A DILIP S. DAHANUKAR

v.

KOTAK MAHINDRA CO. LTD. AND ANR.

APRIL 10, 2007

B [S.B. SINHA AND DALVEER BHANDARI, JJ.]

Code of Criminal Procedure, 1973 :

Sections 357 and 424—Imprisonment for default in payment of fine—
C *Held—It remains stayed pending elapsing of period for presenting appeal or decision therein—Section 424 is subject to Section 357(2).*

Section 357(3)—Compensation not forming part of sentence of fine—Recovery of—Held—Pending elapsing of period for presenting appeal or
D *decision therein, its recovery remains stayed—It is unacceptable that although a compensation payable out of quantum of fine would remain stayed under Section 357(2) of Code, if a compensation is directed to be paid under sub-Section (3) thereof, same would not attract said provision—It was more so as compensation was recoverable as a 'fine', but legal fiction raised in relation to recovery of fine only, it is in that sense 'fine' stood on a higher*
E *footing than compensation—If, therefore, under Section 357(2) realization of fine is to be stayed automatically, there is no reason as to why legislative intent cannot apply to compensation directed to be paid in terms of sub-Section (3).*

Section 357(3)—Compensation not forming part of sentence of fine—
F *Quantum of—Held—It compensates in one way or another, hence amount thereof must be reasonable and not arbitrary—It should not be more than sufficient to compensate complainant—Ordinarily, it should be less than amount which can be granted by a Civil Court upon appreciation of evidence brought before it for losses which might have reasonably been suffered by*
G *plaintiff—Though there is no upper limit to it, its subject to other provisions of Code which mandates that amount of fine imposed on an accused cannot be more than five thousand—In view of fact that Parliament did not think it fit to put a ceiling limit in regard to amount of compensation leviable upon an accused, discretionary jurisdiction thereto must be exercised judiciously.*

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Section 357(3)—Compensation not forming part of sentence of fine— Order for payment of—Held—Before issuing a direction to pay compensation, capacity of accused to pay it must be judged; a summary enquiry in this behalf is necessary and some reasons, which may not be very elaborate, also have to be assigned—Furthermore, as Section 357(3) neither imposes any limitation on power to grant compensation nor enumerates factors for which it is to be paid, power to grant it should be exercised only in appropriate cases, and such jurisdiction cannot be exercised at whims and caprice of a judge.

Section 357(3)—Compensation not forming part of sentence of fine— Conditions for suspension of sentence—Held—They should also be reasonable—A part of compensation may be directed to be deposited, but that must be a reasonable amount—Order may not be passed which cannot be complied resulting in a person being sent to prison—Court, in such cases, must endeavour to strike a balance—Section 421 of Code may be taken recourse to—Ordinarily, a person should not suffer imprisonment only because conditions imposed for suspending sentence are harsh—Also, an accused shall not be taken in custody during trial.

Section 357—Compensation—Award of—Held—Magistrates cannot award it in addition to fine—Power to award it under Section 357(3) is not an ancillary power, but an additional power—Also, when fine is imposed, private party has no right to insist that compensation may be awarded to him out of it.

Section 357(3)—Negotiable Instrument Act, 1881—Sections 138 and 141—Company along with its Chairman convicted for offence punishable under Section 138 r.w. 141 of Act of 1881—Company sentenced to pay a fine of twenty five thousand rupees and in default thereof, Chairman was to suffer simple imprisonment for one month—Also, Chairman sentenced to simple imprisonment for one month and directed to pay a compensation of fifteen lakhs rupees under Section 357(3) to complainant—On admission of appeal against it, direction given for deposition of amount of five lakhs rupees each—Correctness of—Direction of Trial Judge was unreasonable— For all intent and purpose, both Sub-sections (1) and (3) of Section 357 were invoked—Liability of Chairman was a vicarious one in terms of Section 141 of Act of 1881- Direction for payment of compensation of fifteen lakhs rupees by Chairman of Company found to be wrong when fine of only of twenty five thousand rupees was imposed on Company—On facts, Chairman directed to

A *deposit one lakh rupees which complainant was entitled to withdraw.*

Section 374—Appeal from conviction—Scope of—Held—It is a statutory right affecting liberty of a person—Keeping in view expansive definition of Article 21 of Constitution of India, 1950, it is also a Fundamental Right—
B *It can, thus, neither be interfered/impaired, nor subjected to any condition—Also, right of Court to suspend sentence cannot be taken away and such a provision would be ultra vires.*

Interpretation of statutes—Penal statute—Held—Where different meanings are possible, it must be construed liberally in favour of an accused—
C *Also, while Court shall give due weight to need of victim, it cannot ignore right of an accused, and in case of conflict, construction which favours accused shall prevail.*

Interpretation of statute—Legal fiction—Held—It must be construed having regard to purport of statute.

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Appellant, along with Company of which he was Chairman, were convicted for commission of an offence punishable under Section 138 r.w. 141 of Negotiable Instruments Act. The company was sentenced to pay a fine of twenty five thousand rupees, and in default of payment thereof, appellant was to suffer simple imprisonment for one month. Appellant was sentenced to
E **suffer simple imprisonment for one month and also directed to pay compensation to the complainant, quantified at fifteen lakhs rupees under Section 357(3) of Cr.P.C. An appeal was preferred there against. The Appellate Court while admitting the appeal, directed them to deposit five lakhs rupees each. A writ petition was filed by the appellants questioning the legality of the said order, which by reason of the impugned judgment has been dismissed.**
F **Hence the present appeal.**

Appellant contended that (i) right to prefer an appeal being a constitutional right in terms of Article 21 of the Constitution of India, 1950 no condition could have been imposed in respect therefor or for suspension
G **of sentence; (ii) in terms of Section 357(2) of the Code, the amount of fine imposed would automatically be suspended.**

Respondents contended that (i) a distinction must be made between imposition of fine and application thereof, as contemplated under Section 357(1)(a) to (d) of the Code, and an amount of compensation directed to be
H **paid under Sub-section (3) thereof; (ii) on a conjoint reading of Section 357**

read with Sections 421 and 424 of the Code, it is permissible to direct recovery of fine forthwith. A

Partly allowing the appeals, the Court

HELD 1.1. An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the Code. Right of Appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a Fundamental Right. Right of Appeal, thus, can neither be interfered with or impaired, nor it can be subjected to any condition. [Para 12] [1134-G] B C

Mardia Chemicals Ltd. and Ors. v. *Union of India and Ors.*, [2004] 4 SCC 311, followed

