offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof."

22. No evidence was led by the accused. The defence taken in the reply to the notice that cheque was stolen having been rejected by the two courts below, we do not see any basis for the High court coming to the conclusion that the accused has been successful in creating doubt in the mind of the Court with regard to the existence of the debt or liability. How the presumption under Section 139 can be rebutted on the evidence of PW.1, himself has not been explained by the High court.

23. In view of the aforesaid discussion, we are of the view that the High Court committed error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

24. In the result, the appeal is allowed, judgment of the High Court is set aside and judgment of trial court as affirmed by the Appellate Court is restored.

***Result*:-** Appeal allowed.

ABC 2019 (II) 276 SC
ACQUITTAL & BAIL CASES
SUPREME COURT OF INDIA
(R.F. Nariman & Navin Sinha, JJ.)
Criminal Appeal Nos. 896-897 of 2017
(@Special Leave Petition (Criminal) Nos. 1231-1232 of 2013)
(From Kerala High Court)
Decided on 05 May, 2017

KUMARAN ***- Appellant(s).***

Versus

STATE OF KERALA & ANR. ***- Respondent(s).***

Law Covered*:-** ***(A) Indian Penal Code, 1860 — Section 64 — Scope — the section recognises that it shall be competent to the

Court which sentences an offender to state that, in default of payment of a fine, the offender shall suffer imprisonment. (Para 13)

(B) Code of Criminal Procedure, 1973 — Section 431 — Indian Penal Code, 1860 — Section 64 — Deeming fiction — Held, deeming fiction of Section 431 also extends to Section 64, IPC. (Para 27)

(C) Code of Criminal Procedure, 1973 — Sections 431 & 421(1) — Deeming provision — Scope — Held, the deeming provision in Sec. 431 will apply to Section 421(1) as well — despite the fact that the last part of the proviso to Section 421(1) makes a reference only to an order for payment of expenses or compensation out of a fine, which would necessarily refer only to Section 357(1) & not 357(3). (Para 27)

(D) Code of Criminal Procedure, 1973 — Section 431, 357(3) &421(1) — Indian Penal Code, 1860 — Section 70 — so long as compensation has been directed to be paid (albeit under Section 357(3), Section 431, Section 70 Indian Penal Code, 1860 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). (Para 27)

(E) Jurisprudence — Legal fiction — Extension of — Held, a legal fiction is not to be extended beyond the purpose for which it is created or beyond the language of the section by which it is created. (Para 28)

(F) Code of Criminal Procedure, 1973 — Section 431 — Legal fiction created by — Object of — is to extend for the purpose of recovery of compensation until such recovery is completed — this would necessarily take not only to Section 421, Cr.P.C. but also to the companion criminal statute Sec. 70, Indian Penal Code, 1860. (Para 29)

Facts:- *In the present case the complainant approached the Magistrate u/s 138, NI Act in a transaction where the accused had borrowed money from the complainant. When the complainant demanded the amount, the accused issued a cheque for the said amount which was returned as dishonoured due to insufficiency of funds. The accused was found guilty and was convicted. The accused challenged the aforesaid judgment before the Court of Sessions, and the Appellate Court confirmed the conviction, but reduced the sentence to imprisonment till rising of the Court. The order to pay compensation with the default clause was, however, sustained. The accused underwent imprisonment till the rising of the Court and also underwent the default sentence for non-payment of compensation. The second respondent filed CMP before the learned Judicial Magistrate u/s 421 of the Criminal Procedure Code for realising compensation by issuing a*

distress warrant against the accused. This CMP was allowed and a distress warrant for the realisation of compensation was issued. A recalling petition filed by the accused was dismissed. The High Court, by the impugned judgment held that despite the fact that the default sentence was undergone, yet, under the provisions of the CrPC, compensation was recoverable, and upheld the orders of the learned Judicial Magistrate.

The honourable Supreme Court upheld the conclusion of the judgment of the Kerala High Court. The appeals were dismissed accordingly.

