

Recovery of Fine

A presentation by:

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ACJM

Dehradun

Relevant Provisions:

Section – 421 CrPC

Section – 431 CrPC

&

Section – 357 CrPC

Section – 30 CrPC

Section – 64 to 70 IPC

Section -421 Crpc

Modes of recovery of FINE:

- Issuance of warrant for the realisation of the amount **by attachment and sale** of any movable property
- Issuance of warrant to the Collector of the district, authorising him to realise the amount as **arrears of land revenue** from the movable or immovable property

Section- 431 CrPC

Recovery of MONEY:

- Any money (other than a fine)
- method of recovery not expressly provided for
- recoverable as if it were a fine:

Compensation

Order for payment of expenses or compensation- u/s- 357 CrPC

1- If Compensation **part of fine** u/s 357(1) – and not paid by the accused- default sentence can be infused upon.

2- If fine not imposed, Compensation **awarded (not part of sentence)** u/s 357(3) – and not paid by the accused- then what.....

• Vijayan Vs. Sadanandan K. (2009) 6 SCC 652

• Argument-Accused

• compensation u/s 357(3)
recoverable under section 431
r/w 421- as if it were a fine.

• # Ahammedkutty vs.
Abdullakoya, 2009 6
SCC660-

• no direction can be issued that
in default to pay
compensation, the accused
shall suffer SI- u/s 357(3).

• Compensation be realised as
if it were a fine u/s 421CrPC.

• Argument- complainant

• _Default sentence be imposed to
ensure its payment.

• # Hari Singh vs. Sukhbir Singh. 1988 4 SCC
551

• Compensation u/s 357(3) be
enforced by imposing sentence in
default, when no mode is
prescribed.

• # Shanti Lal Vs. Sate of MP, 2007
11 SCC 243

• Default sentence – not a
substantive sentence rather
comes to an end once paid and

• a penalty incurred on non-
payment of fine

• Mode of enforcing recovery of
compensation

• # Suganthi Suresh vs.
Jagdeeshan, 2002 2 SCC 420

• Reiterated Hari Singh's views

- **Vijayan Vs. Sadanandan K.**
(supra)

- **Held- purpose** of ordering accused to pay compensation in order to alleviate the sufferings of the aggrieved.
- If the recourse to enforce the payment of compensation is restricted to Sec.421 CrPC, then object of sec. 357(3) stands frustrated & relief would appear to be an illusory one.

- **Vijayan Vs. Sadanandan K.**
(supra)

- Reaffirmed Hari Singh's case.
- Sections 357(3) and 431 CrPC, 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.
- **Sec- 64 IPC.** Sentence of imprisonment for non-payment of fine.
- Reiterated in **R. Mohan v. A.K. Vijaya Kumar**, (2012) 8 SCC 721

Kumaran Vs State of Kerala

(SC) DOJ- 05/05/2017 – went a step ahead

“so long as compensation has been directed to be paid, albeit under Section 357(3), Section 431, Section 70 IPC and Section 421(1) proviso would make it clear that by a legal fiction, **even though a default sentence has been suffered, yet, compensation would be recoverable** in the manner provided under Section 421(1). This would be without the necessity for recording any special reasons.”

A.K.Devaiah vs. State of Karnataka DOJ- 14-10-2014

- Accused convicted of offence u/s 3,4,6 Dowry Prohibition Act and Sec- 498A & 304B IPC-
 - 5ys sentence
 - and fine Rs. 15000/-, in default further sentence of 2 yrs.
 - To return ornaments, in default, an amount equal to value of ornaments
 - Amount recoverable u/s 421 CrPC as if it were a fine

Noor Mohammed vs Khurram

Pasha DOJ- 2 August, 2022

- Trial Court directing the Accused to deposit 20% of the cheque amount as interim compensation in terms of Section 143(A) of the Act within 60 days but no deposit.
- In view of his failure to deposit the interim compensation as directed, the permission to cross-examine the complainant was refused and after trial, convicted.
- Held- After empowering the court to pass an order directing the accused to pay interim compensation under Section 143A, the remedy for failure to pay interim compensation is also provided for by the Legislature. The method and modality of recovery of interim compensation is clearly delineated by the Legislature.
- nowhere contemplates that an accused who had failed to deposit interim compensation could be fastened with any other disability including denial of right to cross-examine the witnesses
- Any such order foreclosing the right would not be within the powers conferred upon the court

G. J. Raja vs Tejraj Surana

DOJ- 30 July, 2019

- In present case,- offence occurred in 2016 whereas Section 143A of the NI Act was inserted w.e.f. 01.09.2018.
- The question - whether Section 143A of NI Act is retrospective in operation and can be invoked in cases where the offences were committed much prior to the introduction of Section 143A.
- Held- Section 143A have two dimensions:
 - creates a liability to pay upto 20% of the cheque amount
 - makes available the machinery for recovery of such interim compensation.
- prior to the insertion of Section 143A, no provision to make the accused deposit interim compensation before the pronouncement of guilt or conviction.
- The imposition and consequential recovery of fine or compensation could arise only after the person was found guilty of an offence- this status of law changed by Sec-143A.
- Now, 143A imposes a liability that even before the pronouncement of guilt or order of conviction, the accused may be forced to pay interim compensation with the aid of State machinery for recovery of the money as arrears of land revenue.
- The applicability of Section 143A of the Act must, therefore, be held to be **prospective** in nature and confined to cases where offences were committed after the introduction of Section 143A, in order to force an accused to pay such interim compensation.

Dayawati vs Yogesh Kumar

Gosain Delhi HC

DOJ-17 October, 2017

- Discusses the impact of settlement of disputes of cheque bouncing cases via mediation and later on settlement not complied with- what recourse court has to proceed with the case on merits or to execute the settlement agreement.
- Held- the magistrate would pass an order under Section 431 r/w Section 421 Cr.P.C. to recover the amount from the accused as if it were a fine.
- The **settlement reached** in mediation arising out of a **criminal case does not tantamount to a decree** by a civil court and cannot be executed in a civil court.
- However, a settlement in mediation in a civil case, can result in a decree upon compliance with the procedure under Order XXIII of the C.P.C.
- When a criminal court passes order accepting the mediated settlement between the parties and directs the accused to make payment in terms thereof, the **settlement amount becomes payable under the order of the court.** Such order in cheque bouncing cases, would be an **order under Section 147 of the NI Act and Section 320** of the Cr.P.C.

Ramesan (Dead) Through LR.

Girija vs The State Of Kerala

SC, DOJ- 21 January, 2020

- Trial Court- Accused convicted – 2 yrs, fine- 1 Lakh, in default- 6 months SI.
- During appeal- accused died. Appeal not abated. Conviction upheld. Held - since the appellant died pending the appeal, the sentence of imprisonment has become unworkable, and upheld the sentence regarding fine.
- **Sec- 394 CrPC**- abatement of appeals on death of accused except the appeal from a sentence of fine.
- Held - even if sentence of fine is imposed alongwith the sentence of imprisonment under Section 431, such appeal shall not abate.
- Appeal against **Composite sentence** not to abate on mere death of accused.

Thank you..

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