

IN THE COURT OF SH. ABHITESH KUMAR, LD. MM (NI ACT), DIGITAL COURT-04, SOUTH, SAKET COURTS, DELHI.

**CC NI ACT 70/2020
SHALIMAR PAINTS LIMITED Vs.
SOMNATH SANYAL**

24.01.2023

SHALIMAR PAINTS LTD.

4th Floor, Stainless Centre,
Plot No. 50, Sector-32
Gurugram-122001
Through its Authorized Representative

.... Complainant

VERSUS

SOMNATH SANYAL

S/o Late Sh. Kanailal Sanyal
R/o 2/1, Kalinath Munshi Lane,
Kokata, West Bengal-700036

.... Accused

ORDER ON SENTENCE

1. Vide this order, this court shall pronounce order on sentence.
2. Ld. Counsel for the complainant has opened the argument and prayed for maximum punishment.
3. Ld. Counsel for the convict has submitted that lenient view against the convict be taken while passing the sentence.
4. Arguments Heard from both side.

5. Enquiry for compensation is also conducted. Ld. Counsel for the convict has filed an affidavit qua his assets. Taken on record.

6. Before passing an order on sentence, lets have a glance on penal policy of this country. Punishment maintains law and order, it protects person and property. The fear of punishment is an essential attribute of judicial phenomena. Offenders refrain from wrongdoing for fear of punishment and therefore, punishment and law are inseparable.

7. Leniency in punishment or forgiveness makes the offender superior to the victim, which is contrary to the accepted principles of an ideal penal policy. **State of MP Vs. Surender singh reported as AIR 2015 SC 398**, Hon'ble SC observed that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering imposition of the appropriate punishment.

8. In **Sarwan Singh Vs. State of Punjab reported as AIR 2000 SC 362**, Hon'ble Supreme Court enumerated factors which includes capacity of the accused to pay, nature of the offence and the nature of injury suffered by the victim as also the overall effect of the crime on the victim's familial and the social life and emotional or financial loss caused to him/her. The court ruled that the quantum of

compensation must be reasonable, depending upon the facts, circumstances and justness of victim's claim. The convict must be given reasonable time for payment of the compensation and if necessary, it may be ordered to be paid in installments. In **Ankush Shivaji Gaikwad Vs. State of Maharashtra reported as (2013) 6 SCC 770**, the Hon'ble Supreme Court of India has held that it is mandatory for the Courts to consider the matter qua compensation to the victims at the time of sentencing.

9. The offence qua Section 138 of The Negotiable Instruments Act, 1881 has been introduced in the statutory books to encourage the culture of use of cheque(s) and for enhancing the credibility of instruments. The object and purpose of the legislation would be defeated, if too lenient view is taken in such matters.

10. In matter of **“R. Vijayan Vs. Baby” (2012) 1 SCC 260**, Hon'ble Supreme Court of India qua sentencing in 138 of The Negotiable Instruments Act, 1881 has observed that The avowed object of Chapter XVII of the Act is to “encourage the culture of use of cheques and enhance the credibility of the instrument”. In effect, its object appears to be both punitive as also compensatory and restitutive, in regard to cheque dishonour cases. Chapter XVII of the Act is an unique exercise which blurs the dividing line between civil and criminal jurisdictions. It provides a single forum and single proceeding, for enforcement of criminal liability (for dishonouring the cheque) and for enforcement of the civil liability (for realization

of the cheque amount) thereby obviating the need for the creditor to move two different forum for relief.

11. The conspectus of above observations are punishment must be adequate and in that process victim should not be overlooked. Victim's interest is also required to be protected while passing order, considering factors enumerated above and reiterated by apex court time to time. Therefore, punishment should neither be intolerably severe nor unrealistically lenient.

12. Considering conditions of the convict, it is in the opinion of this Court, the scales of justice would be balanced, if convict Somnath Sanyal is sentenced to simple imprisonment for period of 1 month and directed to pay compensation of Rs.2,81,143/- with simple interest thereon at 9% per annum from the date of filing of complaint till making actual payment, within 30 days to the complainant. In default of payment of said compensation, convict Somnath Sanyal shall further undergo simple imprisonment for period of 1 month. Needless to say that the benefit of Section 68 and 69 of Indian Penal Code,1860 is available to the convict.

Abhitesh Kumar
MM(NI Act) Digital Court-04(South)
Saket Court, New Delhi
24.01.2023