***Held*:-** Also contained in Chapter III of the Penal Code which is headed "OF PUNISHMENTS" are the provisions of Sections 64 to 70. Section 64 recognises that it shall be competent to the Court which sentences an offender to state that, in default of payment of a fine, the offender shall suffer imprisonment. Section 65 sets the limit to which such imprisonment can go. (Para-13)

These two judgments make it clear that the deeming fiction of Section 431 Cr.P.C. extends not only to Section 421, but also to Section 64 of the Indian Penal Code. This being the case, Section 70 IPC, which is the last in the group of Sections dealing with sentence of imprisonment for non-payment of fine must also be included as applying directly to compensation under Section 357(3) as well. The position in law now becomes clear. The deeming provision in Section 431 will apply to Section 421(1) as well, despite the fact that the last part of the proviso to Section 421(1) makes a reference only to an order for payment of expenses or compensation out of a fine, which would necessarily refer only to Section 357(1) and not 357(3). Despite this being so, 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, however, be without the necessity for recording any special reasons. This is because Section 421(1) proviso contains the disjunctive "or" following the recommendation of the Law Commission, that the proviso to old Section 386(1) should not be a bar to the issue of a warrant for levy of fine, even when a sentence of imprisonment for default has been fully undergone. The last part inserted into the proviso to Section 421(1) as a result of this recommendation of the Law Commission is a category by itself which applies to compensation payable out of a fine under Section 357(1) and, by

applying the fiction contained in Section 431, to compensation payable under Section 357(3). (Para-27)

a

As is well known, a legal fiction is not to be extended beyond the purpose for which it is created or beyond the language of the section by which it is created. (Para-28)

Thus it is clear that the object of the legal fiction created by b Section 431 is to extend for the purpose of recovery of compensation until such recovery is completed - and this would necessarily take us not only to Section 421 of the Cr.P.C. but also to Section 70 of the Penal Code, a companion criminal statute, as has been held above. (Para-29)

c ***Counsel:-*** ***For Appellant(s):*** *Mr. Siddhartha Dave, Sajith. P, Ms. Jemtiben, Advs.*

For Respondent(s): *Mr. C.K. Sasi, Adv.*

Cases Referred:-

1. *Digamber Kashinath Bhavarthi v. Emperor, AIR 1935 Bom 160: ILR* d *LIX Bom 350, (Para-15)*
2. *Brahameshwar Prasad Sinha v. State of Bihar, 1983 Cri LJ 8, (Para-16)*
3. *Digamber Kashinath Bhavarthi v. Emperor (AIR 1935 Bom 160) : (1935 -36 Cri LJ 1034), (Para-16)*
4. *Parasnath v. State AIR 1969 All 116, (Para-17)*
5. *Saji Kumar v. Soman Pillai, 2006 (3)KLT 679, (Para-18)*
6. e *Kirpa Ram v. Emperor AIR 1914 Lahore 539, (Para-19)*
7. *Collector of Broach and Panchmahals v. Ochhavlal Bhikalal, AIR 1941 Bom 158, (Para-20)*
8. *State v. Krishna Pillai, AIR 1953 Travancore-Cochin 233, (Para-21)*
9. *K. Vemmana Shenoy v. Collector of South Kanara, AIR 1964 Mys. 64, (Para-22)*
10. f *Vijayan v. Sadanandan K., (2009) 6 SCC 652, (Para-25)*
11. *R. Mohan v. A.K. Vijaya Kumar, (2012) 8 SCC 721, (Para-26)*
12. *Prakash H. Jain v. Marie Fernandes, (2003) 8 SCC 431 at 438, (Para-28)*
13. *East End Dwelling Co. Ltd. v. Finsbury Borough Council, 1951 (2) All ER 587 at 589, (Para-28)*
14. g *Ashok Leyland Limited v. State of Tamil Nadu, (2004) 3 SCC 1 at para 32,76, (Para-29)*

JUDGMENT

R.F. NARIMAN, J.: - 1. Leave granted.

h

2. The present appeals raise an interesting question as to whether when compensation is ordered as payable for an offence

committed under Section 138 of the Negotiable Instruments Act, and in default thereof, a jail sentence is prescribed and undergone, is compensation still recoverable.