Garikapati Veeraya v. *N. Subbiah Choudhry & Ors.*, AIR [1957] SCR 540, *Babu Rajirao Shinde* v. *The State of Maharashtra*, [1971] 3 SCC 337, *Siddanna Apparao Patil* v. *The State of Maharashtra*, [1970] 1 SCC 547, *State of Gujarat* v. *Salimbhai Abdulgaffar Shaikh and Ors.*, [2003] 8 SCC 50, *Madhav Hayawadanrao Hoskot* v. *State of Maharashtra*, [1978] 3 SCC 552, *Transmission Corporation of A.P.* v. *Ch. Prabhakar & Ors.*, [2004] 5 SCC 551, *Madhav Hayawadanrao Hoskot* v. *State of Maharashtra*, [1978] 3 SCC 544 and *Jolly George Varghese and Anr.* v. *The Bank of Cochin*, [1980] 2 SCC 360, relied on D E

1.2. Although the right of appeal being a vested right cannot be taken away, it must also be noticed that right of the Court cannot be taken away to suspend the sentence and such a provision would be *ultra vires*. [Para 24] [1139-D] F

Dadu alias Tulsidas v. *State of Maharashtra*, [2000] 8 SCC 437, relied on

2.1. There exists a distinction between fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a 'fine' but the legal fiction raised in relation to recovery of fine only, it is in that sense `fine' stands on a higher footing than compensation awarded by the Court. If, therefore, under sub-Section (2) of Section 357, realization of fine, at least in respect of the factor(s) enumerated in clause (1) of sub-Section to be stayed automatically, there is no reason as to why the legislative intent cannot be held to apply in relation G H

A to amount of compensation directed to be paid in terms of sub-Section (3). [Para 30 and 31] [1139-H; 1140-A-B]

Rachhpal Singh v. *State of Punjab*, [2002] 6 SCC 462, *State of Punjab* v. *Gurmej Singh*, [2002] 6 SCC 663, relied on

B 2.2. It is unacceptable that although a compensation payable out of the quantum of fine would remain stayed under sub-Section (2) of Section 357 of the Code, if a compensation is directed to be paid under sub-Section (3) thereof, the same would not attract the said provision. [Para 41] [1144-B]

P. Suresh Kumar v. *R. Shankar*, (2007) 4 SCALE 143, referred to

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2.3. Sub-Section (2) of Section 357 uses the word 'fine'. It does not say that what would be stayed i.e. application of fine. Sub-Section 2 of Section 357, does not contemplate any other interpretation. Even assuming that respondents are correct in their submission, still then sub-Section (3) would be squarely attracted. [Para 43] [1144-D]

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2.4. Section 421 only provides for a mode of recovery of fine. Section 424 provides for an enabling clause so as to enable the Court to take recourse to either of the situations provided for therein. The said provision, however, would be subject to sub-Section (2) of Section 357 of the Code. Section 431 of the Code provides for a legal fiction in terms whereof any money other than a fine shall be recoverable as if it were a fine. Even according to respondents sub-Section (2) of Section 357 of the Code would be attracted in such a situation. There does not appear to be any reason as to why the amount of compensation should be held to be automatically payable, although the same is only to be recovered as if a fine has been imposed.

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F [Para 45] [1144-H; 1145-A]

Stanny Felix Pinto v. *Jangid Builders Pvt. Ltd. & Anr.*, [2001] 2 SCC 416, held inapplicable

2.5. When a direction is issued for payment of compensation, having regard to Sub-Section (2) of Section 357 of the Code, the application thereof should ordinarily be directed to be stayed. It will, therefore, be for the Court to stay the operation of that part of the judgment whereby and where under compensation has been directed to be paid, which would necessarily mean that some conditions therefor may also be imposed. A *fortiori* a part of the amount of compensation may be directed to be deposited, but the same must be a

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reasonable amount. [Para 53] [1147-F-G] A

3. In a case of this nature, the Court must invoke the doctrine of purposive construction. Sub-Section (2) of Section 357 was enacted for a definite purpose. It must be given its full effect. [Para 58] [1148-C]

K. Bhaskaran v. *Sankaran Vaidhyan Balan & Anr.*, [1999] 7 SCC 510, *Suganthi Suresh Kumar* v. *Jagdeeshan*, [2002] 2 SCC 420 and *National Insurance Co. Ltd.* v. *Laxmi Narain Dhut*, (2007) 4 SCALE 36, relied on. B

K.L. Gupta v. *Bombay Municipal Corpn.* [1968] 1 SCR 274, *Maruti Udyog Ltd.* v. *Ram Lal*, [2005] 2 SCC 638, *Reserve Bank of India* v. *Peerless General Finance & Investment Co. Ltd.*, [1987] 1 SCC 424, *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Presiding Officer, Labour Court*, [1990] 3 SCC 682, *Balram Kumawat* v. *Union of India*, [2003] 7 SCC 628, *Pratap Singh* v. *State of Jharkhand*, [2005] 3 SCC 682, referred to. C

V. Prasada Rao v. *The State of A.P. & Anr.*, 2002 Crl. Law Journal 395, approved. D

R (Haw) v. *Secretary of State for the Home Department & Anr.*, [2006] 3 All ER p. 428-438, referred to

4.1. Unfortunately, the Legislature has not made any express provision in this behalf. In absence of any express provision, the question must be considered having regard to the overall object of a statute. E

[Para 53] [1147-D]

4.2. The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefor in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. F Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made G for one or the other factors enumerated out of the same; but sub-Section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge. [Para 37] [1143-A-C]

Hari Singh v. *Sukhbir Singh & Ors.*, [1988] 4 SCC 551 and *Sarwan* H

A *Singh & Ors.* v. *State of Punjab,* [1978] 4 SCC 111, relied on

4.3. Even in a case where violation of fundamental right guaranteed under Article 21 is alleged, the amount of compensation cannot be arbitrary or unreasonable even under Public Law. [Para 40] [1143-F]

Sube Singh v. *State of Haryana,* (2006) 3 SCC 178, relied on

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4.4. If a fine is to be imposed under the Act, the amount which in the opinion of the Parliament would be more than sufficient to compensate the complainant can it be said, that an unreasonable amount should be directed to be paid by the Court while exercising its power under sub-Section (3) of Section 357? The answer thereto must be rendered in the negative. Sub-C Section (5) of Section 357 also provides for some guidelines. Ordinarily, it should be lesser than the amount which can be granted by a Civil Court upon appreciation of the evidence brought before it for losses which might have reasonably been suffered by the plaintiff. Jurisdiction of the Civil Court, in this behalf, for realization of the amount in question must also be borne in mind. A criminal case is not a substitution for a civil suit, far less execution D of a decree which may be passed. [Para 38] [1143-D-E]

