IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.5770 OF 2025

Cyrus Noshirwan Kartak ... Petitioner
versus
State of Maharashtra and Anr. … Respondents

Mr. Mohit Bharadwaj, for Petitioner.
Mr. P.P.Malshe, APP for State.
Mr. Jatin P. Karia (Shah) with Ms. Snehankita M. Munj, Ms. Dipti Jatin karia, Ms. Shraddha Kamble, for Respondent No.2.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 16 APRIL 2026
PRONOUNCED ON : 5 MAY 2026

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the parties, heard finally.

2. By this Petition under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (the Code), the Petitioner, who has been convicted for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (N.I.Act, 1881), in 17 complaints, seeks declaration that the Petitioner be deemed to have been convicted in only one complaint, and, accordingly, the substantive sentence as well as in default sentence be modified, and, in the alternative, it be declared that the sentence which the Petitioner has already undergone shall be treated as the total sentence in all 17 complaints, including the

sentence in default of payment of compensation awarded by the learned Magistrate.

3. The Petition arises in the backdrop of the following facts :

2.1 Respondent No.2 – complainant claimed to have sold and delivered goods to the Mintaur Engineering Private Ltd. (A1), of which the Petitioner (A2) was the director. Asserting that an amount of Rs.22,68,07,788/- was due and payable by the accused towards the price of the goods sold and delivered and in discharge of the said liability, accused Nos.1 and 2 had drawn 60 cheques and, during the period 7 July 2014 to 30 July 2014, those cheques were dishonoured upon presentment, the complainant (R2) lodged 17 complaints on 12 September 2014 before the same Court.

2.2 Post completion of the trial, in all 17 complaints, by separate judgments delivered on the same day i.e. 9 May 2017, by the learned Metropolitan Magistrate, 63rd Court, Andheri, the Petitioner came to be convicted for the offence punishable under Section 138 read with Section 141 of the Act, 1881 and sentenced to suffer simple imprisonment for 15 months and also pay distinct amounts of compensation under Section 357(3) of the Code, 1973, and, in default of payment of compensation, suffer simple imprisonment for 12 months in each case. It was further directed that the substantive sentences in all the 17 complaints would run concurrently. Whereas the default sentence in each of the cases shall run consecutively.

2.3 Being aggrieved, the Petitioner preferred 17 appeals before the Court of Session, at Mumbai. By separate judgments and orders of even date i.e. 17 January 2025, the learned Additional Sessions Judge, Dindoshi, dismissed all the appeals affirming the judgment of conviction and order of sentence passed by the learned Metropolitan Magistrate in each of the complaints.

2.4 It seems, the orders passed by the Appellate Court have attained finality.

2.5 By this Petition, the Petitioner asserts, there was no reason as to why 17 complaints were lodged. In fact, the transaction between the parties was one and not indivisible. Therefore, the complainant ought to have lodged only one complaint for the dishonour of all the cheques and the accused could have been prosecuted and punished for having committed the offence punishable under Section 138 read with Section 141 of the Act, 1881, once only. Why a particular number of cheques were included in one particular complaint was not disclosed.

2.6 The Petitioner avers, the learned Magistrate as well as the learned Additional Sessions Judge were in error in passing separate orders of conviction and sentence in all of the 17 complaints, though all the cheques were drawn as a part of the same transaction. Resultantly, separate orders of conviction and sentence in each of the 17 complaints, are manifestly illegal. In any event, the learned Magistrate committed a grave error in law, in

awarding sentence of 12 months imprisonment in default of payment of compensation in each of the complaints, in teeth of the provisions contained in Section 65 of the Indian Penal Code, 1860. Hence, this Petition for the aforementioned reliefs.

