

GAHC010174342023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./818/2023

M/S GOPIRAM CHETRAM
PARTNERSHIP FIRM HAVING ITS OFFICE AND PLACE OF BUSINESS AT
SIDING BAZAAR,
TINSUKIA, REP. BY ONE OF ITS PARTNER/POWER OF ATTORNEY HOLDER,
NAMELY SRI SANWARMAL AGARWAL
AGE ABOUT 67 YEARS, SON OF LATE CHETRAM AGARWAL,
R/O SIDING BAZZAR, TINSUKIA TOWN, P.O. AND DIST. TINSUKIA, ASSAM,
PIN-786125

VERSUS

KEJRIWAL SUGAR AGENCIES PVT. LTD. AND 2 ORS.
A COMPANY DULY INCORPORATED UNDER THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT VINAYAK COMPLEX 55/1A STRAND
ROAD, 3RD FLOOR, OPPOSITE MAYO HOSPITAL, KOLKATA-700006 AND
ALSO HAVING ITS OFFICES AT (A) STRAND ROAD, BUILDING NO. 57, 3RD
FLOOR, OPPOSITE MAYO HOSPITAL, KOLKATA-700006 AND (B) 618,
DAKSHINDARI ROAD,
VIP TERRACE, FLAT NO. 403, 4TH FLOOR, KOLKATA-700048, REP. BY ITS
DIRECTORS, NAMELY (1) SRI SURYA PRAKASH KEJRIWAL, AND (2), SMTI.
SANGEETA KEJRIWAL.

2:SRI SURYA PRAKASH KEJRIWAL
DIRECTOR OF KEJRIWAL SUGAR AGENCIES PVT. LTD.

3:SMTI SANGEETA KEJRIWAL

DIRECTOR OF KEJRIWAL SUGAR AGENCIES PVT. LTD. SL. NO. 2 AND 3
HAVING ITS THIER OFFICE ADDRESS AT VINAYAK COMPLEX 55/1A
STRAND ROAD
3RD FLOOR
OPPOSITE MAYO HOSPITAL

KOLKATA- 700006 AND ALSO AT-
(A) STRAND ROAD
BUILDING NO. 57
3RD FLOOR
OPPOSITE MAYO HOSPITAL
KOLKATA-700006.
(B) 618
DAKSHINDARI ROAD

VIP TERRACE
FLAT NO. 403
4TH FLOOR
KOLKATA-700048 AND
(C) SARWANMANI APARTMENT
23RD FLOOR

4C AND 4D
MANIKTALA MAIN ROAD
KADAPARA BAGAN
KOLKATA-700054

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE

Advocate for the Respondent : MR. U K BARMAN (R- 1,2,3)

Linked Case : Crl.Pet./824/2023

M/S GOPIRAM CHETRAM
A PARTNERSHIP FIRM HAVING ITS OFFICE AND PLACE OF BUSINESS AT
SIDING BAZAAR
TINSUKIA
REPRESENTED BY ONE OF ATTORNEY HOLDER
NAMELY
SRI SANWARMAL AGARWAL
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S/O LATE CHETRAM AGARWAL
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REPRESENTED BY ITS DIRECTORS
NAMELY
(1) SRI SURYA PRAKASH KEJRIWAL AND (2) SMTI SANGEETA KEJRIWAL.

2:SURYA PRAKASH KEJRIWAL
DIRECTOR OF KEJRIWAL SUGAR AGENCIES PVT. LTD.
HAVING OFFICE ADDRESS AT VINAYAK COMPLEX 55/1A STRAND ROAD
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3:SMTI SANGEETA KEJRIWAL
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Advocate for : MR. BHASKAR DUTTA
SENIOR ADVOCATE

Advocate for : MR. U K BARMAN (R-1
2

3) appearing for KEJRIWAL SUGAR AGENCIES PVT. LTD. AND 2 ORS.

Linked Case : Crl.Pet./837/2023

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PARTNERSHIP FIRM HAVING ITS OFFICE AND PLACE OF BUSINESS AT
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Advocate for : MR. BHASKAR DUTTA
SENIOR ADVOCATE

Advocate for : MR. U K BARMAN (R- 1
2

3) appearing for KEJRIWAL SUGAR AGENCIES PVT. LTD. AND 2 ORS.

