

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. NO. 1555 OF 2021

INDRANIL MUKHERJEE

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner : Mr. Ayan Bhattacharjee, Adv.,
Mr. Indrajit Adhikari, Adv.,
Mr. Sharequl Haque, Adv.,
Mr. Subhajit Manna, Adv.,
Mr. Somdev Ash, Adv.,
Mr. Suman Majumder, Adv.

For the respondent no.2 : Mr. Sonal Anand, Adv.

Hearing concluded on : 17.02.2022

Judgment on : 21.04.2022

Kausik Chanda, J.:-

This revisional application has been preferred against an order dated April 3, 2021, passed by the learned Metropolitan Magistrate, 20th Court, Calcutta in CS-6964 of 2019. By the order impugned the learned Magistrate dismissed an application filed under Section 421 of the Code of Criminal Procedure, 1973, seeking recovery of the interim compensation awarded to the petitioner by an order dated March 4, 2020.

2. The relevant facts, which are not disputed by either of the parties before this Court, are as follows.

3. The petitioner filed a complaint under Sections 138/141 of the Negotiable Instruments Act, 1881, against the accused persons for the dishonour of a cheque amounting to Rs.50 (fifty) lakh. The case was transferred to the Court of learned Metropolitan Magistrate, 20th Court, Calcutta, and before the said Magistrate, the petitioner filed an application under Section 143A of the said Act for interim compensation.

4. Learned Magistrate by an order dated March 4, 2020, allowed the said application directing the accused namely, Rajeev Arora (since deceased) to pay interim compensation to the tune of twenty percent of the total cheque amount to the petitioner in terms of Section 143A of the said Act within sixty days from the date of order.

5. The said order of the learned Magistrate passed on March 4, 2020, was challenged by Rajeev Arora before the Chief Judge, City Sessions Court, by filing a revisional application.

6. During the pendency of the said application, Rajeev Arora died on October 19, 2020, leaving behind his widow and opposite party nos. 2(a) and (b) as his legal heirs.

7. The order dated March 4, 2020, was affirmed by the learned Chief Judge, City Sessions Court on December 2, 2020, and thereafter the petitioner filed an application under Section 421 of the Code of Criminal Procedure, 1973 before the learned Magistrate for recovery of the interim compensation awarded by the order dated March 4, 2020. The learned Magistrate by the order impugned in this revisional application dated April 3, 2021, dismissed the petition holding, *inter alia*, that interim compensation awarded to the petitioner could not be executed inasmuch as criminal liability including the pecuniary penalties stood extinguished upon the death of the accused person.

8. Assailing the said order dated April 3, 2021, the learned advocate for the petitioner, Mr. Ayan Bhattacharjee with his usual eloquence elaborately argued before this Court by referring to Section 143A of the Negotiable Instruments Act, 1881, Section 421 of the Code of Criminal Procedure, 1973, and Section 70 of the Indian Penal Code, 1860. Mr. Bhattacharjee argued that by virtue of Section 25 of the General Clauses Act, 1897, the provisions of Section 63 to 70 of the Indian Penal Code, 1860, and the provisions of the Code of Criminal Procedure, 1973, in relation to the execution of warrants for levy of fines are applicable to the Negotiable

Instruments Act, 1881. Mr. Bhattacharjee submitted that an interim compensation is also liable to be recovered from the estate of the deceased accused since the liability so accrued on account of the non-payment by the deceased remains recoverable from the estate of the deceased.

9. In support of his submission, Mr. Bhattacharjee has relied upon the decisions rendered in **(*Ramesan v. State of Kerala*) reported at (2020) 3 SCC 45** and **(*Shamim Saifuddin Sarkhot v. Jugraj Miyachand Jain*) reported at (2016) 2 ABR (Cri) 191**.

10. Mr. Bhattacharjee further argued that the aforesaid provisions of law make it clear that the liability to pay the compensation amount does not get automatically absolved on the death of the person responsible to pay, and when the statutory provision is clear a Court cannot interpret to amendment or alter the law. He submitted that any argument to the contrary will make Section 143A of the Negotiable Instruments Act, 1881 inoperative. He suggested that interim compensation payable under Sub-section (1) of the said Act is not relatable to Sub-section (4).

