

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.73 of 2022

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Sunil Kumar, Son of Ramadhyan Yadav, Resident of Village-Parsi, P.S. Fesar,
District-Aurangabad, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Aurangabad, Bihar.
2. The Collector, Aurangabad, Bihar.
3. The Certificate Officer, Aurangabad, Bihar.
4. Arun Kumar, Son of Rajdev Saw, Resident of Village-Kanchanpur, P.S.
Risiup, District-Aurangabd, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sumeet Kumar Singh, Advocate Mr. Amarendra Kumar Singh, Advocate Mr. Nikhil Singh, Advocate Ms. Shatakshi Sahay, Advocate
For the Respondent/s	:	Mr. Anil Kumar Singh (GP 26) Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-05-2022

The following question of law arises for consideration in
this writ petition:-

- (i) Whether an order for payment of interim compensation under the Negotiable Instrument Act can be enforceable under the Bihar & Orissa Public Demands Recovery Act, 1914 as a public demand?

FACTS

2. The respondent No.4, namely Arun Kumar, (referred to as the private respondent) trader of paddy, wheat etc. allegedly



delivered goods worth Rs.1,26,75,600/- to the petitioner, namely Sunil Kumar in the period of 23.08.2018 to 30.08.2018. As consideration, petitioner issued a cheque no.170288 on 15.03.2019 of Punjab National Bank, Aurangabad which on presentation was dishonoured. Private Respondent sent a legal notice and failure to comply subsequently filed Complaint Case No.319 of 2019 on 16.04.2019 before the Chief Judicial Magistrate, Aurangabad under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as NI Act).

3. The learned Additional Chief Judicial Magistrate, III Aurangabad vide order dated 21.11.2019 upon consideration of facts and the record, passed an order of interim compensation of Rs.25,00,000/- under Section 143A of the NI Act to be paid by the petitioner herein to the private respondent, within a period of sixty days from the date of order. Subsequently, an order for execution was passed on 28.01.2021 where noting that sufficient time had passed since the original order, extension could not be granted and Section 421(1) (b) of the Code of Criminal Procedure was invoked and a warrant was issued to the Collector, Aurangabad authorizing him to realize the above stated amount from the moveable and immovable of the petitioner herein.



4. Pursuant to the above order, the Collector, Aurangabad forwarded the same to the District Certificate Officer, Aunrangabad for suitable action, who, registered Certificate Case No.100 /2021-22 and issued notice dated 03.12.2021 (Annexure-4, Page-28) calling upon the petitioner to pay the said amount within a period of thirty days.

5. In the submissions made before this Court, learned counsel for the petitioner contends that the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as the Recovery Act) does not have any application, whatsoever, in the present case. In other words, a jurisdictional vice vitiates such proceedings.

6. It is noted here that though a separate challenge to the order for interim compensation is pending consideration before this Court bearing No. Cr. Misc. No.15524 of 2020 titled as Sunil Kumar v. The State of Bihar & ors but as on date such order is enforceable.

7. Before proceeding to the issue at hand, it would be fit to refer to and/or extract the relevant law for ready reference.

Negotiable Instruments Act, 1881

8. In **Surinder Singh Deswal alias Colonel S. S. Deswal v. Virender Gandhi, (2019) 11 SCC 341**, Hon'ble



the Supreme Court extensively dealt with the aims, object and purpose of the Negotiable Instruments (Amendment) Act, 2018 (20 of 2018). It observed that “The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions. 2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time



and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely— (i) to insert a new Section 143-A in the said Act to provide that the court trying an offence under Section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and (ii) to insert a new Section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under Section 138, the appellate court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial court.”

9. Section 138 titled as Dishonour of cheque for insufficiency, etc. of funds in the account, deals with a condition



where a cheque drawn by a person in favour of another for complete or partial discharge of debts/liability is returned unpaid because the credit in the account is insufficient or being in excess of the amounts arranged as payable from the account, the said person shall have committed an offence.

10. Section 143A 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 per cent. 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. ...

... (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...”