Linked Case : Crl.Pet./836/2023

M/S GOPIRAM CHETRAM
PARTNERSHIP FIRM HAVING ITS OFFICE AND PLACE OF BUSINESS AT
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Advocate for : MR. BHASKAR DUTTA
SENIOR ADVOCATE

Advocate for : MR. U K BARMAN (R- 1
2

3) appearing for KEJRIWAL SUGAR AGENCIES PVT. LTD. AND 2 ORS.

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 30-11-2023

1. Heard Mr. Bhaskar Dutta, learned Senior Counsel for the petitioner assisted by learned counsel Mr. S. Deka. Also heard Mr. H. Ali, learned counsel for respondent Nos.1, 2 and 3.
2. This is a batch of matters before me arising out of the same cause of action and the matters are disposed off with this common judgment and order.
3. The petitioner M/s Gopiram Chetram is a partnership firm with its office and place of business at Siding Bazaar, Tinsukia and is represented by one of its partner/power of attorney holder, namely, Sri Sanwarmal Agarwal. The respondents in this case are Kejriwal Sugar Agencies Private Limited, Sri Surya Prakash Kejriwal and Smti Sangeeta Kejriwal respectively. The respondent No. 1 Kejriwal Sugar Agencies Private Limited is represented by respondent No. 2 Sri Surya Prakash Kejriwal and

respondent No. 3 Smti Sangeeta Kejriwal with their office at Vinayak Complex 55/1A Strand Road, 3rd Floor, opposite Mayo Hospital at Kolkata.

4. The petitioner has filed the petitions u/s 482 of the Code of Criminal Procedure, 1973 (Cr.PC for short) seeking quashing and setting aside the impugned orders dated 04.07.2023 passed by the learned Additional Sessions Judge No. 2 (FTC), Tinsukia in connection with Criminal Revisions Nos. 15(1)/2023, 16(1)/2023, 24(2)/2023 and 25(2)/2023 filed by respondent No. 2 whereby the orders dated 15.03.2023 passed by learned CJM, Tinsukia in N.I. Case Nos. 11 of 2019 and 12 of 2019 directing the respondents herein to pay 10% of two cheque amount i.e, Rs. 50,000/- + Rs. 50,000/- to the petitioner has been set aside. All the correspondences of the respondent's company are made in the name of Prakash Kejriwal who is not only the Director of respondent No. 1 company but also the proprietor of M/s Subham Sugar Agencies. Both the parties made an agreement and it was decided that the respondents would pay in interest of 2% per month on all advance payment made by the petitioner to the respondents from the date of advance payments till the date of supply of sugar. It was agreed that the sugar would be supplied to the petitioner by railway wagon at the Tinsukia/Guwahati destination.

5. During the course of business, the petitioner paid huge amount to the respondents as advance payments for supply of sugar and also there were instances of over billing and short supply to the petitioner and thus dispute arose between the petitioner and the respondents. In such a situation the petitioner issued a letter dated 17.07.2018 to the respondents and requested them to clear the dues. Thereafter again vide letter dated 20.08.2018 a request was made to the petitioner to clear all the dues. The petitioner, on several occasions requested the respondents to settle the amount and refund the outstanding dues and the respondent Nos. 2 and 3 finally agreed to settle the account of the petitioner. The respondents agreed to settle the account of the petitioner for Rs. 10 crores and agreed to make the payment of Rs. 10 crores to the petitioner as full and final settlement amount. It is further submitted that in order to discharge the aforesaid legally enforceable debts towards the petitioner, the respondent No. 2 issued two Account Payee cheques in the account of respondent No. 1 being Account No. 02198620000634 and the Cheque Nos. 001711 dated 30.08.2018 for an amount of Rs. 5 crores and Cheque No.001712 dated 30.08.2018 for an amount of Rs. 5 crores. Both the cheques were drawn on HDFC Bank, Kolkata-700007 and handed over to the petitioner for payment.