2.7 Respondent No.2 – complainant has resisted the Petition.

4. I have heard Mr. Mohit Bharadwaj, the learned Counsel for the Petitioner and Mr. Jatin Karia (Shah), the learned Counsel for Respondent No.2 – complainant and Mr. Malshe, learned APP for the State, at length. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

5. Mr. Bharadwaj, the learned Counsel for the Petitioner, canvassed a two-pronged submission. First, the initiation of prosecution for the offence punishable under Section 138 read with Section 141 of the Act, 1881 in 17 distinct complaints was malafide. The complainant has evidently misused the custody of 60 cheques. In effect, there was only one transaction of purported sale and delivery of the goods by the complainant to the accused and the latter allegedly owed a consolidated amount towards the price of the goods sold and delivered. In fact, the demand notice issued on behalf of the complainant referred to the outstanding amount of Rs.22,68,07,788/- only. Without any specification and bifurcation of the amount for which the cheques were drawn, the cheques were arbitrarily included in one complaint. Nor there

was any co-relation of the cheques included in one complaint with the invoices, etc. The alleged offence was committed as a part and parcel of one and the same transaction. Therefore, the very prosecution of the Petitioner in 17 complaints was legally infirm. If at all, Mr. Bharadwaj would urge, the accused could have been convicted for only one count of commission of the offence punishable under section 138 read with Section 141 of the Act, 1881, and not in 17 complaints.

6. Second, Mr. Bharadwaj would urge, the imposition of sentence of 12 months in default of payment of compensation under Section 357(3) of the Code, in each of the complaints, was clearly illegal. Since the offence punishable under Section 138 of the Act, 1881, entails maximum punishment of two years imprisonment, the learned Magistrate could not have imposed sentence in default exceeding six months, in view of the mandate contained in Section 65 of the IPC. The imposition of default sentence of 12 months in each of the complaints and making all the sentences in default to run consecutively, has caused grave prejudice to the Petitioner as the Petitioner would be required to suffer 17 years of imprisonment in default of payment of compensation. Mr. Bharadwaj would, therefore, urge that the impugned orders of sentence passed by the learned Magistrate and affirmed by the learned Sessions Judge are mechanical and deserve to be quashed and set aside.

7. To buttress the aforesaid submissions, Mr. Bharadwaj placed a very strong reliance on the judgment of a learned Single Judge of the Delhi High Court in the case of **Sanjay Vasudeva V/s. State of NCT of Delhi and Anr.**[1] .

8. In opposition to this, Mr. Jatin Karia, learned Counsel for Respondent No.2 – complainant would submit that the instant writ petition does not deserve to be entertained. It was urged that the Petitioner has filed a single Petition assailing the orders passed by the learned Magistrate and the learned Additional Sessions Judge in 17 distinct proceedings, and, therefore, in the absence of an independent challenge to each of the orders passed by the learned Additional Sessions Judge, a single Petition cannot be entertained.

9. Secondly, Mr. Karia would submit that the impugned orders passed by the learned Sessions Judge in appeal against orders of conviction and sentence passed by the learned Magistrate are revisable. In the face of the statutory remedy, this Court need not exercise its supervisory and inherent jurisdiction, submitted Mr. Karia.

10. On the merits of the matter, Mr. Karia would urge, the claim of the Petitioner that all the cheques were given in discharge of one and the same liability, is factually incorrect and legally unsustainable. An effort was made by Mr. Karia to co-relate the cheques which were the subject matter of 17 distinct

1 CRL M.C. 3340 of 2023 dt. 19 August 2025

complaints with the distinct underlying invoices raised by the complainant.

11. Refuting the submissions of Mr. Bharadwaj that there was no reason to file 17 complaints, Mr. Karia would urge, the demand notice and the respective complaints contain adequate averments in regard to the distinct transactions in discharge of the liability incurred whereunder, separate cheques were drawn and, resultantly, separate complaints were filed. Mr. Karia placed reliance on a decision of the Supreme Court in the case of **V.K.Bansal V/s. State of Haryana and Anr.**[2] to bolster up the submission that separate complaints in respect of distinct transactions were in order.