4.5. It is also of some significance to note that whereas under Section 357(1) of the Code of Criminal Procedure a fine of Rs. 5000/- can be imposed; fine in terms of Section 357 (2) thereof can be twice the amount of cheque whereas there is no upper limit for award of a compensation. But the same E would be subject to other provisions of the Code of Criminal Procedure which mandates that the amount of fine imposed on an accused cannot be more than Rs. 5000/-. The very fact that the Parliament did not think it fit to put a ceiling limit in regard to the amount of compensation leviable upon an accused, the discretionary jurisdiction thereto must be exercised judiciously. [Para 66] [1152-G-H; 1153-A]

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4.6. The matter has to be considered from another angle. An accused for commission of an offence under Section 138 of the Negotiable Instruments Act would ordinarily be granted bail in view of the fact that the offence is a bailable one. [Para 63] [1151-D-E]

G 4.7. Prosecution under the Negotiable Instruments Act may be contemplated as a measure of deterrence, but the same is never meant to be a persecution. [Para 39] [1143-F]

4.8. An order may not be passed which the appellant cannot comply with resulting him being sent to prison. Appellate Court, in such cases, must make H an endeavour to strike a balance. Section 421 of the Code of the Criminal

Procedure may take recourse to, but therefor he cannot be remanded to custody. [Para 54] [1147-G] A

4.9. Ordinarily, an accused shall not be taken in custody during trial. Thus, while exercising the appellate power, ordinarily, a person should not suffer imprisonment only because the conditions imposed for suspending the sentence are harsh. [Para 66] [1153-A-B] B

4.10. Having regard to the aforementioned factors the amount of compensation not only must be reasonable one, the conditions for suspending the sentence should also be reasonable. It is only with that intent in view, the doctrine of purposive construction should be applied. [Para 67] [1153-B-C]

5. Magistrates cannot award compensation in addition to fine. When a fine is imposed, however, the private party has no right to insist that compensation may be awarded to him out of the amount of fine. The power to award compensation under Section 357(3) is not an ancillary power. It is an additional power. [Para 42] [1144-C] C

Balraj v. *State,* (1995) Crl. Law Journal 3217, referred to D

6.1. *Prima facie,* without going into the merit of the appeal, the direction of the Trial Judge appears to be somewhat unreasonable. Appellant has been sentenced to imprisonment. Only fine has been imposed on the Company. Thus, for all intent and purpose, the Trial Judge has invoked both Sub-sections (1) and (3) of Section 357 of the Code. The liability of the appellant was a vicarious one in terms of Section 141 of the Negotiable Instruments Act. The question may also have to be considered from the angle that the Trial Judge thought it fit to impose a fine of Rs. 25,000/- only upon the Company. If that be so, a question would arise as to whether an amount of compensation for a sum of Rs. 15 lakhs should have been directed to be paid by the Chairman of the Company. The answer is that it is not. [Para 69] [1153-D-E] E F

6.2. In the facts and circumstances of the case, it is reasonable to direct the appellant to deposit a sum of Rs. 1 lakh within a period of four weeks, from date. The Respondent - Company, however, would be entitled to withdraw the said amount. The deposit of such amount by the appellant shall be without prejudice to the rights and contentions of the parties in the appeal. G

[Para 71] [1154-B-C]

7.1. A penal statute, in the event, the different meanings are possible to be given, must be construed liberally in favour of an accused.

[Para 56] [1148-A-B] H

A **7.2. While the Court shall give due weight to the need of the victim, it cannot ignore the right of an accused. In a case of conflict, construction which favours the accused shall prevail. [Para 57] [1148-B]**

8. Legal fiction must be construed having regard to the purport of the statute. [Para 44] [1144-F]

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Sadashiv Dada Patil **v.** *Purushottam Onkar Patil (D) By Lrs.*, **(2006) 10 SCALE 21,** *M.P. State Electricity Board* **v.** *Union of India & Ors.*, **(2006) 9 SCALE 194,** *Maruti Udyog Ltd.* **v.** *Ram Lal & Ors.*, **[2005] 2 SCC 638 and** *Bharat Petroleum Corpn. Ltd.* **v.** *P. Kesavan & Anr.*, **[2004] 9 SCC 772, referred to**

C

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 521 of 2007.

From the Judgment and Order dated 06.06.2006 of the High Court of Bombay in Criminal Writ Petition No. 1167 of 2006.

D

WITH

Criminal Appeal No. 522 of 2007

Kamal Mohan Gupta for the Appellant.

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Uday Lalit, Nandini Gore and V.N. Raghupathy for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

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2. Interpretation of Section 357 of the Code of Criminal Procedure, 1973 ('the Code', for short) *vis-a-vis* the provisions of the Negotiable Instruments Act ('the Act', for short), as regards power to impose sentence of fine is involved in these appeals which arise out of a judgment and order dated 6.6.2006 passed by the High Court of Bombay in Criminal Writ Petition No. 1167 of 2006.

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3. Accused No.1-M/s. Goodvalue Marketing Co. Ltd., a company registered and incorporated under the Companies Act, 1956 and Accused No.2-Appellant herein were convicted for commission of an offence involving Section 138 of the Act by a judgment of conviction and sentence dated

H

23.2.2006 holding : A

"The accused No.1 company M/s. Goodvalue Marketing Co. Ltd. stands convicted for the offence punishable under Section 138 r.w. 141 of Negotiable Instruments Act.

The accused No.1 company, is sentenced to pay a fine of Rs.25,000/- (Rupees Twenty Five Thousand only). In default of payment of fine, the accused No.2 Mr. Dilip S. Dahanukar, the Chairman of accused No.1 and representative at the trial, shall suffer S.I. for 1 month. B

The accused No.2 Mr. Dilip S. Dahanukar, stands convicted for the offence punishable under Section 138 r.w. 141 of Negotiable Instruments Act, 1881. C

The accused No.2 is sentenced to suffer S.I. for 1 month.

The accused No.2 is also directed to pay compensation to the complainant, quantified (sic) at Rs.15,00,000/- (Rupees Fifteen lakhs only), under Section 357(3) of Cr.P.C. The accused No.2 is entitled to pay the amount of compensation in two equal monthly instalments of Rs.7,50,000/- each. The first instalment of Rs.7,50,000/- shall be paid on or before 23-03-2006 and the second instalment of Rs.7,50,000/- shall be paid on or before 24-04-2006 in default of payment of the amount of compensation the accused No.2 shall suffer further S.I. for 2 month." D E

4. An appeal was preferred thereagainst. The Appellate Court by an order dated 27.4.2006 while admitting the appeal, directed them to deposit a sum of Rs. 5 lakhs each within four weeks from the said date. A writ petition was filed by the appellants questioning the legality of the said order which by reason of the impugned judgment has been dismissed. F

5. Submissions of Mr. Subash Jha, learned Counsel appearing on behalf of the appellant are :

i) That having regard to the provisions of Section 357(2) of the Code, the impugned judgment is wholly unsustainable inasmuch as in terms thereof the amount of fine imposed would automatically be suspended. G

ii) Right to prefer an appeal being a constitutional right in terms of Article 21 of the Constitution of India, no condition could have been imposed H

A in respect therefor or for suspension of sentence.