6. It is averred that on 13.09.2018, the petitioner deposited the cheques in the State Bank of India, Tinsukia Branch in its Account No. 10988208922 for encashment by SBI, Tinsukia branch vide two nos. of memorandum dated 14.09.2018, returned the cheques to the petitioner which were dishonoured due to insufficiency of funds. The return memo was forwarded to the petitioner vide speed post and was received by the petitioner on 19.09.2018. The petitioner on 01.10.2018 issued a demand notice to the respondents through his Advocate for payment of Rs. 5 crores each, along with interest @ 24% per annum as two cheques were dishonoured. The demand notice was forwarded to the respondents through registered post with A/D on 01.10.2018 and the notices were duly delivered to the respondents on 10.10.2018 and 11.10.2018 respectively. The respondent No. 2 called the petitioner over mobile phone and their company requested the petitioner to deposit the aforesaid cheque after one month assuring him that this time the cheques will be honoured. The petitioner again deposited the Cheques Nos. 001711 and 001712 dated 30.08.2018 on 22.11.2018 to the State Bank of India, Tinsukia but the same was returned due to insufficiency of funds vide Memo dated 27.11.2018. Thereafter the petitioner again issued the demand notice through his Advocate dated 29.12.2018 and the notice was forwarded on 21.12.2018. The notice was delivered on 21.12.2018 but the respondents failed to repay the dues. After receiving the notice the respondent No. 2 called the petitioner over phone and requested him to

repay the cheques for the second time and assured of the clearance of the cheques and also sent a cryptic reply to the demand notice.

7. It is averred that the respondent in his reply clearly admitted about the issuance of the two cheques to the petitioners.

8. In connection with the dishonour of the Cheque No. 001712 dated 30.08.2018, the petitioner filed a complaint before the learned CJM, Tinsukia as per provision of Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act for short) which was registered as N.I. Case No. 12 of 2019. Relating to dishonour of Cheque No. 001711 dated 30.08.2018 for an amount of Rs. 5 crores, the petitioner filed another complaint before the learned CJM, Tinsukia against the respondents and this case was registered as N.I. Case No. 11 of 2019.

9. The learned CJM vide order dated 18.01.2019 took cognizance and the respondent Nos. 2 and 3 appeared through their duly engaged counsel but continuously started to submit applications praying for adjournments. Several adjournments were granted but finally the trial Court fixed the matter on 09.07.2019 for appearance of the respondents and interim compensation hearing.

10. The respondents meanwhile filed four criminal petitions registered as Criminal Petition No. 763/2019, Criminal Petition No. 768/2019, Criminal Petition No. 757/2019 and Criminal Petition No. 762/2019 in this Court challenging the orders dated 18.01.2019 passed in N.I. Case No. 11/2019 and N.I. Case No. 12/2019.

11. Vide order dated 25.03.2022, this Court dismissed the afore-mentioned criminal petitions. Thereafter the learned CJM, Tinsukia vide order dated 31.03.2022 issued notice to the respondents for their appearance fixing the next date on 02.05.2022. The respondents were allowed to be represented by an order passed by the trial Court on an undertaking to be furnished by the respondents that they would not dispute their identity during the course of trial. However, after procuring several adjournments under various pretexts, no undertaking was filed, but it was informed by the learned counsel for the respondent No. 3 by a petition No. 3045/2022 stating that the respondent No. 3 has preferred SLP (Criminal) No. 7102-7103/2022 before the Honble Apex Court and the Hon'ble Apex Court vide order dated 22.08.2022 stayed the proceeding against the respondent No. 3. The case was finally fixed on 11.10.2022 for passing necessary order on the petitions filed by the respondents, and on 11.10.2022 the trial Court rejected the petition No. 3372/2022 filed by the respondents praying to keep the proceedings in abeyance as SLP has been preferred before the Hon'ble Apex Court. A prayer was also made to dispose of the petition No. 3045/2022. Bailable warrant of Rs. 10,000/- was issued against the respondents. Again on 24.11.2022, the case was fixed for appearance of authorised representative of respondent No. 1 for hearing on the point of compensation u/s 143A of the N.I. Act.

12. Due to protraction of this case by the respondents as well as by the learned trial Court, the petitioner was impelled to file the Criminal Petition No. 67 of 2023 and Criminal Petition No. 68 of 2023, with a prayer for a direction by this Court to the trial Court to dispose of the case within specific time. This Court vide order dated 25.01.2023 in Criminal Petition No. 67 of 2023 and Criminal Petition No. 68 of 2023 directed the learned CJM, Tinsukia to dispose of the matter expeditiously within six months.

13. The original case was again fixed on 02.03.2023. The offence was explained and the respondents pleaded not guilty and the matter was fixed on 15.03.2023 for necessary order on prayer on interim compensation made by the petitioner. The learned CJM vide order dated 15.03.2023 was pleased to

direct the respondent Nos. 1 and 2 to pay 10% of the cheque amounts i.e. Rs. 50,00,000/- (Rupees Fifty Lakhs only) within a period of 60 days.