12. Mr. Karia would urge that, it is settled legal position that the sentences in default of payment of fine, cannot run concurrently. Those sentences are required to be suffered independently. Thus, the prayer of the Petitioner to declare that the sentence already undergone by the Petitioner shall be treated as total sentence in default of payment of compensation qua all the 17 complaints, cannot be acceded. to. Reliance was placed by Mr. Karia on a judgment of the learned Single Judge of the Kerala High Court in the case of **C.T.K. Chandran V/s. State of Kerala and Ors.**[3]

13. I have given anxious consideration to the aforesaid submissions canvassed across the bar. Before adverting to the core controversy that crops up for consideration, it may be apposite to note few uncontroverted

2 (2013) 7 SCC 211
3 2020 SCC Online Ker 1900

facts. Incontrovertibly, the complainant had lodged 17 complaints for the offence punishable under Section 138 read with Section 141 of the Act, 1881, against the accused No.1 company and the Petitioner (A2), on one and the same day and before the same Court. Indisputably, all those complaints were decided on the same day i.e. 9 May 2017 by separate judgments. Accused Nos.1 and 2 were found guilty of the offence punishable under Section 138 read with Section 141 of the Act, 1881. The Petitioner (A2) was sentenced to suffer simple imprisonment for 15 months and the accused No.1 and the Petitioner were directed to pay compensation specified in each of the complaints under Section 357(3) of the Code and in default of payment of compensation, the Petitioner (A2) was sentenced to suffer Simple Imprisonment for 12 months in each of the complaints. Learned Magistrate directed that the substantive sentence in all the 17 complaints would run concurrently. Sentence in default of payment of compensation would, however, run consecutively. It is not in dispute that, in the appeals preferred by the accused, the learned Additional Sessions Judge found no reason to interfere with the judgments and orders passed by the learned Magistrate, even in regard to the sentence.

14. In the backdrop of the aforesaid facts, the first question that comes to the fore is, whether the accused could have been prosecuted and punished separately in 17 distinct complaints. The answer to the aforesaid question

hinges upon a further question as to whether, all the 60 cheques were drawn as a part of one and the same transaction. It would be contextually relevant to note the case set up by the complainant in the statutory demand notice, which preceded the complaints, and the averments in the complaints. In the statutory notice, it was claimed that, towards the price of the goods sold and delivered by the complainant to accused No.1 Company, a sum of Rs.22,68,07,788/-, was due and payable and towards the discharge of the said liability, the accused has drawn distinct cheques referred to in each of the complaints.

15. Likewise, in the complaints, it was alleged that a sum of Rs.22,68,07,788/- was outstanding towards the goods sold and delivered by the complainant to the accused No.1, and the cheques drawn towards the payment of the price of the goods sold and delivered were dishonoured on presentment. It could be urged that, though the total outstanding amount was the same, the cheques drawn towards the discharge of the liability in part, in each of the complaints were presented and dishonoured on different dates giving rise to distinct causes of action for lodging separate complaints.

16. Nonetheless, were the courts below required to pose unto themselves the question as to whether, despite finding the accused guilty of the offences punishable under Sections 138 read with Section 141 of the Act, in all the 17 complaints, the accused could have been sentenced to suffer imprisonment

on one count of the charge and awarded consolidated compensation on the basis of the aggregate amount covered by the dishonoured cheques, and, consecutively, one sentence in default of payment of compensation ?

17. Mr. Karia attempted to demonstrate that, 17 complaints pertained to different transactions evidenced by distinct invoices and delivery challans. A chart of the invoices and delivery challans, which formed the underlying transactions in the discharge of liability towards which the cheques included in different complaints were drawn, was sought to be tendered for the perusal of the Court.

18. True, this court in exercise of its supervisory writ jurisdiction may not delve into the thickets of facts as if the very order of conviction for the offence punishable under Section 138 read with Section 141 of the Act, 1881, was under challenge. That question could have been legitimately examined; more elaborately, in the challenge to the orders passed by the learned Sessions Judge in the appeals if the accused assailed the same by filing properly constituted proceedings.

19. Ordinarily, the rule of single transaction is resorted to in the matter of issue of direction to run the sentences concurrently or consecutively. Under Section 427 of the Code, 1973, the Court is vested with the discretion to determine whether the sentence would run consecutively or concurrently. The exercise of discretion is informed by the peculiar facts of the case and the

predominant factor is, whether the offences have allegedly been committed as a part of the same transaction.

