

Court No. - 86

Case :- APPLICATION U/S 482 No. - 40469 of 2023

Applicant :- Haridwar Shah

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Dinesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the record.

2. By means of this application under Section 482 CrPC, the applicant has challenged the order dated 04.10.2023 passed by Presiding Officer, Additional Court, Varanasi, by which, applicant's application for recalling the summoning order dated 25.11.2019, under Section 138 of N.I. Act, has been rejected and further prayer for paying the interim compensation to the complainant to the extent of 20% of the cheque amount has been allowed and the applicant has been directed to pay a sum of Rs.4,00,000/- as interim compensation under Section 143A of N.I. Act.

3. Being aggrieved and dissatisfied by the said orders, the instant application under Section 482 CrPC has been filed.

4. Learned counsel for the applicant has submitted that power to direct payment of interim compensation as contained in Section 143A of N.I. Act to the extent of 20% of the cheque amount can not be said to be an absolute rule and it can be varied in the given facts and circumstances of the case as held by the Hon'ble Apex Court in ***Criminal***

Appeal No. 2741 of 2023 (Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Limited, dated 04.09.2023.

5. Learned counsel for the applicant has next submitted that payment of interim compensation to the extent of Rs.4,00,000/- at this stage would be too excessive and needs to be interfered by this Court in exercise of power under Section 482 CrPC.

6. In order to appreciate the controversy involved in the instant case, it would be apt to consider the provision contained in Section 143A of N.I. Act, which reads as under:-

143A. Power to direct interim compensation.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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.

(2) The interim compensation under sub-section (1) shall not exceed twenty percent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) 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, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal

Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.

7. It is thus submitted that the power to direct payment of interim compensation as contained in the aforesaid provision is not absolute and as such, the order directing payment of interim compensation to the extent of 20% of the cheque amount at this stage is too excessive and liable to be set aside.

8. Learned counsel for the applicant has further submitted that impugned order dated 25.11.2019 passed by the court below summoning the applicant to face trial under Section 138 of N.I. Act is bad in law and therefore, learned Magistrate ought to have recalled the said order.

9. Per contra, learned AGA has submitted that impugned order dated 04.10.2023 to the extent of refusing to recall the summoning order dated 25.11.2019 under Section 138 of N.I. Act is just, proper and legal and in accordance with law laid down by the Hon'ble Apex Court in several of its decisions, particularly in view of law laid down in ***Adalat Prasad Vs. Roop Lal Jindal reported in (2004) All India JIC 792*** and therefore, no interference in exercise of power under Section 482 CrPC can be made by this Court.

10. Learned AGA has further submitted that in view of provisions contained in Section 143A of N.I. Act, it is evident that the court trying an offence under Section 138 of N.I. Act may order the drawer of the cheque to pay interim

compensation to the complainant, however, only exception is that said interim compensation shall not exceed 20% of the cheque amount.

11. In the instant case, applicant under Section 251 of CrPC has admitted to have issued cheque in question to the opposite party no.2 in the sum of Rs.20,00,000/- and 20% of which, being Rs.4,00,000/- has been directed to be paid as interim compensation, which is well within the competence of the trial court and as such, said order also do not suffer from any illegality or error in law and therefore, can not be interfered in exercise of power under Section 482 CrPC and the present application under Section 482 CrPC is liable to be dismissed.

12. Having considered the rival submissions made by learned counsel for the parties and taking into consideration the settled law laid down by the Hon'ble Apex Court in the case of ***Adalat Prasad Vs. Roop Lal Jindal reported in (2004) Alld JIC 792***, the court below has no power to recall the summoning order dated 25.11.2019 and therefore, in terms of the law laid down by the Hon'ble Apex Court, impugned order rejecting the prayer to recall the summoning order is just, proper and legal and do not call for any interference in exercise of power under Section 482 CrPC.

13. However, so far as the direction to pay the interim compensation to the opposite party no.2 pursuant to the provision contained in Section 143A of N.I. act, to the extent of 20% of the cheque amount is concerned, the submission of learned counsel for the applicant that deposit of 20% of cheque amount is not an absolute rule, which does not

accommodate any exception and in a given facts and circumstances of the case, it may be reduced in the interest of justice as held by the Hon'ble Apex Court in the case of ***Criminal Appeal No. 2741 of 2023 (Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Limited, dated 04.09.2023.***

14. In the instant case, the cheque in question, which has been dishonoured, is in the sum of Rs.20,00,000/- and 20% of which, being Rs.4,00,000/- has been directed to be paid to the opposite party no.2 as interim compensation, which appears to be too excessive, particularly when the trial is still pending.

15. Admittedly, four cheques are said to have been issued on 02.05.2019, 02.07.2019, 02.08.2019 and 03.08.2019 respectively in the sum of Rs.5,00,000/- each. Thus, even after the lapse of more than four years, the trial has not yet commenced and is likely to take some more time, therefore, in my opinion, the interest of justice would be served, if the amount of Rs.4,00,000/-, which has been directed to be paid as interim compensation to the opposite party no.2 is reduced to Rs.3,00,000/-, being 15% of the cheque amount.

16. With the said modification, the instant application under Section 482 CrPC is partly **allowed**.

Order Date :-15.12.2023
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