14. On being aggrieved by the order dated 15.03.2023 passed by the learned CJM, Tinsukia, in N.I. Case No. 11 of 2019 and N.I. Case No. 12 of 2019, the respondent No. 2 herein filed Criminal Revision No. 15(1) of 2023, Criminal Revision No. 16(1) of 2023, Criminal Revision No. 24(2) of 2023 and Criminal Revision No. 25(2) of 2023 registered u/s 397 of the Cr.PC before the learned Additional Sessions Judge No. 2 (FTC) on the ground that the cheques in question were not issued to discharge a legally and enforceable debt and the cheques in fact were issued as security. Thereafter the respondents also filed Title Suit No. 1 of 2019 before the learned 6th City Civil Court, Calcutta to prevent misuse of cheque and ensure the return of the cheque to them. Vide order dated 03.01.2019 the learned 6th City Civil Court, Calcutta granted an injunction restraining the petitioner herein from using the cheques and the same is still in operation.

15. Reverting back to this case, it is further submitted that vide order dated 15.03.2023 passed by the learned CJM, Tinsukia, the respondent No. 1 company filed Criminal Revision No. 15(1) of 2023, Criminal Revision No. 16(1) of 2023, Criminal Revision No. 24(2) of 2023 and Criminal Revision No. 25(2) of 2023 and vide the impugned orders dated 04.07.2023 in the afore-mentioned criminal revision petitions, the orders dated 15.03.2023 passed by the learned trial Court in N.I. Case No. 11 of 2019 and N.I. Case No. 12 of 2019 were set aside. The orders dated 04.07.2023 in the afore-mentioned criminal petitions setting aside the payment of 10% of the cheque amount are under challenge in this Court.

16. It is averred that the learned Additional Sessions Judge No. 2 (FTC), Tinsukia failed to consider the law and facts of the corresponding cases in its proper perspective. The scope and ambit of Section 143-A of the N.I. Act was not properly appreciated by the Court in its proper perspective. The finding of the Court that the jurisdiction to deal with the question of interim compensation arose out of the accused's plea of not guilty was arbitrary and capricious. It is a well settled principle of law that the prayer u/s 143-A of the N.I. Act can be disposed of and allowed at any stage of the proceeding.

17. It is admitted that the petitioner prayed for interim compensation at the very initial stage of the proceeding but the same was allowed by the trial Court only on 15.03.2023 i.e. after the respondents pleaded not guilty on 02.03.2023. It is contended that the finding of the learned Additional Sessions Judge at para 31 of the impugned order that no circumstances arose which would compel the Court to resort to Section 143A of the N.I. Act against the respondents and the delay in disposal of the case cannot be considered to be intentional or the conduct of the respondents was not found to be perverse and contrary, is assailed by the petitioner. The record clearly reveals that for the umpteenth time the respondents have procured adjournments and procrastinated the pendency. The finding of the Court that the respondent No. 2 had signed the cheques as authorised signatory of respondent Nos. 1 and cannot be directed to pay interim compensation, is totally perverse and premature. It is also averred that the learned Additional Sessions Judge failed to appreciate that the issuance of the two cheques have not been disputed by the respondents themselves. In this case presumption operates against the respondents. The petitioner has prayed to set aside the impugned order as this case is pending for more than 4 years due to conduct of the respondents.

18. Per contra the learned counsel for the respondent has raised serious objection contending inter-alia that Section 143-A is very clear which reads:-

“143A. Power to direct interim compensation.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 may

order the drawer of the cheque to pay interim compensation to the complainant –

- (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and*
- (b) in any other case, upon framing of charge.”*

19. The learned counsel for the respondent took this Court through the orders dated 15.03.2023 passed in N.I. Case No. 11 of 2019 and N.I. Case No. 12 of 2019. It is submitted that the orders clearly reflect that the case was fixed for necessary order on prayer of interim compensation made by the complainant-petitioner herein. It is submitted that the hearing for interim compensation was fixed before the charges were framed in connection with this case which is against the law laid down by the Section 143A of the N.I. Act. It is also submitted on behalf of the respondents that the orders dated 04.07.2023 passed by the learned Additional Sessions Judge, FTC, Tinsukia in Criminal Revision No. 15(1) of 2023, Criminal Revision No. 16(1) of 2023, Criminal Revision No. 24(2) of 2023 and Criminal Revision No. 25(2) of 2023 are appropriate. The learned counsel for the respondent has supported the order dated 04.07.2023 passed by the learned Additional Sessions Judge, FTC, Tinsukia in the afore-mentioned criminal revision petition captioned above.

