realise the cheque amount as compensation out of the fine amount.

While the matter stood thus the Hon'ble Apex Court while delivering the judgment reported in (2000 (1) ALT (Cr.) 42 (SC), in the case of *K. Bhaskaran v. Sankaran Vaidhyan Balan*) delivered by justice *K.T. Thomas* and another restricting the fine to only Rs.5,000/-. Because the Judicial Magistrate of I Class has no power to impose the fine amount more than Rs.5,000/-. But, their Lordship had observed that there is a power to the concerned Magistrate to impose any amount of compensation while disposing of the said matter. With a great respect to the Apex Court as per the said judgment now all the

judicial Magistrates of first class who are dealing with cases under Negotiable Instruments Act are imposing fine of Rs.5,000/- only in addition to the imprisonment to the accused and some of the Magistrates are awarding compensation as to their wish by exercising the powers under Section 357 of Cr.P.C.

Now the main trouble starts with recovery of the compensation amount from the accused. Why I am stressing on this aspect is, the complainant who filed the complaint into the Court is very much eager in getting the compensation from the accused which was awarded by the Court and he will sincerely feel that he will get compensation amount from the accused by any means. But, it is not so easy to get the compensation amount from the concerned accused. The complainant generally expects that immediately after the delivery of judgment the accused will pay compensation amount or at least he expects to receive the same when judgment delivered by the Lower Court is confirmed by the appellate Court. But, actually he will not get the compensation amount from the Lower Court or from the appellate Court and if he approaches the Counsel who filed the complaint into the Court he may also express his sorrow face that he does not know what should he do.

Any order passed by the Court must be a workable order and must be an executable order otherwise passing of the order and giving of the judgments without its execution is of no use.

Section 431 Cr.P.C. is only a relevant provision which we can find in the Code of

Criminal Procedure with regard to the recovery of compensation it reads as follows:

***Section 431 Money ordered to be paid recoverable as a fine :***

Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for shall be recoverable as if it were a fine :

Provided that Section 421 shall, in its application to an order under Section 359 by virtue of this section, be construed as if in the proviso to sub-section (1) of Section 421, after the words and figures “under Section 357”, the words and figures “or an order for payment of costs under Section 359” had been inserted.

***Section 421 : Warrant for levy of fine :***

(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say it may.

- (a) Issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender,
- (b) Issue a warrant to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property or both the defaulter :

Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed and for the summary determination of any claims made by any person or other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1) the Collector shall realize the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law : Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

***423. Warrant for levy of fine issued by a Court in any territory to which this Code does not extend.***

According to Section 431 Cr.PC any amount ordered by the Court including fine shall be recoverable as if it is fine as provided under Section 421 of Cr.P.C. As per Section 421 of Cr.P.C. the compensation amount can be realized by attachment of sale of immovable property or by sending the warrant to the District Collector for realization of this amount by issuing a distress warrant *etc.*

We all know pretty well that how the revenue people are attending the Court Orders and it is very difficult for complainant who was given the order by the Court of award of compensation in realising the same through revenue authorities. In my little experience of service I never come across, where a distress warrant has been executed by the Revenue people. We are awarding compensation to the complainant by resorting to the procedure above he could not get fruits of award so easily. Then there would be no meaning in awarding compensation to the complainant when it is very difficult for the complainant to realize the same and if the common man had also develops the

same opinion that only for the sake of paper and only for the sake of eye wash of the complainant this compensation have been awarded by the Court then the very purpose of amendment would be defeated. If this attitude or even this opinion has been formed by the common man/litigant public who approaches the Court, the prestige of the Courts will be lowered in the Society.

To avoid the above problems to my little mind I had one solution *i.e.* a suitable amendment has to be made in the Negotiable Instrument Act and also to Section 357 of Cr.P.C. Since the proceedings under Negotiable Instrument Act are quasi civil and criminal if any award passed by the Court, the complainant shall have a right to execute the same by executing that award by following procedure under Order 21 of Code of Civil Procedure. So that it will be very easy for the complainant to get realise

the compensation amount award under Section 357 of Cr.P.C.

In view of the proviso *i.e.* under Section 357(5) of Cr.P.C. which reads as follows :

*“At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.”*

So with the above proviso the accused will get advantage of appropriation if any suit is filed against him basing on the cheque which is a subject-matter of calendar case instituted under Negotiable Instruments Act.

With this I conclude that the above suitable amendment is very much needed otherwise awarding of compensation is futile exercise by the Courts.

*“Justice is not only to be done but it must seem to have been done.”*

## A NOTE ON JUDICIAL REFORMS

By

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In yester years an eminent Judge *Diwan J.*, came on transfer from Gujarat and adorned the bench of the High Court of Andhra Pradesh. He carved a niche among the members of the Bar for his sweet manners and bonhomie. At the time of his farewell he made some observations which often ring in my ears. He referred to his senior and mentor former Chief Justice of Bombay High Court and great Jurist *M.C. Chagla* and his exhortations to him about the performance on the Bench. While recalling his advice *Diwan J.*, said that the advocates

standing at the Bar are in no way less important and they are respectful persons in society and they should be given due regard by the Judge, sitting on the Bench. This is not to say that other judicial officers lack these qualities. By and large, our judiciary is known, not only for integrity and transparency, but also sobriety and dignity. It is trite to say that the Bench and Bar are two components endeavouring for the common goal *viz* dispensation of justice. They are priests before the altar Goddess of justice.