3. In the present case, the facts are that the complainant approached the Magistrate under Section 138 of the Negotiable Instruments Act in a transaction where the accused had borrowed a sum of Rs. 2.75 lakh from the complainant. When the complainant demanded the amount, the accused issued a cheque for the said amount which was returned as dishonoured due to insufficiency of funds. The requisite demand notice was sent by the complainant to the accused followed by the complaint. Ultimately, the accused was found guilty of the offence under Section 138, and was convicted, stating:

> "Considering the fact that this is an offence u/s 138 of the Negotiable Instruments Act I do not consider this to be a fit case to be proceeded under the Probation of Offenders Act. I am of the view that simple imprisonment for 4 months for the offence u/s 138 of the Negotiable Instruments Act would meet the ends of justice. The accused is further directed to pay a compensation of Rs. 2,75,000/- to the complainant u/s 357(3) of Cr.P.C. In default of payment of compensation, he shall undergo simple imprisonment for 1 month."

4. The accused challenged the aforesaid judgment before the Court of Sessions, and the Appellate Court, by an order dated 27th April, 2006, confirmed the conviction, but reduced the sentence to imprisonment till rising of the Court. The order to pay compensation with the default clause was, however, sustained. The accused underwent imprisonment till the rising of the Court and also underwent the default sentence for non-payment of compensation. The second respondent filed CMP No.2018 of 2008 before the learned Judicial Magistrate under Section 421 of the Criminal Procedure Code for realising compensation by issuing a distress warrant against the accused. This CMP was allowed on 19th July, 2008, and a distress warrant for the realisation of compensation was issued. A recalling petition filed by the accused was dismissed on 29th March, 2011. The High Court, by the impugned judgment dated 8th August, 2012, held that despite the fact that the default sentence was undergone, yet, under the provisions of the Code of Criminal Procedure, compensation was recoverable, and upheld the orders of the learned Judicial Magistrate.

5. Shri Siddharth Dave, learned counsel appearing on behalf of the Appellant, has argued before us that an accused who is directed to pay fine, or undergo sentence of which fine forms a part, and from which compensation is to be paid, then a court would proceed against the accused in the manner provided under Section 421 even though he may have undergone the default sentence awarded to him. However, if the sentence is of fine or sentence of which fine forms a part and there is no order of payment of compensation from the fine imposed, the court would have to record special reasons in writing before proceeding against the accused under Section 421. Likewise, compensation under Section 357(3) would be covered by the proviso if the accused has undergone the default sentence awarded and special reasons in writing would have to be recorded before action under Section 421 can be initiated. As in the present case, at the time of issuance of warrant, the Magistrate did not record special reasons in writing for proceeding against the accused person, the Division Bench judgment ought to be set aside.

6. Shri C.K. Sasi, learned counsel for the Respondent, has repelled the above submissions. According to the learned counsel, by operation of the deeming fiction contained in Section 431 Cr.P.C. compensation can be realized even if the accused had undergone the default sentence. The exception provided in the proviso to Section 421 is to achieve the object of payment of compensation to the victim of the offence. According to learned counsel, the purpose of Section 421 being victim compensation, the provision must be liberally construed to meet the ends of justice. This being so, the Division Bench judgment cannot be faulted on any score.

7. Having heard learned counsel for the parties, it is important to set out all the relevant statutory provisions. Section 357 Cr.P.C. reads as under:

> **"357. Order to pay compensation.** (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-
>
> (a) in defraying the expenses properly incurred in the prosecution;
>
> (b) 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;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person 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.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) 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."

It is important to note that sub-section (3) is a new provision which did not exist in the old Criminal Procedure Code.

8. The predecessor to Section 421 was Section 386 of the Code of Criminal Procedure, 1898, which reads as follows :

"**386. Warrant for levy of fine.**(1) Whenever 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 authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both, of 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 to do so.

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

(3) Where the Courts issue a warrant to the Collector under sub-section (1), Clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the Decree, and all the provisions of that Code as to execution of decrees shall apply accordingly:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

9. Section 421 of the present Code reads as follows :

"**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, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of 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 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 realise 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."