20. Contrary to this, the learned counsel for the petitioner has submitted that the last part of the order dated 15.03.2023 clearly reflects that offence was already explained to the respondents on 02.03.2023 and thereafter on 02.03.2023 hearing was taken up for interim compensation u/s 143A of the Act, and order was passed on 15.03.2023.

21. The Section 143A(4) of the Act clearly expounds that:-

“If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India”

22. Thus in case of acquittal this interim compensation will be refunded to the petitioner. The petitioner has relied on the decision of High Court of judicature at Madras in ***L.G.R. Enterprises and Others vs. P. Anbazhagan***, reported in ***2019 Legal Eagle (MAD) 2514*** where it has been held and observed that:-

“Therefore, whenever the trial Court exercises its jurisdiction under Section 143A(1) of the Act, it shall record <http://www.judis.nic.in> reasons as to why it directs the accused person (drawer of the cheque) to pay the interim compensation to the complainant. The reasons may be varied. For instance, the accused person would have absconded for a longtime and thereby would have protracted the proceedings or the accused person would have intentionally evaded service for a long time and only after repeated attempts, appears before the Court, or the enforceable debt or liability in a case, is borne out by overwhelming materials which the accused person could not on the face of it deny or where the accused person accepts the debt or liability partly or where the accused person does not cross examine the witnesses and keeps on dragging with the proceedings by filing one petition after another or the accused person absconds and by virtue of a non-bailable warrant he is secured and brought before the Court after a long time or he files a recall non-bailable warrant petition after a long time and the Court while considering his petition for recalling the non-bailable warrant can invoke Section 143A(1) of the Act. This list is not exhaustive and it is more illustrative as to the various circumstances under which the trial Court will be justified in

exercising its jurisdiction under [Section 143A\(1\)](#) of the Act, by directing the accused person to pay the interim compensation of 20% to the complainant.”

23. The petitioner has also relied on the decision of the High Court of judicature at Bombay in *Guljama Shah Jahir Shah vs. Shri Sadguru Kaka Stone Crusher*, reported in (2023) SCC OnLine Bom 2285, wherein it has been held and observed that:-

“11. The interim compensation is granted at a stage of the proceedings where the accused pleads not guilty to the charges. Thus, despite the requirements in clause (a) to (d) above being fulfilled, if the accused pleads not guilty, to not award interim compensation @ 20% of the cheque amount will only defeat the intent of Sec. 143A. To my mind, it is only in case of doubt as regards fulfillment of any requirement under clause (a) to (d) above, the learned Magistrate may reduce the interim compensation below 20% of the cheque, or not grant it at all.

12. As regards the restitution of the interim compensation, in case the trial results in an acquittal of the accused, additional condition that could be imposed and ought to be imposed, is to seek an undertaking from the complainant that in case of acquittal of the accused or any order having effect of acquittal, the complainant shall deposit the amount of interim compensation along with interest (which may be assessed on the basis of prevailing long term interest rate of the public sector banks on the fixed deposits, from the date of receipt of interim compensation till its realization).

13. In the present case, let there be an undertaking given by the complainant that he shall deposit the amount of interim compensation, that will be received by him along with interest @ 6% per annum thereupon, if the accused is acquitted. The learned Magistrate may impose such a condition in the cases where interim compensation is granted.”

24. On the contrary the learned counsel for the respondents laid stress in his argument that the ratio of the decision in *L.G.R. Enterprises and Others (supra)* is not applicable to this case. The case was not protracted or procrastinated by the respondents. The petitioner has also sought adjournments and the petitioner too preferred revisions and appeals before the appellate Court which procrastinated the pendency. This case was also pending during the COVID-19 pandemic which resulted in the delay in the proceeding. The respondents have a valid ground not to pay the interim compensation of 10%.

25. The respondents have relied on the decision of the High Court of judicature at Bombay in *Lyka Labs Limited and Another vs. State of Maharashtra and Another*, reported in (2023) STLP 8210 Bombay wherein it has been observed that:-

“51. For the reasons stated above questions framed above are answered as below:-

(i) The signatory of the cheque, authorized by the "Company", is not the drawer in terms of section 143A of the NI Act and cannot be directed to pay interim compensation under section 143A.

