

(2025) 11 DEL CK 1795
In the Delhi High Court
Case No : Criminal Appeal No. 90 Of 2025

Mohd Umar

APPELLANT

Vs

State Of Nct Of Delhi & Anr.

RESPONDENT

Date of Decision : 01-11-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 357(3), 357(5), 421, 431
Indian Penal Code, 1860 — Section 64, 69
Negotiable Instruments Act, 1881 — Section 138

Citation : (2025) 11 DEL CK 1795

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Alok Tripathi, Amitosh Chaturvedi, Saurabh Mishra, Hitesh Vali, Jitendra Bakshi

Final Decision : Disposed Of

Judgement

Manoj Kumar Ohri, J

CRL.A. 90/2025 and CRL.M.A. 28731/2025 (Seeking direction to adjust the amount paid by applicant in civil suit against the fine imposed by court in proceedings U/s 138 NI Act by Appellant)

1. The subject appeal has been preferred seeking to challenge the Judgment and Order dated 25.08.2022 passed by the learned ASJ, Karkardooma Courts, Delhi in CR. No. 39/2021 titled as Asad Raza v. U.S. Handicrafts and Another in proceedings initiated under Section 138 of NI Act.

2. By way of captioned application, the applicant/appellant seeks the following reliefs:-

a. Adjust the amount of Rs. 33,10,000/- {Thirty Three Lakh Ten Thousand only) paid by the applicant in the civil suit against the amount of fine imposed by the Court in criminal proceeding under Section 138 NI Act, pertaining to the same cheques and same transactions;

b. Proportionately adjust the amount of Rs. 33,10,000/- (Thirty Three Lakh Ten Thousand only) in the default sentence of the Applicant;

3. Notably, the applicant was convicted by the Trial Court in Criminal Complaint No. 56308/2016 under Section 138 of the NI Act vide judgement dated 23.12.2020. He was sentenced with 2 months of simple imprisonment and was further directed to pay a compensation of Rs.1,50,00,000/- within 30 days. In default of payment of compensation, the convict was to undergo simple imprisonment for 1 month.

4. The private respondent being aggrieved with inadequacy of sentence imposed by the trial court sought its enhancement. Vide the impugned judgement, the Sessions Court enhanced the sentence for the offence under Section 138 NI Act to SI for 1 year and while affirming the compensation amount, increased the default sentence to 6 months.

5. On account of same cause of action that had accrued on account of dishonour of the cheque, the respondent had additionally pursued a civil suit being Civil Suit No. 10359/2016 before the Court of Hon'ble District Judge (South-East District), Saket Court, New Delhi titled as Asad Raza Vs. Sh Mohd. Umar & Anr which was decreed in his favour vide judgment dated 27.04.2017. Concededly, in the execution proceedings emanating therefrom, the respondent realised a sum of Rs. 33,10,000/-.

6. Learned counsel for the applicant submits that the appellant having undergone the substantive sentence does not wish to press the accompanying appeal on merits. The appellant is currently undergoing his sentence in default for non-payment of compensation amount. The appellant prays that the amount recovered by the respondent in the civil proceedings be adjusted in the compensation amount as both the proceedings were in respect of the same cheque amount. He places reliance on the decision of High Court of Punjab and Haryana in Vivek Sahni and anr v. Kotak Mahindra Bank Ltd Decided on 18.07.2019 in CRM-M-29187-2019(O&M). He further submits that if the amount is so adjusted, in view of Section 69 IPC, the appellant would be entitled to be released.

7. Learned counsel for the respondent submits that the appeal is time barred with a delay of 879 days and in light of conduct of the appellant, no discretion be exercised in his favour.

8. The appellant has not pressed the present appeal on merits. In so far as the default in lieu of compensation is concerned, it would be beneficial to look at the statutory position. Section 357(3) CrPC states that when a Court imposes a sentence which does not have a fine component, the Court can chose to order the accused person to pay, by way of compensation, some amount to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. Further, Section 357(5) CrPC states that in any subsequent civil suit relating to the same matter, at the time of awarding

compensation, the Court shall take into account any sum paid or recovered as compensation under this section. Now the question which arises is how does the Court ensure that the compensation is paid. Section 431 CrPC states that 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. Section 64 IPC empowers the Court imposing a fine to also prescribe a default sentence which the accused would have to serve if he fails to pay the fine amount. Though Section 357(3) CrPC does not explicitly provide for the power to impose a default sentence, the same can be traced to reading it with Section 431 CrPC as well as Section 64 IPC.