20. In the case of **Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti V/s. Asstt. Collector of Customs and Anr.**[4], the Supreme Court expounded that the provisions contained in Section 427 relates to administration of criminal justice and provides procedure for sentencing. The sentencing court is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or consecutive ? The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

21. In the case of **State of Punjab V/s. Madan Lal**[5], where the accused was convicted for the offence punishable under Section 138 of the Act in three complaints, and sentenced to suffer imprisonment, without giving benefit of Section 427 of the Code, the Supreme Court upheld the order of the High Court that the sentence imposed by the Court in all the three complaints shall

4 (1988) 4 SCC 183
5 (2009) 5 SCC 238

run concurrently.

22. In the case of **V.K.Bansal (supra)**, the Supreme Court enunciated that, under Section 427(1) the court has the power and discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along the judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the Courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed and the fact-situation in which the question of concurrent running of the sentences arises.

23. The Supreme Court culled out the proposition, as under :

> "16. In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor."

24. In the case at hand, the learned Magistrate has indeed given the benefit of the provisions contained in Section 427 of the Code, in the matter of

the substantive sentence of imprisonment of 15 months ordered to be suffered in each of the 17 complaints. However, the controversy arose on account of the award of the distinct compensation in each of the complaints and even more significantly on account of imposition of 12 months sentence in default of payment of compensation in each of the complaints.

25. In regard to the imposition of the sentence of imprisonment of 12 months in default of payment of compensation, the pivotal questions that arise for consideration, (i) could the learned Magistrate have awarded imprisonment of 12 months in default of payment of compensation ? (ii) whether the order to run sentences in default of payment of compensation consecutively, was legally sustainable ? And (iii) whether the award of excessive sentence of imprisonment in default of payment of compensation was justifiable ?

Limits of sentence in default of payment of fine :

26. A brief recourse to the provisions of the Code of Criminal Procedure, 1973 and the Indian Penal Code, 1860, becomes necessary. Section 30 of the Code, 1973, deals with the sentence of imprisonment in default of fine. It reads as under :

> "**30. Sentence of imprisonment in default of fine.** - (1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law :

> Provided that the term -
>
> (a) is not in excess of the powers of the Magistrate under section 29;
>
> (b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.
>
> (2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 29."

27. Section 65 of the IPC, 1860 prescribes limit of imprisonment for non-payment of fine. It reads as under :

> "**65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable –** The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine."

28. A conjoint reading of the aforesaid provisions would indicate that the Magistrate is empowered to award imprisonment in default of payment of fine, as is authorized by law. The proviso to sub-section (1), however, restricts the power of the Magistrate to impose sentence in default of payment of fine.

Firstly, it shall not be in excess of the powers of the Magistrate under Section 29. Secondly, where the imprisonment has been awarded as a part of the substantive sentence, default sentence shall not exceed 1/4th of the term of the imprisonment, which the Magistrate is competent to inflict as punishment for the offence for which the accused is found guilty.

29. Section 65 of the IPC, 1860, contains an interdict against sentencing the accused to imprisonment in default of payment of fine, by providing that such imprisonment shall not exceed the 1/4th of the imprisonment which is the maximum term of the sentence. Cumulatively, the imprisonment in default of payment of fine shall not exceed :

(1) 1/4th of the maximum term of imprisonment provided for the offence in question,

(2) 1/4th of the term of imprisonment, which the Magistrate is competent to inflict as punishment, even though the offence may entail greater punishment. For example, an offence punishable under Section 326 of the IPC entailed punishment of imprisonment which may extend to life and, yet, the Magistrate of First Class cannot impose a sentence of imprisonment for a term not exceeding three years,

(3) the powers of the Magistrate under Section 29.

30. Reverting to the case at hand, the offence punishable under Section 138 of the NI Act, 1881 entails punishment which may extend to two years, or

with fine which may extend to twice the amount of cheque or with both. In view of the provisions contained in Section 65 of the IPC read with Section 30 of the Code, 1973, the maximum sentence in default of payment of fine or compensation awarded for the commission of an offence punishable under Section 138 of the NI Act, 1881 would be six months. Learned Magistrate was, thus, in error in imposing the sentence of 12 months imprisonment in default of payment of compensation awarded under Section 357(3) of the Code, 1973. Sentence of 12 months imprisonment is clearly in teeth of the mandate contained in Section 65 of the IPC and Section 30 of the Code, 1973. These mandates are absolute.

31. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of **M.B.Manjegowda V/s. State of Karnataka**[6] , wherein the Supreme Court enunciated that the mandate of Section 65 of the IPC is absolutely clear and no default sentence can be awarded in excess of ¼th of the maximum punishment prescribed for the offence concerned.

32. In view of the aforesaid position in law, the imposition of 12 months imprisonment in default of payment of compensation by the learned Magistrate was clearly illegal. The learned Additional Sessions Judge also failed to notice the legal infirmity in the sentence in default of payment of compensation imposed by the learned Magistrate.

6 (2021) 17 SCC 723

Default Sentence : Consecutive or Concurrent :

33. The legal position on the aspect of the sentences in default in payment of fine running consecutively and not concurrently, is well recognized. To start with, Section 64 of the IPC, 1860 provides that, it shall be competent to the Court which sentences the offender to direct by the sentence that, in default of payment fo 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. Section 64 of the Penal Code, thus, mandates that the sentence awarded for non-payment of fine, shall be in excess of any other imprisonment to which the accused may have been sentenced.

34. Sub-section (2) of Section 30 of the Code, provides that the imprisonment awarded under the said Section may be in addition to the substantive sentence of imprisonment for the maximum term awardable by the Magistrate under Section 29. Section 428 of the Code further clarifies the position by excluding the imprisonment in default of payment of fine, from the ambit of set off to which the accused is entitled to on account of the period of detention undergone by him during the investigation, inquiry or trial of the case. Therefore, the sentences in default of payment of fine or compensation, cannot be made to run concurrently.

35. In the case of **Sharad Hiru Kolambe V/s. State of Maharashtra and Ors.**[7], the Supreme Court has held that the default sentences cannot be directed to run concurrently.

Term of Default Sentence :

Justifiability of the nature of the sentence in default of payment of fine or compensation ?

36. This leads me to the justifiability of the award of 12 months imprisonment in default of payment of compensation. A sentence in default of payment of fine is in the nature of disapprobation of the conduct of the accused in not complying with the order of the Court to pay the fine or compensation. The sentence in default of payment of compensation is not a device to enhance the substantive sentence which the Court is empowered to inflict by way of punishment. A substantive sentence of imprisonment, as a part of punishment for the offence, and, a sentence in default of payment of fine are qualitatively different. A default sentence stands on a different footing. Default sentence is essentially by way of penalty for the failure to abide the order of the Court to pay fine or compensation. Therefore, while imposing a sentence in default of payment of fine, the Court should be alive to the object of the measure of the sentence in default. It can never be imposed by way of an additional punishment.

7 (2018) 18 SCC 718

37. In the case of **Shanti Lal V/s. State of Madhya Pradesh**[8], the Supreme Court postulated the object of sentence in default of payment of fine and the considerations which ought to weigh in Court in imposing the default sentence. The observations in para 31 read as under :

> "31……The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or otherwise. A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but the duty of the court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine." (emphasis supplied)

38. Following the aforesaid pronouncement, in the case of **Sahejadkhan Mahebubkhan Pathan V/s. State of Gujarat**[9], the Supreme Court interfered

8 (2007) 11 SCC 243
9 (2013) 1 SCC 570

with the order of imposition of three years imprisonment in default of payment of fine of Rs.1.5 Lakhs, for having committed the offences punishable under the NDPS Act, 1985 and reduced it to six months. The Supreme Court reiterated the position in law, as under :