6. Mr. Uday Umesh Lalit, learned Senior Counsel appearing on behalf of the respondents, on the other hand, would submit that a distinction must be made between imposition of fine and application thereof, as contemplated under Clauses (a) to (d) of Sub-Section (1) of Section 357 and an amount of B compensation directed to be paid under Section (3) thereof.

7. We have noticed hereinbefore the sentence imposed upon the accused. It was submitted that a conjoint reading of Section 357 read with Sections 421 and 424 of the Code would clearly go to show that it is permissible for a Court to direct recovery of fine forthwith and if it is to be held that recovery of fine C is automatically stayed, Section 421 and 424 of the Code would become nugatory.

8. The Act is a special statute. Section 138(1) thereof provides for imposition of sentence upto two years or a fine which may extend to twice D the amount of the cheque or with both.

9. Before embarking upon the rival contentions raised by the parties, we may notice the relevant provisions of the Code :

"357. Order to pay compensation. (1) When a Court imposes a sentence E 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-

* * * *

F (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;

* * * *

(2) If the fine is imposed in a case which is subject to appeal, no G 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 H 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. A

* ** *

(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." B

"*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- C

(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, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter: D

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." E

"*431. Money ordered to be paid recoverable as a 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:" F

"*439. Special powers of High Court or Court of Session regarding bail.* (1) A High Court or Court of Session may direct- G

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any H

A person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of
B the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and
C commit him to custody."

10. It is, therefore, apparent that if a Court imposes a sentence of fine or a sentence or where it forms a part thereof, the Court is entitled to direct that whole or any part of the fine recovered, to be applied to in respect of the factors enumerated in clauses (a), (b), (c) or (d). Section 421 of the Code
D deals with the mode and manner in which the fine levied is to be recovered. Section 424 deals with the steps required to be taken by the Court where the amount of fine has not been paid forthwith. Section 357 deals with two types of cases, namely, (i) where only a sentence has been imposed; and (ii) where fine also forms part of the sentence. When a fine is imposed simplicitor Section 421 read with Section 424 would be applicable but where fine forms
E part of the sentence, it would not have any application.

11. A statute must be read harmoniously. An amount of compensation directed to be paid may not form part of a fine. It may be awarded separately. It may be recoverable as if it is a fine in terms of Section 431 of the Code but
F by reason thereof it would not become automatically recoverable forthwith. The legal position, however, must be considered keeping in view the purport and object of the Act.

12. An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for
G under Section 374 of the Code. Right of Appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a Fundamental Right. Right of Appeal, thus, can neither be interfered with or impaired, nor it can be subjected to any condition.

13. We may take notice of some of the decisions operating in the field
H in this behalf.

In *Garikapati Veeraya* v. *N. Subbiah Choudhry & Ors.* AIR [1957] SCR 540, this Court opined : A

> "(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.
>
> (ii) The right of appeal is not a mere matter of procedure but is a substantive right. B
>
> (iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit. C
>
> (iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or D proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.
>
> (v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise." E

14. This Court, in *Babu Rajirao Shinde* v. *The State of Maharashtra,* [1971] 3 SCC 337, observed that a convicted person must be held to be at least entitled to one appeal as a substantial right.

15. Yet again in *Siddanna Apparao Patil* v. *The State of Maharashtra,* F [1970] 1 SCC 547, this Court held :

> "The right to prefer an appeal from sentence of Court of Sessions is conferred by Section 410 of the Criminal Procedure Code. The right to appeal is one both on a matter of fact and a matter of law. It is only in cases where there is a trial by jury that the right to appeal is under G Section 418 confined only to a matter of law."

16. In *State of Gujarat* v. *Salimbhai Abdulgaffar Shaikh and Ors.,* [2003] 8 SCC 50, it was held:

> "10. Sub-section (4) of Section 34 of POTA provides for an appeal to H

A the High Court against an order of the Special Court granting or refusing bail. Though the word "appeal" is used both in the Code of Criminal Procedure and the Code of Civil Procedure and in many other statutes but it has not been defined anywhere. Over a period of time, it has acquired a definite connotation and meaning which is as under:

B "A proceeding undertaken to have a decision reconsidered by bringing it to a higher authority, especially the submission of a lower court's decision to a higher court for review and possible reversal.

An appeal, strictly so-called, is one in which the question is, whether the order of the court from which the appeal is brought was right on C the material which the court had before it. An appeal is removal of the cause from an inferior to one of superior jurisdiction for the purposes of obtaining a review or retrial. An appeal, generally speaking, is a rehearing by a superior court on both law and fact."

11. Broadly speaking, therefore, an appeal is a proceeding taken to D rectify an erroneous decision of a court by submitting the question to a higher court, and in view of the express language used in sub-section (1) of Section 34 of POTA the appeal would lie both on facts and on law. Therefore even an order granting bail can be examined on merits by the High Court without any kind of fetters on its powers and E it can come to an independent conclusion whether the accused deserves to be released on bail on the merits of the case. The considerations which are generally relevant in the matter of cancellation of bail under sub-section (2) of Section 439 of the Code will not come in the way of the High Court in setting aside an order of the Special Court granting bail. It is, therefore, evident that the provisions of F POTA are in clear contradistinction with that of the Code of Criminal Procedure where no appeal is provided against an order granting bail. The appeal can lie only against an order of the Special Court and unless there is an order of the Special Court refusing bail, the accused will have no right to file an appeal before the High Court praying for G grant of bail to them. Existence of an order of the Special Court is, therefore, a sine qua non for approaching the High Court."

17. In regard to the principles of natural justice, it was stated in *Madhav Hayawadanrao Hoskot* v. *State of Maharashtra,* reported in [1978] 3 SCC 552:

H "11. One component of fair procedure is natural justice. Generally

speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure, natural justice and normative universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis. In short, a first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code, manifests this value upheld in Article 21."

18. The legal position was declared as under :

"Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be made available by the Jail Administration;

These benign prescriptions operate by force of Article 21 (strengthened by Article 19(1)(d) read with sub-article (5) from the lowest to the highest court where deprivation of life and personal liberty is in substantial peril."