11. Mr. Bhattacharjee argued that repayment, as contemplated under Sub-section (4) would be relevant only when the accused is acquitted from the charge, but in the case of death of the accused, the question of acquittal does not arise. He submits that Section 139 of the Negotiable Instruments Act provides for a presumption which operates in favour of the payee from the initiation of a complaint under Section 138 of the said Act

and on the basis of the same, at the stage of recording the plea under Section 251 of the Code of Criminal Procedure, 1973, an order under Section 143A of the Negotiable Instruments Act is passed. Therefore, on the death of the accused, under Sub-section (4) of Section 143A of the Negotiable Instruments Act, the liability to pay interim compensation from the estate of the accused is not absolved. Mr. Bhattacharjee on interpretation of statutory provisions has relied upon judgments of the Supreme Court reported at **(2010) 2 SCC 513 (Sri Jeyaram Educational Trust v. A.G. Syed Mohideen)** and **(1999) 4 SCC 253 (NEPC Micon Ltd. v. Magma Leasing Ltd.)**.

12. He further relied upon a judgment reported at **ILR (1938) 1 Cal 509 (Tari Bala Sukla Baidya v. Kabal Ram Sukla Baidya)**, where it was held that cancellation of an interim maintenance does not absolve the husband to pay the arrear.

13. Mr. Sonal Anand, learned advocate appearing for the opposite parties, on the other hand, submits that the compensation passed under Section 143A is interim in nature and the same is refundable in case it is established that the accused is innocent. In case of death of an accused during the trial, the innocence of the accused cannot be, in any event, proved and therefore, the amount of compensation directed to be paid in terms of Section 143A becomes irrecoverable.

14. Mr. Anand, further, submits that the proceeding under Section 138 of the Negotiable Instruments Act abates upon the death of the accused and when the main proceeding itself abates interim order passed in connection thereof cannot survive. In support of the proposition that proceeding under Section 138 of the Negotiable Instruments Act cannot continue against the legal representatives of the drawer of the cheque and abates upon his death, Mr. Anand has relied upon the judgments rendered in **(Madhu v. State of Kerala) reported at (2020) SCC OnLine Ker 2353, (Smt. Girija v. K. Vinay) reported at (2003) SCC OnLine Kar 434, and (M. Abbas Haji v. T.N. Channakeshava) reported at (2019) 9 SCC 606.**

15. Mr. Anand, further, submits that the accused died on October 19, 2020. In this case, the application filed under Section 421 of the Code of Criminal Procedure for recovery of the interim compensation was not maintainable since the same was filed against the dead person.

16. Mr. Anand argued that Section 143A starts with a non-obstante clause. Therefore, the said provision cannot be extended to the provisions of the Indian Penal Code, which is a substantial law. Interim compensation under Section 143A of the Negotiable Instruments Act is passed at a pre-trial stage while Section 70 of the Indian Penal Code becomes operative only after passing of the sentence upon finding of guilt. Mr. Anand argued that the provision of one substantial law cannot be read into another substantial law unless so specifically provided by the statute. Therefore,

the provisions of the Indian Penal Code cannot be made applicable to the provisions of the Negotiable Instruments Act, 1881.

17. From the respective arguments of the parties as noted hereinbefore, the points of law that arises for consideration are (a) whether the compensation awarded under Section 138 of the Negotiable Instruments Act, 1881 can be recovered from the estate of a deceased accused and (b) whether an interim compensation awarded under Section 143A of the Negotiable Instruments Act, 1881 can be recovered from the estate of a deceased accused, who died before the conclusion of the trial.

18. Before I advert to the aforesaid issues, it is necessary to consider the relevant provisions of law.

19. Section 143A of the Negotiable Instruments Act, 1881, grants power upon the trial Court to direct payment for interim compensation. Section 143A 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.

(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.

(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 years, 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.”

20. Section 421 of the Code of Criminal Procedure, 1973 reads as follows:

“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—

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(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:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or

unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(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.”

21. Section 70 of the Indian Penal Court, 1860 is quoted below:

“70. Fine leviable within six years, or during imprisonment—Death not to discharge property from liability.—The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.”

22. It is also necessary to notice Section 431 of the Code of Criminal Procedure, 1973, which provides as follows:

“431. Money ordered to be paid recoverable as a fine.—Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that section 421 shall, in its application to an order under section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of section 421, after the words and figures “under section

357”, the words and figures “or an order for payment of costs under section 359” had been inserted.”

23. The relevant part of Section 138 of the Negotiable Instruments Act, 1881, is quoted below:

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: ...”

24. By operation of Section 70 of the Indian Penal Code, 1860 any unpaid fine may be levied at any time within six years after the passing of the sentence, and the death of the accused does not discharge from the liability any property which would, after his death, be legally liable for his debts.