> "12. It is clear and reiterated that the term of imprisonment in default of payment of fine is not a sentence. To put it clear, it is a penalty which a person incurs on account of non-payment of fine. On the other hand, if sentence is imposed, undoubtedly, an offender must undergo unless it is modified or varied in part or whole in the judicial proceedings. However, the imprisonment ordered in default of payment of fine stands on a different footing. When such default sentence is imposed, a person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. Accordingly, he can always avoid to undergo imprisonment in default of payment of fine by paying such an amount. In such circumstance, we are of the view that it is the duty of the Court to keep in view the nature of offence, circumstances in which it was committed, the position of the offender and other relevant considerations such as pecuniary circumstances of the accused person as to character and magnitude of the offence before ordering the offender to suffer imprisonment in default of payment of fine. The provisions of Sections 63 to 70 of IPC make it clear that an amount of fine should not be harsh or excessive. We also reiterate that where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases." (emphasis supplied)

39. In the case of **Sharad Hiru Kolambe (supra)**, the Supreme Court clarified that if the term of imprisonment in default of payment of fine is a penalty which a person incurs on account of non-payment of fine and is not a sentence in strict sense, imposition of such default sentence is completely different and qualitatively distinct from a substantive sentence. In the said case as well, the Supreme Court interfered with the order of imposition of default sentence of three years imprisonment for non-payment of fine for having committed the offences under MCOCA, and reduced it to one year.

40. It is true, the offence punishable under Section 138 of the NI Act, 1881, stands on a slightly different pedestal. Ordinarily, the justice of the case demands that the drawer of the cheque be directed to pay the fine or compensation, as the case may be, to compensate the payee. The prescription of punishment for the dishonour of a cheque is predominantly for the purpose of ensuring the sanctity of the cheque as a negotiable instrument in the commercial transactions. The penal measure primarily subserves the end of compensatory justice rather than retributive or punitive element. Nonetheless, while imposing the compensation, the Court ought to have due regard to the situation in life of the parties, especially that of accused. The circumstances peculiar to the accused are of critical salience while determining the quantum of sentence of imprisonment in default of payment

of fine or compensation. The maximum permissible sentence in default of payment of compensation may be legitimate. However, the Court must pose unto itself a question whether that would be reasonable and justifiable in the facts and circumstances of the given case, for there is an essential distinction between the permissibility of the action and justifiability thereof.

41. Applying these principles to the facts of the case, I find it rather difficult to accede to the submission of Mr. Karia that the Petitioner must suffer six months imprisonment in default of payment of compensation in each of the cases. The implications of the submission of Mr. Karia are that the Petitioner shall suffer substantive sentence of imprisonment of 15 months and in addition, shall suffer eight and half years of imprisonment in default of payment of compensation. The sole reason being the inability of the Petitioner to pay the amount of compensation, directed to be paid in each of the complaints.

42. The submission canvassed by Mr. Karia, in the considered view of this Court, cannot be countenanced, if the guarantee of right to life and personal liberty under Article 21 is to be given such an expansive interpretation as it has received. A procedure which authorises the detention of the convict for default in payment of compensation for a term of eight and half years, when the substantive sentence of imprisonment is 15 months only, can only be said to be ex-facie unreasonable, excessively harsh and shockingly

disproportionate to the non-compliance of the order to pay the compensation.

43. At this juncture, the purpose of imposition of sentence in default of payment of fine assumes salience. A system which detains the convict for his inability to pay the compensation ordered by the Court for an inordinately long period without anything more, may not pass the muster of reasonable and fair procedure. The approach to be adopted by the Court when a person is sought to be detained in a prison for failure to pay the amount ordered to be paid by the Court, delineated by the Supreme Court in the case of **Jolly George Varghese and Anr. V/s. The Bank of Cochin**[10], albeit in a different context, deserves to be noted. In the context of the execution of the decree for payment of money by detaining the judgment debtor in prison, the Supreme Court enunciated the law, as under :

> "10. Equally meaningful is the import of Art. 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Art. 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 case as developed further in **Sunil Batra v.s Delhi Administration**[11], **Sita Ram and Ors. V/s. State of U.P.**[12] and **Sunil Batra V/s. Delhi Administration**[13] lays down the proposition. It is too obvious to need

10 (1980) 2 SCC 360
11 (1978) 4 SCC 494
12 (1979) 2 scc 656
13 W.P.No.1009 of 1979 decided on December 20, 1979