(Emphasis supplied)

11. In **G.J. Raja v. Tejraj Surana, (2019) 19 SCC 469**, the Court held such amendment to be prospective in nature, thus not applying to the proceedings initiated prior thereto. However, the decision came to be distinguished subsequently by Hon’ble Apex Court in **Surender Singh Deswal alias Colonel S. S. Deswal and others v. Virendra**



Ghandhi and anr. (2020) 2 SCC 514, para 17. The power to grant compensation by the Court at the first instance in the complaint case is vested with the Court before whom the complaint is pending. Provision to similar effect is also stipulated under Section 148 of the NI Act empowering the appellate Court to grant such compensation. Significantly, both Section 143A and Section 148 were incorporated by the very same amendment.

12. Whether the Court at the first instance or the appellate court has got any discretion or not in awarding compensation came up for consideration before the Apex Court in **Surinder Singh Deswal (supra)** where the Court clarified that the expression “may” has to be read as “shall”. Thus the Court accounting for all the attending facts and circumstances has to take a view in the affirmative in the grant of interim compensation, be it at the first instance or at the appellate stage.

13. The cause of action in the instant case has arisen much after the insertion of Section 143A of the NI Act. Such insertion was by virtue of Act (20 of 2018) notified with effect from 01.09.2018.

Bihar & Orissa Public Demands Recovery Act, 1914



14. Relevant extracts of Section 3 and Article 3 Schedule I
are reproduced below:-

“3. Definitions. - In this Act, unless there is anything repugnant in the subject or context :-

(1) "certificate debtor" means the person named as debtor in a certificate filed under this Act and includes any person whose name is substituted or added as debtor by the Certificate Officer;

(2) "certificate holder" means the Government or person in whose favour a certificate has been filed under this Act, and includes any person whose name is substituted or added as creditor by the Certificate Officer;

(3) "certificate-officer" means a Collector, a sub-divisional officer, and any officer appointed by a Collector, with the sanction of the Commissioner, to perform the functions of a Certificate Officer;

(4) "movable property" includes growing crops;

....

.... (6) "Public demand" means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon upto the date on which a certificate is signed under Part II; and”

(Emphasis supplied)

Article 3 of Schedule- I reads as under:-

“3. Any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land-revenue, or by the process authorized for the recovery of arrears of revenue or of the public revenue or of Government revenue.”

(Emphasis supplied)

15. A Full Bench of this Court in **Ram Chandra Singh vs State Of Bihar And Ors. on 12 November, 1986, AIR 1987 Pat 107**, observed in reference to recovery of public money that:-“8A. The State or the public exchequer has always stood on a



pedestal higher than and different from the private individual's demands for recovery of his debts. From times immemorial the State Exchequer has reserved to itself the special and peculiar procedure for the recovery of certain dues and debts owing to itself. Whilst the individual citizen resorts to the Civil Courts for debts due to him, in the case of State the public exchequer cannot, by the very nature of things, resort to the ordinary civil process for the recovery of all sums due to it. Necessarily a special procedure for enforcing its own demands is resorted to by the State in the interest of public exchequer because it would be impossible to carry on the business of government if its revenues were all to be referable to regular litigation in Civil Courts. There, thus, arises a concept of public demands in the nature of land revenue, rents, taxes, fines and other dues, in respect of which the primal need is a special summary procedure for their recovery where they are not paid or denied. Perhaps the classic example in this context is that of land revenue which is a special feature in India and the modes of its recovery and realisation historically go back to the earliest time. For our purposes it is wholly unnecessary to delve too far down in history and it suffices to notice that under early British rule the customary modes of demand and coercion for the recovery of land revenue both before and subsequent to the permanent settlement were resorted to. One of the earliest statutes in this context is Regulation III of 1774 in the province of Bengal followed by Regulation I of 1801 and Regulation