19. A Constitution Bench of this Court in *Mardia Chemicals Ltd. and Ors* v. *Union of India and Ors.*, [2004] 4 SCC 311, where the constitutionality of provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 were quested qua Section 17(4) thereof, held :

"In view of the discussion already held in this behalf, we find that the requirement of deposit of 75% of the amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down."

20. In *Transmission Corporation of A.P.* v. *Ch. Prabhakar & Ors.* [2004] 5 SCC 551, this Court held :

"The appeal is the right of entering a superior court and invoking its aid and interposition to redress an error of the court below. Though procedure does surround an appeal the central idea is a right. The right of appeal has been recognized by judicial decisions as a right which vests in a suitor at the time of institution of original proceedings."

A 21. In *Madhav Hayawadanrao Hoskot* v. *State of Maharashtra*, [1978] 3 SCC 544, this Court held :

> "....The fact remains that prisoners are situationally at the mercy of the prison 'brass' but their right to appeal, which is part of the constitutional process to resist illegal deprivation of liberty, is in peril if district jail
B officials *ipse dixit* that copies have been served is to pass muster without a title of prisoner's acknowledgement. What is more, there is no statutory provision for free legal services to a prisoner, absent which a right of appeal for the legal illiterates is nugatory and, therefore, a negation of that fair legal procedure which is implicit in Article 21
C of the Constitution as made explicit by this Court in Maneka Gandhi."

It was further held:-

> "Freedom is what freedom does and here we go straight to Article 21 of the Constitution, where the guarantee of personal liberty is phrased
D with superb amplitude."

22. Although it has been contended that direction to impose a fine of Rs.5 lacs had been issued as a condition precedent for admitting the appeal; from the order of the Appellate Court, the same does not appear to be correct. In its order dated 23.4.2006, the learned Appellate Court directed:-

E "Appeal admitted.

> Substantive sentence @ compensation payable in default is suspended till the disposal of the appeal, on payment of Rs.5 lacs within four weeks.

F Call R & P. Appellant be released on same bail.

> Appellant to furnish fresh bail bond."

23. We may also notice that appellant sought time for depositing the amount of compensation and also asked for the indulgence of the Court for
G reduction of the said amount as also for extension of time.

In the Memorandum of Appeal, it was prayed:-

> "(d) That the order of depositing of the compensation imposed by the trial court be suitably modified, to enable the appellant No. 2 time and
H come up with reduced amount of funds to comply with the same."

24. Although the right of appeal being a vested right cannot be taken away, we must also notice that right of the Court cannot be taken away to suspend the sentence and such a provision would be *ultra vires*. It was so held in *Dadu alias Tulsidas* v. *State of Maharashtra*, [2000] 8 SCC 437]. A

25. The distinction between sub-Sections (1) and (3) of Section 357 is apparent. Sub-Section (1) provides for application of an amount of fine while imposing a sentence of which fine forms a part; whereas sub-Section (3) calls for a situation where a Court imposes a sentence of which fine does not form a part of the sentence. B

26. Compensation is awarded towards sufferance of any loss or injury by reason of an act for which an accused person is sentenced. Although it provides for a criminal liability, the amount which has been awarded as compensation is considered to be recourse of the victim in the same manner which may be granted in a civil suit. So far as Appellant No. 2 is concerned, no fine has been imposed on him. He was directed to pay compensation. C

27. The question is as to whether the matter would come within the purview of sub-Section (3) and if so, whether sub-Section (2) of Section 357 would automatically be attracted. D

28. The purposes for application of fine imposed has been set out in clauses (a) to (d) of sub-Sections (1) of Section 357. Clause (b) of sub-Section (1) of Section 357 provides for payment of compensation out of the amount of fine. The purpose enumerated in clause (b) of sub-Section (1) of Section 357 is the same as sub-Section (3) thereof, the difference being that whereas in a case under sub-Section (1) fine imposed forms a part of the sentence, under sub-Section (3) compensation can be directed to be paid whence fine does not form a part of the sentence. E F

29. The fine can be imposed only in terms of the provisions of the Act. Fine which can be imposed under the Act, however, shall be double of the amount of the cheque which stood dishonoured. When, however, fine is not imposed, compensation can be directed to be paid for loss or injury caused to the complainant by reason of commission of the offence. Clause (b) of sub-Section (1) of Section 357 only provides for application of amount of fine which may be in respect of the entire amount or in respect of a part thereof. Sub-Section (3) of Section 357 seeks to achieve the same purpose. G

30. We must, however, observe that there exists a distinction between H

A fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a 'fine' but the legal fiction raised in relation to recovery of fine only, it is in that sense `fine' stands on a higher footing than compensation awarded by the Court.

B 31. If, therefore, under sub-Section (2) of Section 357, realization of fine, at least in respect of the factor(s) enumerated in clause (1) of sub-Section to be stayed automatically, we see no reason as to why the legislative intent cannot be held to apply in relation to amount of compensation directed to be paid in terms of sub-Section (3).

C In *Rachhpal Singh* v. *State of Punjab,* [2002] 6 SCC 462, this Court held:-

> "...A perusal of the operative part of the judgment of the High Court clearly shows that so far as the punishment under Section 302 is
> D concerned, it has disagreed with the Sessions Court and altered the sentence to one of life imprisonment from death. It has nowhere stated that it is also awarding a fine or that it was confirming the fine awarded by the Sessions Court for the offence under Section 302 IPC. In the absence of any such specific recording in our opinion, it should be deemed that the High Court has awarded only a sentence of life
> E imprisonment for an offence under Section 302 IPC. In such cases where the court does not award a fine along with a substantive sentence, Section 357(3) comes into play and it is open to the court to award compensation to the victim or his family. In our opinion, it is in the exercise of this power under Section 357(3) that the High
> F Court has awarded the compensation in question, therefore, it was well within the jurisdiction of the High Court..."

32. Yet again in *State of Punjab* v. *Gurmej Singh,* [2002] 6 SCC 663, we may notice a similar conclusion was arrived at although in a somewhat different fact situation :

> G "11. In the present case, sentence of fine has also been imposed, as indicated in the earlier part of this judgment. Out of the fine, a sum of Rs.1000 each had been ordered to be given to the three injured persons, namely, Dalip Singh, Amarjit Kaur and Gurmeet Kaur. The balance amount is to go to the legal heirs of Jagjit Singh. We had
> H heard the learned counsel for both parties on this aspect. Learned

counsel for the appellant submitted that Gurmeet Kaur lost both her parents as well as her brother in the incident and now she is alone and would have become of marriageable age or may have to start some work of her own. She would need some money. In case she cannot be compensated, the amount of fine may be enhanced to some extent. Learned counsel for the respondent has, however, submitted that out of seven acres of land belonging to his father, the same has been divided into three equal shares and some of it is also under mortgage and he has got two daughters and a son and his wife. He has also submitted that whenever the respondent was released on parole he met Gurmeet Kaur and his wife also keeps on going to meet her. Their relations are normal and cordial. If that is so, nothing better can be thought of in the prevailing circumstances. However, we are not considering for awarding any compensation to Gurmeet Kaur under Section 357(3) CrPC but the amount of fine imposed, can in any case be reasonably enhanced."