10. It may be noticed that the last part of the proviso to sub-section (1), namely, "or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357" has been added to the proviso for the first time. This was done pursuant to the 41st Law Commission Report, which will be referred to a little later.

11. The third important provision in the Code of Criminal Procedure is Section 431, which reads as follows:

"431. Money ordered to be paid recoverable as 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."

From this provision, it is clear that a deeming fiction is enacted, viz., that any money other than a fine, (which would include compensation payable under Section 357(3) Cr.P.C.) the method of recovery of which is not expressly provided for, shall be recoverable as if it was a fine. One of the bones of contention in these appeals is the effect of the deeming fiction under Section 431.

12. Section 53 of the Indian Penal Code speaks of punishment to which offenders are liable under the provisions of the Code. Suffice it to say that fine is one of them, but compensation payable is not.

13. Also contained in Chapter III of the Penal Code which is headed "OF PUNISHMENTS" are the provisions of Sections 64 to 70. Section 64 recognises that it shall be competent to the Court which sentences an offender to state that, in default of payment of a fine, the offender shall suffer imprisonment. Section 65 sets the limit to which such imprisonment can go. Section 68 is important and reads as follows :

"68. Imprisonment to terminate on payment of fine.- The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law."

Section 70, which is almost determinative of the point that has been argued in these appeals, reads as follows:

"70. Fine leviable within six years, or during imprisonment - Death not to discharge property from liability.--The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts."

14. It is important at this juncture to deal with some of the judgments of the High Courts.

15. An early judgment of the Bombay High Court dealt with what were "special reasons" for the purpose of the proviso to Section 386(1) under the old Code. A Division Bench of the said High Court in ***Digamber Kashinath Bhavarthi v. Emperor, AIR 1935 Bom 160: ILR LIX Bom 350***, dealt with the proviso to Section 386(1) in the following terms:

> "On June 30, 1934, the applicant was Released from jail, having served not only his substantive sentence, but also the sentence imposed upon him in default of payment of the fine, and he now asks that the warrant for the recovery of the fine issued against him should be withdrawn, and in support of his contention he relies on the proviso to section 386(1). That proviso provides 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 a warrant under the section unless for special reasons to be recorded in writing it considers it necessary to do so. The proviso applies in terms only to the issue of a fresh warrant and does not require the withdrawal of a warrant already issued before expiration of the sentence in default of payment. But, I think that, in dealing with such existing warrants, the Court should follow the policy which seems to have inspired the proviso to section 386. That policy appears to be that in general an offender ought not to be required both to pay the fine and to serve the sentence in default. But the proviso enables a warrant to be issued for recovery of the fine, even if the whole sentence in default has been served, if the Court considers that there are special reasons for issuing the warrant. I apprehend that the special reasons should be reasons accounting for the fact that the fine has not been recovered before the sentence in default has been served, and any reasons which are directed to that point would be relevant. It may be that the authorities, through no negligence on their part, did not know of the existence of the property or the accused may have inherited property after he served his sentence in default; or there may not have been time to execute the warrant. Matters of that sort would all be special reasons for issuing a warrant after the sentence in default had been served; and I think, in the same way, they are reasons justifying the Court in refusing to withdraw a warrant already issued. In the

present case, in my opinion, there are special reasons, though not quite those which were recorded by the Judge. I think that a special reason for not withdrawing the warrant is that before the sentence in default had been served the authorities had taken steps to enforce this warrant by levying execution, upon the immoveable property of the applicant, and the delay which has taken place is not, in my opinion, shown to be due to any default on the part of the authorities. The learned Judge himself gave as his reasons for not withdrawing the warrant that the offence was a serious one, and the complainant had been allotted part of the fine. In my view, reasons of that sort are not relevant because they do not account for the fine not having been recovered before the service of the sentence in default. For these reasons, I think the application must be refused."