V of 1812. Later public demands other than land revenue also came within the ambit of the special mode for their recovery. Act VII of 1868 for first time codified provisions relating to the procedure for the recovery of State demands other than land revenue proper. It was followed by a series of other statutes ultimately culminating in Bengal Act I of 1895 which was the predecessor statute to the Bengal Public Demands Recovery Act, 1913 (Act III of 1913). This perhaps continued to apply within this jurisdiction till the creation of the separate province of Bihar and Orissa and till the present Bihar and Orissa Public Demands Recovery Act, 1914 was notified in the gazette on the 7th Oct., 1914. The Act is in part in pari materia with its predecessor statute. Plainly enough it is a pre-Constitution legislation which in essence has held the field for 72 years now and, as noticed, is only a successor of much older provisions applicable to the erstwhile province of Bengal. Schedule I to the Act is an integral part of the statute framed with particular reference to Section 3(6) of the Act. The existing articles (barring Articles 9A and 15) were an integral part of the statute even when originally enacted.” “9. Now, the articles in Schedule 1 have to be viewed in the context of the 'fact that the phrase "public demands" is intrinsically one of the widest amplitude. It is against this background that one has to construe the aforequoted definition given in Section 3(6) of the Act. This definition is by direct reference to Schedule I. The said schedule then has its heading as "Public Demands" and at the same time makes



express reference to Section 3(6). It is thus manifest that Section 3(6) and Schedule I are one integral whole which has to be construed as part and parcel of each other. But what perhaps calls for particular notice in this context is that under the Act the definition and concept of public demand becomes one of the widest amplitude. Even in its ordinary common parlance and dictionary meaning, a public demand is a wide ranging concept. However, this has been further and deliberately expanded by the legislature to include within its sweep any arrear or any money which may come to be mentioned or even referred to in Schedule 1 and include also any interest which may be chargeable thereon. Yet again it deserves highlighting that Section 3(6) of the Act is not merely an inclusive definition but expressly says that the public demand means whatever may be specified in Schedule 1. In the result even the broad sweep of public demand is further extended by the statute herein and, in my view, designedly so. In logical essence, this leads to the result that for the purposes of this Act a public demand includes all arrears of revenue or any money due or demand payable which finds place in Schedule I even by reference. It seems patent that the legislature has deliberately not attempted to define public demand or limiting the same. All the arrears of revenue, money or payable demands which the legislature chooses to incorporate in Schedule I become by virtue of the definition" under Section 3(6) a public demand of which recovery can be made under the Act. The scheme of the definition



under Section 3(6) of the Act and the frame of the articles of the schedule complementary thereto thus become a key to the interpretation of these provisions.”

Code of Criminal Procedure, 1973

16. Section 421 reads as under:

“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-...

...(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter: ...

(3) Where the Court issues a warrant to the Collector under clause (b) of sub- section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.”

(Emphasis supplied)

17. With the above facts and law, we now proceed to analyze the issue arising out of this *lis*.

(i) Whether an order for payment of interim compensation under the Negotiable Instrument Act can be enforceable under the Bihar & Orissa Public Demands Recovery Act, 1914 as a public demand?

18. We notice that Section 143A of the NI Act under sub-



section (5) specifically states that interim compensation payable under this Section is recoverable as a fine under Section 421 of the Code of Criminal Procedure. Section 421 (1) (b) provides for issuance of warrant to the Collector to realize amounts as arrears of land revenue from movable and immovable properties of said defaulter. Further, clause 3 of Schedule I of the Recovery Act as already extracted hereinabove states that any money realizable as arrear of land revenue by process authorized for said purpose shall be deemed a public demand under Section 3 of the Act.

19. The interim compensation so ordered under Section 143A of the NI Act is recoverable as a fine under Section 421 of Cr.P.C. which then, as shown from the above discussion, clearly falls under the definition of 'public demand'. The petitioner's contention of non-applicability of the Recovery Act, therefore, necessarily has to be negated.

20. Once the above question is answered positively, that is to say that interim compensation ordered under the NI Act falls within the ambit of Schedule I of the Recovery Act, realization thereunder cannot be stopped. The learned Court below was correct in issuing an order under Section 143A of the NI Act for recovery of interim compensation as land revenue.

21. The present petition is disposed of with liberty to the



petitioner to avail alternative remedies under the law as applicable. However, before we part, as emphasized earlier, we hope and expect the parties to have the matter resolved by engaging in the process of mediation and/or conciliation.

22. Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

S. Kumar, J. I agree.

(S. Kumar, J)

Sujit/-

AFR/NAFR	AFR
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