33. It is, therefore, seen that consideration for payment of compensation is somewhat different from payment of fine. It is, to the said extent applied differently. As would be noticed a little later, it is necessary to probe into the capacity of the accused to pay the amount and the purpose for which it is directed to be paid.

34. In *Hari Singh* v. *Sukhbir Singh & Ors.*, [1988] 4 SCC 551, this Court held:

"Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with sub-section (1). We are concerned only with sub-section (3). It is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim

A with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.

35. It was further opined:-

B

"The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one C accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default."

D

36. In *Sarwan Singh & Ors.* v. *State of Punjab*, [1978] 4 SCC 111, this Court held :

"...Though Section 545 enabled the court only to pay compensation out of the fine that would be imposed under the law, by Section 357 (3) when a Court imposes a sentence, of which fine does not form a E part, the Court may direct the accused to pay compensation. In awarding compensation it is necessary for the court to decide whether the case is a fit one in which compensation has to be awarded. If it is found that compensation should be paid, then the capacity of the accused to pay a compensation has to be determined. In directing F compensation, the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensation for, imposing a default sentence for non-payment of fine would not achieve the object. If the accused is in a position to pay the compensation to the injured or his dependents to which they are entitled to, there could be no G reason for the court not directing such compensation. When a person, who caused injury due to negligence or is made vicariously liable is bound to pay compensation it is only appropriate to direct payment by the accused who is guilty of causing an injury with the necessary mens rea to pay compensation for the person who has suffered H injury."

37. The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefor in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. *A fortiori,* an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub-Section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge.

38. If a fine is to be imposed under the Act, the amount of which in the opinion of the Parliament would be more than sufficient to compensate the complainant; can it be said, that an unreasonable amount should be directed to be paid by the Court while exercising its power under sub-Section (3) of Section 357? The answer thereto must be rendered in the negative. Sub-Section (5) of Section 357 also provides for some guidelines. Ordinarily, it should be lesser than the amount which can be granted by a Civil Court upon appreciation of the evidence brought before it for losses which might have reasonably been suffered by the plaintiff. Jurisdiction of the Civil Court, in this behalf, for realization of the amount in question must also be borne in mind. A criminal case is not a substitution for a civil suit, far less execution of a decree which may be passed.

39. Prosecution under the Act may be contemplated as a measure of deterrence, but the same is never meant to be a persecution.

40. Even in a case where violation of fundamental right guaranteed under Article 21 is alleged, the amount of compensation cannot be arbitrary or unreasonable even under Public Law.

In *Sube Singh* v. *State of Haryana,* [2006] 3 SCC 178, it is stated :

> "...The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way

A of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure."

41. It does not appeal to us that although a compensation payable out of the quantum of fine would remain stayed under sub-Section (2) of Section 357 of the Code, if a compensation is directed to be paid under sub-Section B (3) thereof, the same would not attract the said provision. [See *P. Suresh Kumar* v. *R. Shankar,* [2007] 4 SCALE 143]

42. Magistrates cannot award compensation in addition to fine. When a fine is imposed, however, the private party has no right to insist that compensation may be awarded to him out of the amount of fine. The power C to award compensation under Section 357(3) is not an ancillary power. It is an additional power.{See *Balraj* v. *State,* (1995) Crl. Law Journal 3217}.

43. Clause (b) of sub-Section (1) of Section 357 and sub-Section (1) of Section 357 and sub-Section (3) of Section 357 seek to achieve the same purpose. What is necessary is to find out the intention of the law maker and D the object sought to be achieved. Sub-Section (2) of Section 357 uses the word 'fine'. It does not say that what would be stayed i.e. application of fine. Sub-Section 2 of Section 357, in our opinion, does not contemplate any other interpretation. Even assuming that Mr. Lalit was correct in his submission, still then sub-Section (3) would be squarely attracted.

E

44. The amount of compensation, in view of the legal fiction, may be recovered under Section 421 of the Code. But the amount of compensation, having regard to Sub-Section (2) of Section 357 of the Code cannot be recovered forthwith unless the period of appeal expires.

F Legal fiction, it is well-settled, must be construed having regard to the purport of the statute. {See *Sadashiv Dada Patil* v. *Purushottam Onkar Patil (D) By Lrs.,* [2006] 10 SCALE 21; *M.P. State Electricity Board* v. *Union of India & Ors.,* [2006] 9 SCALE 194; *Maruti Udyog Ltd.* v. *Ram Lal & Ors.,* [2005] 2 SCC 638; and *Bharat Petroleum Corpn. Ltd.* v. *P. Kesavan & Anr.,* G [2004] 9 SCC 772.}

45. Section 421 only provides for a mode of recovery of fine. Section 424 provides for an enabling clause so as to enable the Court to take recourse to either of the situations provided for therein. The said provision, however, would be subject to sub-Section (2) of Section 357 of the Code. Section 431 H of the Code provides for a legal fiction in terms whereof any money other than

a fine shall be recoverable as if it were a fine. Even according to Mr. Lalit, sub-Section (2) of Section 357 of the Code would be attracted in such a situation. There does not appear to be any reason as to why the amount of compensation should be held to be automatically payable, although the same is only to be recovered as if a fine has been imposed. A

46. We are, however, not oblivious of the fact that in *Stanny Felix Pinto* v. *Jangid Builders Pvt. Ltd. & Anr.*, [2001] 2 SCC 416, Thomas, J. opined that while entertaining revision applications, a part of the fine should be directed to be deposited but therein this Court had no occasion to consider the provisions of Section 357 of the Code in details. B

47. This Court in an appropriate case may have to consider as to whether in economic offence like Negotiable Instruments Act, the Courts should at all invoke sub-Section (3) of Section 357 of the Code, when the purpose can be achieved by taking recourse to substantive provision of Section 138 of the Act read with Section 357(1) thereof. We, however, do not intend to lay down any law in this behalf, as at present advised, as we are not concerned herein with such a situation. C D