9. The question whether to ensure the payment of such compensation, a default sentence can be imposed by the court, stands conclusively answered by the Supreme Court in *Vijayan v. Sadanandan K. & Anr* decided on 05.05.2009 in SLP (Crl.) No. 3220 of 2008, wherein it has been held that Section 357(3) CrPC has to be read alongwith Section 431 CrPC and Section 64 IPC. It held as follows:-

"22. The provisions of Sections 357(3) and 431 Cr. P.C., when read with Section 64 IPC, empower the Court, while making an order for payment of compensation, to also include a default sentence in case of non-payment of the same. The observations made by this Court in *Hari Singh's case* (supra) are as important today as they were when they were made and if, as submitted by Dr. Pillay, recourse can only be had to Section 421 Cr. P.C. for enforcing the same, the very object of Sub-Section (3) of Section 357 would be frustrated and the relief contemplated therein would be rendered somewhat illusory."

10. The High Court of Punjab and Haryana in *Vivek Sahni* (Supra) held that when the amount under cheque and recovery proceedings under any other provision is same and interconnected, the Courts are well within their power to order adjustment. It held as follows: -

"In view of the aforesaid provisions, it is clear that the interim compensation or compensation ordered by the Court while dealing with criminal case is liable to be accounted for in any subsequent civil suit or proceedings. Even otherwise, this court did not find that there is any prohibition or impediment in ordering adjustment.

Let's try to examine this question from another angle. The intention of the legislature is to introduce provision for speedy recovery of some part of the amount representing the cheque amount as an interim measure. It is not the intention of the legislature that if some part of the cheque amount has already been recovered in a separate proceedings, may be civil proceedings, the amount ordered to be deposited as interim compensation or fine shall still liable to be deposited in the appeal or the trial Court...

Learned counsel for the petitioners has made reference to a judgment passed by the Hon'ble Supreme Court in the case of *D. Purshotama Reddy and another vs. K. Sateesh*, (2008) 8 SCC 505. In that case, Hon'ble Supreme Court was

examining a situation where in the proceedings under Section 138 of the NI Act compensation amount ordered by the court stood paid. For recovery of some amount including the cheque amount, a civil suit had been filed which was decreed along with interest. Question which arose before the Hon'ble Supreme Court was whether such amount is liable to be adjusted. The Court found that the provisions of the Act have to be given purposive interpretation and construction, therefore, the amount of compensation already recovered shall be liable to be adjusted in the decree of the Civil court as per the provisions of sub-section (5) of Section 357 of the Code of Criminal Procedure.

Taking support from the aforesaid judgment, this Court is of the view that the facts of each case particularly when the amount under cheque and recovery proceedings under any other provision is same and interconnected, the Courts are well within their power to order adjustment.”

11. Since Section 357(5) CrPC allows the Court to adjust any amount paid or compensation received in criminal proceedings in any subsequent civil suit relating to the same matter, there is no bar in applying the reverse analogy, and adjusting any amount earlier received in a civil suit pertaining to the same matter, in the subsequent criminal proceedings. This Court deems it fit to adjust the amount received by the respondent in the execution proceedings, i.e. Rs. 33,10,000/-, towards the compensation amount of Rs. 1.5 Crores.

12. Section 69 IPC states that if, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine is paid that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate. The accompanying illustration of the said section is reproduced below:-

Illustration

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment. A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

13. In the present case, a perusal of the nominal roll would show that the appellant has undergone the entire substantive sentence on 26.05.2025. Thus, the default sentence of 6 months is set to expire on 26.11.2025. Taking into account the sum of Rs. 33,10,000/- already received by the respondent in execution proceedings, which amounts to around 22 percent of the total

compensation amount, the default sentence is also reduced by a similar proportion, i.e. by around 39 days. Since the remaining sentence is less than 39 days, the appellant has already undergone the reduced default sentence.

14. Consequently, the appellant is directed to be released forthwith, if not required in any other case.

15. The present application is allowed and the appeal is disposed of in the above terms.

16. A copy of this judgment be communicated to the Trial Court as well as the Jail Superintendent.