



M/s Sagar Katha Factory versus Jaswant Singh

Cr. Appeal No.215 of 2013

Reserved on 27.02.2026

Quantum of Sentence

11.03.2026 Present: Mr Karan Singh Kanwar, Advocate, for the appellant.
Ms Shalini Thakur, Advocate for the convict.
The parties have been heard on the quantum of sentence.

2. Mr Karan Singh Kanwar, learned counsel for the appellant/complainant, submitted that the cheque was issued on 02.04.2008. The appellant/complainant was deprived of the money for about 18 years. He had prosecuted the complaint before the learned Trial Court and pursued the appeal before this Court by spending a lot of money. The legislature has enacted the offence punishable under Section 138 of the Negotiable Instruments Act (NI Act) to inspire confidence in financial transactions, and a deterrent view should be taken to fulfil this objective. Therefore, he prayed that a maximum sentence be awarded.

3. Ms Shalini Thakur, learned counsel for the convict, submitted that the convict had to face the agony of trial before the learned Trial Court, and he had to defend himself before this Court. The convict is an elderly person,



and sending him to prison will not serve any useful purpose. Therefore, she prayed that a lenient view be taken.

4. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

5. It was laid down by the Hon'ble Supreme Court in *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138 that the penal provisions of Section 138 of the NI Act is deterrent in nature. It was observed at page 203:

“6. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility into negotiable instruments, including cheques, and to encourage and promote the use of negotiable instruments, including cheques, in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same.”

6. The Court has to weigh the object of Section 138 of the NI Act as well as the agony of trial and the appeal suffered by the convict. Balancing these factors together, the convict is sentenced to undergo simple imprisonment for six months.



7. The convict had issued a cheque for ₹5,50,000/- on 02.04.2008. More than 18 years have elapsed since then. It was rightly submitted on behalf of the complainant that the complainant was deprived of the interest which he would have gained by investing the money. He had to spend the money for prosecuting the complaint and the appeal before this Court, and he is entitled to be compensated for the loss. It was laid down by the Hon'ble Supreme Court in *Kalamani Tex v. P. Balasubramanian*, (2021) 5 SCC 283; (2021) 3 SCC (Civ) 25; (2021) 2 SCC (Cri) 555; 2021 SCC OnLine SC 75 that the Courts should uniformly levy a fine up to twice the cheque amount along with simple interest at the rate of 9% per annum. It was observed at page 291: -

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 NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for the dishonour of a cheque as well as civil liability for the 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 fines up to twice the cheque amount along with simple interest @ 9% p.a. [*R. Vijayan v. Baby*, (2012) 1 SCC 260, para 20; (2012) 1 SCC (Civ) 79; (2012) 1 SCC (Cri) 520]”

8. Balancing all these factors, the convict is ordered to pay the compensation of ₹11,00,000/- (original



cheque amount of ₹5,50,000/- and compensation of ₹5,50,000/-) to the complainant.

9. It was laid down by the Hon'ble Supreme Court in *K.A. Abbas v. Sabu Joseph*, (2010) 6 SCC 230: 2010 SCC OnLine SC 612, the Courts can impose a sentence of imprisonment in default of payment of compensation. It was observed at page 237:

“26. From the above line of cases, it becomes very clear that a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) CrPC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead, directing the accused to pay an amount of compensation to the victim or affected party can ensure the delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person to bars or in addition to a very light sentence of imprisonment. Hence, in default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation, and imposing another fine would be impractical, as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above; otherwise, the very purpose of granting an order of compensation would stand defeated.”



10. This position was reiterated in *R. Mohan v. A.K. Vijaya Kumar*, (2012) 8 SCC 721: 2012 SCC OnLine SC 486, wherein it was observed at page 729:

“29. The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3), compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. An order under Section 357(3) must have the potential to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid by the court on a par with the fine so far as the mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation, as it can be done in case of default in payment of a fine under Section 64 IPC. It is obvious that in view of this, in *Vijayan [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]*, this Court stated that the abovementioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in *Hari Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984]* are as important today as they were when they were made. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding a sentence in default.

30. In view of the above, we find no illegality in the order passed by the learned Magistrate and



confirmed by the Sessions Court in awarding a sentence in default of payment of compensation. The High Court was in error in setting aside the sentence imposed in default of payment of compensation.

11. Therefore, in order to ensure the payment of compensation, the convict will undergo simple imprisonment for four months in default of the payment of compensation. The period of imprisonment, if any, undergone by the convict during the trial would be set off from the substantive sentences of imprisonment. The convict will surrender before the learned Trial Court within one month to serve the sentence imposed upon him, failing which the learned Trial Court shall take appropriate steps to execute the sentence as per law.

12. The record of the learned Courts below be returned forthwith along with the judgment and order.

(Rakesh Kainthla)
Judge

11th March, 2026
(Nikita)