(ii) In an appeal under section 148 of NI Act filed by persons other than "drawer" against the conviction under section 138 of the NI Act, a deposit of a minimum sum of 20% of the fine or compensation is not necessary.

However, in an appeal filed by persons other than "drawer" against the conviction under section 138 of the NI Act such power to direct deposit of compensation is available with the Appellate Court while suspending sentence under section 389 of code of criminal procedure."

26. The respondents have relied on the decision of Hon'ble the Supreme Court in *Pawan Bhasin vs. State of U.P. & Anr.*, reported in *Criminal Appeal No. 1807/2023 arising out of SLP(Criminal) No. 6878/2023* decided on 07.07.2023, it has been observed by Hon'ble the Supreme Court that:-

"As is evident from plain reading of Section 143A (1)(a), it is only where the accused "pleads not guilty" of the accusation made in the complaint that interim compensation under Section 143A (1) can be granted. In the present case, the Magistrate did not issue the order after the plea of the accused was entered, but before that i.e. after he answered the summons. The parties counsels were present at an intermediate stage of proceedings, but before the plea of "not guilty" was entered.

In these circumstances, clearly there is an infraction of Section 143A (1).

The order dated 24.05.2022 made by the Chief Judicial Magistrate, Gautam Budh Nagar, U.P. in Complaint No. 50/2021 cannot therefore be sustained and is hereby quashed."

27. The learned counsel for the petitioner laid stress in his argument that, it has to be borne in mind that the respondent No. 2 is not only the Director of the company but is also the proprietor of the company M/s. Sugar Agencies, Kolkata and all the correspondences are made by respondent No. 2, namely, Surya Prakash Kejriwal @ Mr. Prakash Kejriwal in the name of Mr. Prakash Kejriwal. The decision of the Bombay High Court in connection with *Lyka Labs Limited and Another (supra)* is not applicable to this case. The respondent No.2 is not the authorised signatory of the Company but is the Director and Proprietor of the Company.

28. I have considered the submissions at the Bar that the offence was explained to the respondents on 02.03.2023 and the order for payment of interim compensation was passed on 15.03.2023. In the case of *Pawan Bhasin (supra)* the order u/s 143A(1) for interim compensation was passed by the Magistrate before the plea of the accused was entered and after the accused answered the summonses. The parties counsel were present at the intermediate stage of proceeding but before the plea of not guilty was entered.

29. In the instant case, it is apparent from the order impugned that the respondents pleaded not guilty on 02.03.2023 and on the same day the petitioner u/s 143A of the N.I. Act was heard, but the order of interim compensation was passed on a later date i.e. 15.03.2023.

30. The learned counsel for the respondents has supported the decision of the learned Additional Sessions Judge who set aside the impugned order dated 15.03.2023 passed in connection with N.I. Case No. 11 of 2019 and N.I. Case No. 12 of 2019.

31. In the Criminal Revision No. 15(1) of 2023, Criminal Revision No. 16(1) of 2023, Criminal Revision No. 24(2) of 2023 and Criminal Revision No. 25(2) of 2023 vide orders dated 04.07.2023 the

learned Additional Sessions Judge, FTC has held that there was no separate prayer for granting compensation u/s 143-A except in a sentence at the end of the complaint petition mentioning about compensation u/s 143A. There is no instance of delay being caused by the respondents and in procrastinating the case. The issue of undue delay has to be addressed while considering the prayer of compensation u/s 143A of the N.I. Act. Application of mind in passing of a reasoned order for grant of compensation becomes necessary in the light of penal consequences that ensue an accused who fail to comply with the order of granting 20% compensation. It was also held by the learned Additional Sessions Judge that no application was made by the complainant for compensation u/s 143-A of the N.I. Act and the order sheet was also silent about any such application. The absence of any such application itself, takes away the jurisdiction of the learned trial Court for granting any compensation. It was held that the hearing on the matter of Section 143-A of the Act was fixed even before the offence was explained and the accused had pleaded not guilty. It was evident in the present case that the offence was explained only on 02.03.2023 but the learned trial Court on 11.06.2019 had fixed the date on 09.07.2019 for the hearing on interim compensation at the stage when the respondents had not even physically appeared in the case. It was held that the trial Court cannot *suo-moto* consider a relief, without being prayed for nor can the Court consider a matter before it being due. It was also held that the learned Additional Sessions Judge, FTC, Tinsukia has relied on the decision of the Bombay High Court in *Lyka Labs Limited and Another (supra)* and has held that the drawer does not include authorised signatory and the petitioner No. 2 Surya Prakash Kejriwal having signed the cheques as authorised signatory of Accused No. 1 (Respondent No. 1) cannot be directed to pay the interim compensation u/s 143A of the N.I. Act.