16. This judgment was followed in ***Brahameshwar Prasad Sinha v. State of Bihar, 1983 Cri LJ 8*** by a Division Bench of the Patna High Court, in which the Patna High Court held as follows :

"In ***Digamber Kashinath Bhavarthi v. Emperor (AIR 1935 Bom 160) : (1935-36 Cri LJ 1034)*** the Bombay High Court pointed out that special reasons mentioned in Section 386 of the old Code should be reasons accounting for the fact that the fine had not been recovered from the convict before the sentence in default had been served out and any reasons which are directed to that point would be relevant applying that test, I am unable to say that the reasons-given by the learned Sessions Judge is not relevant. It must be pointed that, that the discretion is of the learned Sessions Judge and sitting in revision it may not be interfered with lightly."

17. A Single Judge of the Allahabad High Court in ***Parasnath v. State AIR 1969 All 116*** held as follows :

"There is no provision in the Indian Penal Code like Section 68 providing that, on the undergoing of the whole period of imprisonment, the fine shall not be recoverable. The procedure for recovery of such fines is provided for in Section 386 of the Code of Criminal Procedure. Sub-section (1) of Section 386, Cr. P.C. which is relevant, provides:

"386(1)-Whenever 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 authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both, of 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 to do so."

The absence of any specific provision to the effect that the fine shall not be realisable if the whole of the period of imprisonment for default has been undergone and the language of the proviso to sub-section (1) of Section 386, Cr. P.C. lead to the conclusion that the undergoing of imprisonment awarded in default of payment of the fine does not operate as a discharge or satisfaction of the fine which may nevertheless be levied in the manner prescribed by Section 386(1), Cr. P.C."

18. A Single Judge of the Kerala High Court in ***Saji Kumar v. Soman Pillai, 2006 (3)KLT 679***, set out Section 421 of the Code of Criminal Procedure and held that the fiction contained in Section 431 Cr.P.C. must be extended logically until its object is accomplished. A non-fine must be deemed to be a fine for the purpose of recovery, and until recovery is complete, the fiction must continue. Having so held, the learned Judge stated that the proviso to Section 421(1) would apply not merely to Section 357(1), but also to Section 357(3) and this being so, held that despite the fact that the default sentence had been undergone, compensation under Section 357(3) is recoverable. The impugned judgment before us of the same High Court approved of the conclusion of the aforesaid judgment, but with completely different reasoning. According to the Division Bench, "compensation" is not a "sentence" and this being the case, would not be covered by the proviso to Section 421(1). This would make it clear that since compensation is otherwise recoverable, despite the default sentence

having been undergone, ultimately, a warrant can be issued under the first part of Section 421(1).

19. At this stage, it is important to refer to a few judgments of various High Courts on the reach of Section 70 of the Penal Code. In ***Kirpa Ram v. Emperor AIR 1914 Lahore 539***, a Division Bench of the Lahore High Court adverted to Section 70 of the Penal Code and added that a fine can be collected even after the imprisonment awarded in default has been undergone.

20. In ***Collector of Broach and Panchmahals v. Ochhavlal Bhikalal, AIR 1941 Bom 158***, a Division Bench of the Bombay High Court held that Section 386 of the Cr.P.C. (i.e. the predecessor Section to Section 421 of the present Code) relates only to procedure, whereas the substantive law as to payment of fine is contained in Section 70 of the Penal Code. This being the case, it was held that the limitation period of six years from the date of the sentence barred the *darkhast* that was presented in that case.

21. In ***State v. Krishna Pillai, AIR 1953 Travancore-Cochin 233***, the law was stated thus:

> "The jurisdiction of the trial court to impose a sentence of imprisonment in default of payment of fine is merely permissive. It is not imperative to award a term of imprisonment in default of payment of a fine. Section 64, Penal Code (S. 53, Travancore Code) only states that it shall be competent to the court to impose a sentence of imprisonment for non-payment of fine. Further, imprisonment in default of payment of fine does not liberate an accused person from his liability to pay the fine imposed on him. Such imprisonment does not serve as a discharge or satisfaction of the fine, but is imposed as a punishment for nonpayment. The fine would remain alive for collection for six years after the passing of the sentence. Assuming the accused counter-petitioner has no means now to pay the same, it can be recovered from any property acquired by him within the period specified. Even his death will not discharge from the liability any property which would, after his death be legally liable for his debts. (Section 70, Penal Code, corresponding to Section 59, Travancore Penal Code)."