> 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 Art. 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 Art.11 of the Covenant. But this is precisely the interpretation we have put on the Proviso to s. 51 C.P.C. and the lethal blow of Art. 21 cannot strike down the provision, as now interpreted." (emphasis supplied)

44. The case of **Sanjay Vasudeva (supra),** on which reliance was placed by Mr. Bharadwaj, appears to be on all four with the facts of the case at hand. In the said case, the accused therein was convicted in as many as 82 complaints for the offence punishable under Section 138 of the N.I.Act, 1881. Despite aggreging with the correctness of the submission that, none of the complainants have received the compensation awarded by the Courts owing to the accused's failure to deposit the fine amount, the learned Single Judge of the Delhi High Court, observed as under :

> "19. Turning to the relief sought by the petitioner, it is indeed correct, as urged by the learned APP, that despite succeeding in protracted litigation, none of the 82 complainants have received compensation awarded by the

Courts, owing to the petitioner's failure to deposit the fine amounts. However, I am firmly of the view that it would be unjust and disproportionate to keep the petitioner incarcerated any further on account of default in payment of fine.

……

21. Accordingly, the facts and circumstances in the present case particularly the sheer adversity and poverty which the petitioner is currently suffering, make out a case where this court, in exercise of its inherent jurisdiction under section 528 of the BNSS, can reduce the sentence of imprisonment awarded in default of payment of fine and direct that sentences already undergone by the petitioner in default of payment of fine, be treated as the total punishment in default of payment of fine in the aforesaid 82 cases.

……..

24. The default sentence imposed on the applicant has become excessively harsh, albeit unintentionally. Illustratively, if this case had involved only a single cheque of Rs. 1.3 crores, the petitioner's position would have been far less onerous. Ignoring the period of imprisonment already undergone would effectively subject the applicant to what is virtually a life sentence—approximately 17 years [8 + 9 = 17]. He has already endured seven years and ten months in custody, and yet, under the default sentence, he is required to serve an additional nine years and several months. Such an outcome is manifestly disproportionate and cannot be justified."

45. The fact that the sentence in default of payment of fine, even if undergone by the accused, does not absolve the accused of the liability to pay the said amount is also a relevant consideration. Section 421 empowers the Court even if the offender has undergone imprisonment in default to issue a warrant for recovery of the compensation ordered to be paid under Section 357 of the Code. If the amount of compensation ordered to be paid to the complainant can still be recovered by resorting to the procedure envisaged by the Code, further detention of the Petitioner to undergo in default sentence appears wholly unsustainable.

46. The imprisonment certificate dated 15 April 2026 issued by the Superintendent, Nashik Road Central Prison, indicates that the Petitioner has undergone total imprisonment of seven years, six months and five days. The Petitioner has earned remission of 719 days as of 31 March 2026. The total period of imprisonment undergone by the Petitioner including the admissible remission would, thus, come to nine years, six months and five days.

47. In the backdrop of the aforesaid position in law and the facts of the case, this Court considers the further detention of the Petitioner to serve the default sentence would be unjust, unconscionable and unjustifiable. I am, therefore, inclined to allow the Petition and modify the sentence in default of payment of compensation to the period of sentence already undergone by the Petitioner in default of payment of compensation in all the complaints.

48. Hence, the following order :

ORDER

(i) The Writ Petition stands allowed.

(ii) The order passed by the learned Magistrate sentencing the Petitioner (A2) to imprisonment for a period of 12 months in default of payment of compensation in each of the 17 complaints, stands modified to the sentence already undergone by the Petitioner in default of payment of compensation.

(iii) For the said purpose, the total sentence of imprisonment in default of payment of compensation in all the 17 complaints stands reduced by the proportionate adjustment and equalisation of the period of imprisonment already suffered by the Petitioner in default of payment of compensation.

(iv) The Petitioner – Cyrus Noshirwan Kartak, be released forthwith, if not required to be detained in any other case.

(v) Rule made absolute in the aforesaid terms.

All concerned to act on an authenticated copy of this judgment.

(N.J.JAMADAR, J.)