48. Section 389 does not deal with exactly a similar situation. Section 389 of the Code is to be read with Section 387 thereof. Suspension of a sentence and enlarging an appellant on bail, who is convicted and realization of fine has been dealt with by the Parliament under different provisions of the Code. The power of the Court, thus, to suspend a sentence in regard to realization of compensation may be different from that of a direction in realization of fine. E

49. If realization of an amount of compensation payable to a victim as envisaged under Clause (d) of sub-Section (1) of Section 357 is to be stayed under sub-Section (2) thereof, there is no reason why the amount of compensation payable in terms of sub-Section (3) shall not receive the same treatment. F

50. Doctrine of Purposive Interpretation in a situation of this nature, in our opinion, shall be applied. G

51. In *R (Haw)* v. *Secretary of State for the Home Department & Anr.*, (2006) 3 All ER p.428 at p.438, Lord Smith stated:-

"42...a passage from Bennion Statutory Interpretation (4th edn, 2002) 810 (section 304) entitled, 'Nature of purposive construction'. That H

A begins with the following words:

> 'A purposive construction of an enactment is one which gives effect to the legislative purpose by- (a) following the literal meaning of the enactment where the meaning is in accordance with the legislative purpose (in this Code called a purposive-and-
B literal construction), or (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).'
>
> xxx xxx

C 52. 44. The passage from Bennion continues:

> '...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is
D engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it. [*Kammins Ballroom Co. Ltd.* v. *Zenith Investments (Torquay) Ltd.* (1970) 2 All ER 871, (1971) AC 850, (1970) 3 WLR 287] provides an instance of this; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied.
E First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, an eventuality that required to be dealt with if the purpose of the
F Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a court
G of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed.'

45. The passage from Bennion continues:

> 'Lord Diplock's third point is, with respect, erroneous. The
H argument that in *Jones* v. *Wrotham Park Settled Estates*, Lord

Diplock was mistaken in saying that for a rectifying construction to be effected it must be possible to state with certainty what the missing words are, has been endorsed by the House of Lords. Lord Nicholls of Birkenhead said that the court must be sure of "the substance of the provision Parliament would have used" [See *Inco Europe Ltd.* v. *First Choice Distribution* (a firm) (2000) 2 All ER 109, (2000) 2 All ER 109, (2000) 1 WLR 586]."" A B

{See also *K.L. Gupta* v. *Bombay Municipal Corpn.*, [1968] 1 SCR 274: AIR (1968) SC 303; *Maruti Udyog Ltd.* v. *Ram Lal*, [2005] 2 SCC 638 : [2005] SCC (L&S) 308]; *Reserve Bank of India* v. *Peerless General Finance & Investment Co. Ltd.*, [1987] 1 SCC 424; *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Presiding Officer, Labour Court*, [1990] 3 SCC 682; *Balram Kumawat* v. *Union of India*, [2003] 7 SCC 628 and *Pratap Singh* v. *State of Jharkhand*, [2005] 3 SCC 682.} C

53. Unfortunately, the Legislature has not made any express provision in this behalf. In absence of any express provision, the question must be considered having regard to the overall object of a statute. We have noticed hereinbefore that Article 21 of the Constitution of India read with Section 374 of Crl.P.C. confers a right of appeal. Such a right is an absolute one. In a case where a judgment of conviction has been awarded, the Court can release a person on bail having regard to the nature of offence but as also the other relevant factors including its effect on society. A person upon arrest may have to remain in jail as an under trial prisoner. So would a person upon conviction. A person may also have to remain in jail, in the event he defaults in payment of fine, if he is so directed. But when a direction is issued for payment of compensation, having regard to Sub-Section (2) of Section 357 of the Code, the application thereof should ordinarily be directed to be stayed. It will, therefore, be for the Court to stay the operation of that part of the judgment whereby and whereunder compensation has been directed to be paid, which would necessarily mean that some conditions therefor may also be imposed. *A fortiori* a part of the amount of compensation may be directed to be deposited, but the same must be a reasonable amount. D E F G

54. An order may not be passed which the appellant cannot comply with resulting him being sent to prison. Appellate Court, in such cases, must make an endeavour to strike a balance. Section 421 of the Code of the Criminal Procedure may take recourse to, but therefor he cannot be remanded to custody. H

A 55. The Parliament has dealt with the imposition of substantive sentence and a sentence of fine *vis-a-vis* payment of compensation differently.

56. A penal statute, in the event, the different meanings are possible to be given, must be construed liberally in favour of an accused.

B 57. While the Court shall give due weight to the need of the victim, it cannot ignore the right of an accused. In a case of conflict, construction which favours the accused shall prevail.

58. In a case of this nature, the Court must invoke the doctrine of purposive construction. Sub-Section (2) of Section 357 was enacted for a C definite purpose. It must be given its full effect.

59. Reliance has been placed on a judgment of a learned Single Judge of the Andhra Pradesh High Court in *V. Prasada Rao* v. *The State of A.P. & Anr.*, (2002) Crl. Law Journal 395. The learned Judge opined that the purpose of stay in sub-Section (2) of Section 357 would cover a case both under sub- D Section (1) as also under sub-Section (3) stating:-

> "8. The fine amount imposed by the Court as a sentence shall have to be recovered in the first instance so that the whole of the said amount or part of it can be applied towards expenses and towards compensation. The Code clearly envisages recovery of fine amount. E The execution, suspension, remission and commutation of sentences passed by a criminal Court is envisaged under Chapter XXXII of the Code. It is in four parts. Part A deals with the death sentences, Part B deals with imprisonment, Part C with levy of fine and Part D deals with general provisions regarding execution. Coming in the realm of F Part C. Section 421 envisages the procedure of recovery of fine. There has been no specific provision for recovery of compensation awarded by the criminal Court. If the compensation awarded is from out of the fine amount there is no difficulty. However, under the general provisions of Part D, Section 431 covers the field. It is a residuary provision, which caters to the above piquant situation. G

60. The learned Judge referred to Section 431 of the Code and observed:

> "The object of granting compensation is one and the same under these provisions. When the order of compensation granted under sub-section (1) gets automatically stayed in the event of filing an H

appeal there is no reason as to why the stay shall not operate in respect of the compensation granted under sub-section (3) of Section 357 of the Code. Merely because sub-section (2) is coming under sub-section (1) and speaks of fine imposed by the Court in an appealable case the benefit of the stay engrafted under the Section cannot be restricted to sub-section (1) alone nor its application be excluded to the provisions of sub-section (3) thereof. It is manifest now even the compensation granted under sub-section (3) of Section 357 shall have to be recovered only as if it were a fine. Consequently, the stay engrafted under sub-section (2) in my considered view equally applies to the compensation granted under sub-section (3) of Section 357 of the Code. It is not a case of suspending the sentence of fine where it is open to the Court to impose a condition either for deposit of a part of the fine amount or for such condition as is appropriate in the context. Section 357 which enables the Court to grant compensation, inheres in itself a bar for such payment of compensation under sub-section (2) which operates automatically. Imposing a condition in this regard has not been clearly envisaged by that Section. Oblivious of the legal position the learned Judge directed the petitioner to furnish third party security."