22. In ***K. Vemmana Shenoy v. Collector of South Kanara, AIR 1964 Mys. 64***, a Single Judge of that High Court adverted to the

amending Act of 1923, by which a substantial change was made to Section 386 of the Cr.P.C., which made it clear that the offender should not be made to pay fine as well as undergo imprisonment in default of payment of the fine in the absence of special reasons to be recorded in writing. The learned Single Judge held that Section 70 IPC read with Section 386(1) proviso would necessarily lead to the conclusion that in the absence of special reasons to be recorded in writing, the fine cannot be recovered after the offender has undergone imprisonment in default of payment.

23. A conspectus of the aforesaid judgments would show that compensation under the old Cr.P.C. was always recoverable as a part of fine, and that even after default imprisonment having been undergone, a fine could still be collected in the manner provided by Section 386. The requirement of special reasons was introduced by the amending Act of 1923. The special reasons outlined in the Bombay High Court judgment of 1935 as well as in the Mysore High Court judgment of 1964 would show that it is enough that sufficient reasons or some good reason be given in order that fine be realized even after default imprisonment has been undergone. The Courts held that despite the fact that the reach of Section 386(1) proviso was only qua warrants that issued after default imprisonment was undergone, yet, the principle of the proviso to Section 386(1) would apply even to warrants issued before default imprisonment was undergone. The law, therefore, till the enactment of the 1973 Code, made it clear that Section 386, and Section 70 IPC read together would lead to the conclusion that fines were recoverable even after default imprisonment was undergone, provided there were special reasons for recovery of the same. With the Code of 1973 came an interesting change. Sub-section (3) was added to Section 357, which was an entirely new provision making it clear that the Court may, when passing judgment, order the accused to pay by way of compensation such amount as may be specified in the order to the person who has suffered loss or injury by reason of the act for which the accused person has been sentenced. This is provided that the Court imposes a sentence of which fine does not form a part. Another important change was made in Section 421(1). The proviso to the said sub-section was altered because the 41st Law Commission Report, in recommending amendments to the old Section 386 stated, after noticing the Bombay High Court judgment in **Digambar's case** (supra) as follows :

> **"28.10. Fine should be recoverable when compensation has been ordered.**—We notice that in the above judgment the fact that the complainant has been allotted part of the fine was not considered a relevant special reason for purposes of the proviso as it stands. A contumacious offender should not, in our opinion, be permitted to deprive the aggrieved party of the small compensation awarded to it by the device of undergoing the sentence of imprisonment in default of payment of the fine. When an order under Section 545 has been passed for payment of expenses or compensation out of fine, recovery of the fine should be pursued, and in such cases, the fact that the sentence of imprisonment in default has been fully undergone should not be a bar to the issue of a warrant for levy of the fine. We recommend that the proviso to section 386(1) should make this clear."

24. Following paragraph 28.10, the words "or unless it made an order for the payment of expenses or compensation out of the fine under Section 357" was added to the proviso which was contained in old Section 386(1) and continued in Section 421(1).

25. At this juncture, it is important to note that in ***Vijayan v. Sadanandan K., (2009) 6 SCC 652***, this Court held :

> **"29.** To appreciate the said legal position, the provisions of Section 431 are set out hereinbelow:
>
> "*431. Money ordered to be paid recoverable as 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 431 makes it clear that any money other *than a fine* payable on account of an order passed under the Code shall be recoverable as if it were a fine which takes us to Section 64 IPC.

30. Section 64 IPC makes it clear that while imposing a sentence of fine, the court would be competent to include a default sentence to ensure payment of the same. For the sake of reference, Section 64 IPC is set out hereinbelow:

"*64. Sentence of imprisonment for non-payment of fine.*-In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence."

31. The provisions of 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."

26. This statement of the law was reiterated in ***R. Mohan v. A.K. Vijaya Kumar, (2012) 8 SCC 721*** (see paras 26 to 29).

