

R.Vijayan Vs Baby and Anr

(Para.12- Sections29(2) CrPc and 138 NIA)

Bench: Justice R.M. Lodha

Appellant: R.Vijayan

Respondent: Baby & Anr.

Citation: (2012) 1 SCC 260

Issue:

- Was fine levied on dishonouring of cheque appropriate?
- Co-existence of fine along with compensation.
- The contentions involved in Sections 29 and 357 of the CrPc and Section 138 of the Negotiable Instruments Act.

Facts:

- A complaint was filed for dishonouring of cheque of Rs 20,000 whereby the court ordered the accused to pay a fine of Rs 2000 and also pay compensation to the complainant and undergo one-month imprisonment.
- This order was challenged by the accused and the court held that hat it could only restore the fine of Rs.2000/- imposed by the Magistrate with the default sentence but not the direction for payment of compensation under section 357(3) of the Code, as it could not co-exist with the imposition of fine.
- Sub-section (3) of section 357, is categorical that the compensation can be awarded only where fine does not form part of the sentence.

Appellant's contentions :

- The complainant filed the complaint under Section 138 of the Negotiable Instruments Act for the dishonouring of cheque and a notice was sent for payment, yet the payment was not made.
- The appellant had issues with the Sections 29 and 357 of the CrPc and also Section 138 of the NIA and mentioned that fines can be levied twice the amount of the cheque in case of failure of restoration of payment of the compensation amount.

Respondent's contentions:

- The initial judgement of payment of fine and imprisonment was filed by the respondent and the first appellate court held that the accused had denied her signature in the postal acknowledgement relating to the notice, the appellant ought to have examined the postman who served the notice; and as the appellant did not do so, the court held that the complainant had not discharged the burden to prove that the notice was duly served on the first respondent.
- Further, an appeal was filed in the High Court where it ordered the restoration of the fine amount and not the compensation.

Judgement:

- The court held that there must be a consequential levy of a fine of an amount sufficient to cheque amount and interest thereon at a fixed rate of 9% p.a, followed by the award of such sum as compensation from the fine amount and the appeal was dismissed.

Relevant Paragraphs:

- Sub-Section (3) of section 357 of the Code, states that where the sentence imposed does not include a fine, that is, where the sentence relates to only imprisonment, the court, when passing judgment, can direct the accused to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. The reason for this is obvious. Sub-section (1) of section 357 provides that where the court imposes a sentence of fine or a sentence of which fine forms a part, the Court may direct the fine amount to be applied in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a Civil Court. Thus, if compensation could be paid from out of the fine, there is no need to award separate compensation. Only where the sentence does not include fine but only imprisonment and the court finds that the person who has suffered any loss or injury by reason of the act of the accused person, requires to be compensated, it is permitted to award compensation under-compensation under section 357(3).
- Section 138 of the Act authorizes the learned Magistrate to impose by way of fine, an amount which may extend to twice the amount of the cheque, with or without imprisonment. Section 29 of the Code deals with the sentences which Magistrates may pass. The Chief Judicial Magistrate is empowered to pass any sentence authorized by law (except a sentence of death or imprisonment for life or imprisonment for a term exceeding seven years).