60. In *K. Bhaskaran* v. *Sankaran Vaidhyan Balan & Anr.*, [1999] 7 SCC 510, this Court held :

"However, the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code. It is well to remember that this Court has emphasised the need for making liberal use of that provision (*Hari Singh* v. *Sukhbir Singh*). No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of a Magistrate of the First Class in respect of a cheque which covers an amount exceeding Rs 5000 the Court has power to award compensation to be paid to the complainant."

{See also *Suganthi Suresh Kumar* v. *Jagdeeshan*, [2002] 2 SCC 420.}

61. Recently, in *National Insurance Co. Ltd.* v. *Laxmi Narain Dhut*, [2007] 4 SCALE 36, a Division Bench of this Court laid down the law in the

A following terms:

> "A statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of those who make it and the duty of the court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to foresee all situations exhaustively and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. (See *District Mining Officer and Ors.* v. *Tata Iron & Steel Co. and Anr.*, JT (2001) 6 SC 183).

62. It is also well settled that to arrive at the intention of the legislation depending on the objects for which the enactment is made, the Court can resort to historical, contextual and purposive interpretation leaving textual

interpretation aside." A

It was also opined:

> "More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the Courts should keep in mind the objectives B or purpose for which statute has been enacted. Justice Frankfurter of U.S. Supreme Court in an article titled as Some Reflections on the Reading of Statutes (47 Columbia Law Reports 527), observed that, "legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of C Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of purpose"."

We, generally, agree with the observations made by the learned Judge, the same shall, however, be subject to any observations made hereinbefore. D

63. The matter has to be considered from another angle. An accused for commission of an offence under Section 138 of the Negotiable Instruments Act would ordinarily be granted bail; in view of the fact that the offence is a bailable one.

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64. The right to appeal from a judgment of conviction *vis-a-vis* the provisions of Section 357 of the Code of Criminal Procedure and other provisions thereof, as mentioned hereinbefore, must be considered having regard to the fundamental right of an accused enshrined under Article 21 of the Constitution of India as also the international covenants operating in the field. F

65. It is of some significance to notice that in *Jolly George Varghese and Anr* v. *The Bank of Cochin,* [1980] 2 SCC 360, this Court opined:

> "Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value G of human dignity and the worth of the human person enshrined in Article 21, read with Arts. 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. *Maneka Gandhi's* case [1978] 1 S.C.R. 248 as developed further in *Sunil Batra* v. *Delhi Administration, Sita Ram* H

A *and Ors.*, v. *State of U.P. and Sunil Batra* v. *Delhi Administration,* lays down the proposition. It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of daridra Narayana, is no crime and to 'recover' debts by the procedure of putting one in prison is too flagrantly violative of
B Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the Covenant. But this
C is precisely the interpretation we have put on the Proviso to Section 51 C.P.C. and the lethal blow of Article 21 cannot strike down the provision, as now interpreted.

The words which hurt are "or has had since the date of the decree, the means to pay the amount of the decree". This implies, superficially
D read, that if at any time after the passing of an old decree the judgment-debtor had come by some resources and had not discharged the decree, he could be detained in prison even though at that later point of time he was found to be penniless. This is not a sound position apart from being inhuman going by the standards of Article 11(of the
E Covenant) and Article 21(of the Constitution). The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging
F on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will play prominently. We would have, by this construction, sauced law with justice, harmonised Section 51 with the Covenant and the Constitution."

G 66. It is also of some significance to note that whereas under Section 357(1) of the Code of Criminal Procedure a fine of Rs. 5000/- can be imposed; fine in terms of Section 357 (2) thereof can be twice the amount of cheque whereas there is no upper limit for award of a compensation. But the same would be subject to other provisions of the Code of Criminal Procedure which mandates that the amount of fine imposed on an accused cannot be more than
H

Rs. 5000/-. The very fact that the Parliament did not think it fit to put a ceiling limit in regard to the amount of compensation leviable upon an accused, the discretionary jurisdiction thereto must be exercised judiciously. Ordinarily, an accused shall not be taken in custody during trial. Thus, while exercising the appellate power, ordinarily, a person should not suffer imprisonment only because the conditions imposed for suspending the sentence are harsh.

67. We are of the opinion that having regard to the aforementioned factors the amount of compensation not only must be reasonable one, the conditions for suspending the sentence should also be reasonable. It is only with that intent in view, the doctrine of purposive construction should be applied.

68. We would, however, like to put a note of caution that the right of an accused unnecessarily need not be enlarged but it is the court's duty to duly protect his right.

69. We are *Prima facie* of the opinion (without going into the merit of the appeal) that the direction of the learned Trial Judge appears to be somewhat unreasonable. Appellant herein has been sentenced to imprisonment. Only fine has been imposed on the Company. Thus, for all intent and purpose, the learned Trial Judge has invoked both Sub-sections (1) and (3) of Section 357 of the Code. The liability of the appellant herein was a vicarious one in terms of Section 141 of the Negotiable Instruments Act. The question may also have to be considered from the angle that the learned Trial Judge thought it fit to impose a fine of Rs. 25,000/- only upon the Company. If that be so, a question would arise as to whether an amount of compensation for a sum of Rs. 15 lakhs should have been directed to be paid by the Chairman of the Company. We feel that it is not.

70. We, therefore, are of the opinion :

(i) In a case of this nature, Sub-Section (2) of Section 357 of the Code of Criminal Procedure would be attracted even when Appellant was directed to pay compensation;

(ii) The Appellate Court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;

(iii) The amount of compensation must be a reasonable sum;

(iv) The Court, while fixing such amount, must have regard to all

A relevant factors including the one referred to in Sub-Section (5) of 357 of the Code of Criminal Procedure;

(v) No unreasonable amount of compensation can be directed to be paid.

B 71. In the facts and circumstances of the case, we, however, think it reasonable to direct the appellant to deposit a sum of Rs. 1 lakh within a period of four weeks, from date. The Respondent - Company, however, would be entitled to withdraw the said amount. The deposit of such amount by the appellant shall be without prejudice to the rights and contentions of the parties in the appeal.

C 72. These appeals are allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs.

VS Appeals allowed.