27. These two judgments make it clear that the deeming fiction of Section 431 Cr.P.C. extends not only to Section 421, but also to Section 64 of the Indian Penal Code. This being the case, Section 70 IPC, which is the last in the group of Sections dealing with sentence of imprisonment for non-payment of fine must also be included as applying directly to compensation under Section 357(3) as well. The position in law now becomes clear. The deeming provision in Section 431 will apply to Section 421(1) as well, despite the fact that the last part of the proviso to Section 421(1) makes a reference only to an order for payment of expenses or compensation out of a fine, which would necessarily refer only to Section 357(1) and not 357(3). Despite this being so, 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, however, be without the necessity for recording any special reasons.

This is because Section 421(1) proviso contains the disjunctive "or" following the recommendation of the Law Commission, that the proviso to old Section 386(1) should not be a bar to the issue of a warrant for levy of fine, even when a sentence of imprisonment for default has been fully undergone. The last part inserted into the proviso to Section 421(1) as a result of this recommendation of the Law Commission is a category by itself which applies to compensation payable out of a fine under Section 357(1) and, by applying the fiction contained in Section 431, to compensation payable under Section 357(3).

28. As is well known, a legal fiction is not to be extended beyond the purpose for which it is created or beyond the language of the section by which it is created. For example, see ***Prakash H. Jain v. Marie Fernandes, (2003) 8 SCC 431 at 438***. However, once the purpose of the legal fiction is ascertained, full effect must be given, and it should be carried to its logical conclusion. This is clear from the celebrated passage in ***East End Dwelling Co. Ltd. v. Finsbury Borough Council, 1951 (2) All ER 587 at 589***:

> "if you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of those in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".

29. The legal fiction enacted under Section 431 is not limited to "the purpose of this Act" unlike Section 6A of the Central Sales Tax Act, as was the case in ***Ashok Leyland Limited v. State of Tamil Nadu, (2004) 3 SCC 1 at para 32,76***. Thus it is clear that the object of the legal fiction created by Section 431 is to extend for the purpose of recovery of compensation until such recovery is completed - and this would necessarily take us not only to Section 421 of the Cr.P.C. but also to Section 70 of the Penal Code, a companion criminal statute, as has been held above.

30. This being the case, we uphold the conclusion of the judgment dated 8th August, 2012 of the Division Bench of the Kerala

High Court but for the reasons given in this judgment. The appeals are dismissed accordingly.

***Result*:-** Appeals dismissed

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ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(N.V. Ramana & Prafulla C. Pant, JJ.)
Criminal Appeal No. 455 of 2006
(From Kerala High Court)
Decided on 01 March, 2017

N. PARAESWARAN UNNI ***- Appellant(s).***

Versus

G. KANNAN & ANR. ***- Respondent(s).***

Law Covered*:-** ***(A) Negotiable Instruments Act, 1881 — Sections 138 & 142 — Service of Notice — return of a notice sent by registered post with postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station" — due service has to be presumed. (Para 15)

(B) Negotiable Instruments Act, 1881 — Section 138 — Purport of — is to prevent & punish the dishonest drawers of cheques who evade and avoid their liability — the payee or the holder of the cheque in due course is necessarily required to serve a written notice on the drawer of the cheque within fifteen days (after amendment it is enhanced to 30 days) from the date of intimation received from the bank about dishonour. (Para 11)

(C) Negotiable Instruments Act, 1881 — Section 138 Clause (c) — Purpose of enactment — this gives an opportunity to a drawer of the cheque to make payment within fifteen days of receipt of the notice sent by the drawee.

(D) Intention of legislation — Negotiable Instruments Act, 1881 — Section 138 Clause (c) —Enactment — the object of providing Clause (c) is to avoid unnecessary hardship to the accused. (Para 12)

(E) General Clauses Act, 1897 — Section 27 — Indian Evidence Act, 1872— Section 114 — Sending a notice by registered post — Held, once notice is sent by registered post by correctly addressing to the drawer of the cheque— the service of notice is deemed to have been