32. In the case at hand, it is submitted that the accused No. 2-respondent No. 2 herein is the proprietor and Director of the company M/s. Kejriwal Sugar Agencies Pvt. Ltd. It is premature at this stage to hold that the respondent No. 2 is the authorised signatory. It has been vehemently and fervently argued that the respondent No. 2 is not the authorised signatory. On the other hand it has surfaced through the impugned order dated 04.07.2023 and the order of the learned CJM dated 15.03.2023 that both the parties were heard on 02.03.2023 and the parties had pleaded not guilty and thereafter the order of interim compensation u/s 143-A dated 15.03.2023 was passed. It is true that there is no separate petition u/s 143-A of the N.I. Act but in the complaint petition it has been distinctly mentioned that the complainant petitioner herein has prayed for compensation u/s 143-A of the N.I. Act and before 02.03.2023, the case was fixed for hearing on the order of compensation but no order for compensation was passed before the respondents plea of not guilty was entered. The order was passed on 15.03.2023 and the respondents pleaded not guilty on 02.03.2023 in the proceedings under N.I. Case No. 11 of 2019 and N.I. Case No. 12 of 2019.

33. A bare reading of Section 143-A of the N.I. Act indicates that an order of interim compensation can be passed only after framing of charge. This petition is filed u/s 482 Cr.PC and this Court is hesitant to get into the intricacies and details of the merits of the proceeding. It has surfaced from the submissions of both the parties that in connection with N.I. Case No. 11 of 2019 and N.I. Case No. 12 of 2019 vide order dated 15.03.2023 offences were explained to the respondents and the order of interim compensation was passed after offence was explained to the respondents who pleaded not guilty and claimed to be tried. It has to be borne in mind that cheques were issued by the respondent No. 2. A plain reading of the complaint petition reveals that both the parties have business dealings. The merits of the case is not taken into consideration at this juncture as the case is still pending at its nascent stage. The cases were instituted as early as 17.01.2019 and is still pending at the stage of evidence. A case under the N.I. Act has to be disposed of expeditiously. The learned trial Court has spelt out sound reasonings while passing the order dated 15.03.2023. The learned Court of Additional

Sessions Judge, FTC, Tinsukia has also spelt out sound reasonings while passing the impugned order dated 04.03.2023 in connection with Criminal Revision No. 15(1) of 2023, Criminal Revision No. 16(1) of 2023, Criminal Revision No. 24(2) of 2023 and Criminal Revision No. 25(2) of 2023.

34. It is made clear that at this juncture it is not held that the cheques were issued in discharge of a debt. The learned trial Court has to consider evidence and thereafter decide the case in its proper perspective. However, there is no denial that the cheques were issued by the respondent No. 2.

35. In the light of the decision of Hon'ble the Supreme Court as highlighted by the High Court of judicature at Bombay in *Guljama Shah Jahir Shah's* case (*supra*) , it is observed that in case the trial results in acquittal of the respondent/accused, additional condition that can be imposed to furnish an undertaking by the complainant/petitioner that in case of acquittal of the accused or any order having effect of acquittal, the complainant/petitioner shall deposit the amount of interim compensation along with interest of 6% p.a.

36. Considering the facts and circumstances of this case and considering all aspects, the orders dated 04.07.2023 passed by the learned Additional Sessions Judge, FTC, Tinsukia in connection with Criminal Revision No. 15(1)/2023, Criminal Revision No. 16(1)/2023, Criminal Revision No. 24(2)/2023 and Criminal Revision No. 25(2)/2023 are hereby set aside, consequentially upholding the order of the learned CJM being orders dated 15.03.2023 passed in N.I. Case No. 11 of 2019 and N.I. Case No. 12 of 2019. The learned CJM may impose any condition, which the CJM deems fit and proper. The learned trial Court is directed to dispose of the aforementioned pending cases expeditiously.

No order as to costs.

JUDGE

Comparing Assistant