25. In the judgment reported at **(2020) 3 SCC 45 (*Ramesan v. State of Kerala*)**, it was laid down that even if a sentence of fine is imposed along with the sentence of imprisonment, under Section 431 of the Code of Criminal Procedure, 1898, the appeal shall not abate.

26. In the judgment report at **AIR (1964) SC 1645 (*Bondada Gajapathi Rao v. State of A.P.*)** the Supreme Court laid down the principle on which the hearing of a proceeding may be continued after the death of an accused. It was held that the principle on which the hearing of a proceeding may be continued after the death of an accused would appear to be the effect of the sentence on his property in the hands of his legal representatives. If the sentence affects the property, the legal representatives can be said to be interested in the proceeding and allowed to continue it.

27. Section 25 of the General Clauses Act, 1897, makes it clear that Sections 63 to 70 of the Indian Penal Code, 1860, shall apply to fines imposed under the Negotiable Instruments Act, 1881. Section 25 of the General Clauses Act, 1897 is reproduced below:-

“25. Recovery of fines.—Section 63 to 70 of the Indian Penal Code (45 of 1860) and the provisions of the Code of Criminal Procedure (5 of 1898) for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-law unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.”

28. I, therefore, do not agree with Mr. Anand that the provisions of Section 70 of the Indian Penal Code, 1860 cannot be extended to Section 143A of the Negotiable Instruments Act, 1881. The expression “all fines imposed under any Act ...” is wide enough to include the fine imposed

under Section 143A of the Negotiable Instruments Act, 1881 to bring within the swipe of Section 70 of the Indian Penal Code, 1860.

29. The combined reading of the aforesaid provisions makes it clear that where the compensation has been directed to be paid upon conclusion of a proceeding under Section 138 of the Negotiable Instruments Act, 1881, the legal heirs who have inherited the estate of the deceased are liable to repay the fine or compensation amount when an application under Section 421 of the Code of Criminal Procedure, 1973, has been filed.

30. The same view has been taken in the judgment reported at **(2016) 2 ABR (Cri) 191 (Shamim Saifuddin Sarkhot v. Jugraj Miyachand Jain)**.

31. The judgment reported at **(2020) SCC OnLine Ker 2353 (Madhu v. State of Kerala)** deals with an appeal against acquittal in connection with a proceeding under Section 138 of the Negotiable Instruments Act, 1881.

32. In the judgment reported at **(2003) SCC OnLine Kar 434 (Smt. Girija v. K. Vinay)** the Karnataka High Court held that no proceedings can be initiated for an offence punishable under Section 138 of the Negotiable Instruments Act against the legal heirs of the deceased.

33. In the case reported at **(2019) 9 SCC 606 (M. Abbas Haji v. T.N. Channakeshava)** the Supreme Court ultimately allowed the application filed by the legal heirs of the deceased to prosecute his appeal.

34. The facts involved in the present case, as discussed above, are, however, different.

35. The position of law will be, however, different in a case where the interim compensation has been granted under Section 143A of the Negotiable Instruments Act, 1881.

36. Section 143A (1) of the Negotiable Instruments Act, 1881, speaks of payment of interim compensation and I am unable to persuade myself to agree with Mr. Bhattacharjee that Section 143A (1) is independent of Section 143A (4) of the Negotiable Instruments Act, 1881. A bare reading of Section 143A (4) makes it clear that in the event the drawer of the cheque is acquitted, the interim compensation paid in terms of Section 143A (1) has to be repaid together with the prevalent bank interest. And again in terms of Sub-section (6) the amount of fine imposed under Section 138 of the Negotiable Instruments Act, 1881 or the amount of compensation awarded under Section 357 of the Code of Criminal Procedure, 1973 shall be reduced by the amount paid or recovered as interim compensation.

37. The order of interim compensation is, therefore, dependent on the outcome of the trial. There is no finality attached to such interim order of compensation and no right is crystallized in favour of the complainant by dint of such interim order of compensation. The order of interim compensation, which is passed in the aid of final compensation, will cease to exist when the trial comes to an end due to the death of the accused since in such eventuality there cannot be any scope to adjudicate the innocence or the guilt of the accused in the trial.

38. Therefore, I am of the view that if in case of death of an accused the compensation awarded under Section 138 of the Negotiable Instruments Act, 1881 can be recovered from the estate of a deceased accused, but an interim compensation awarded under Section 143A of the said Act cannot be recovered from the estate of a deceased accused, who died before the conclusion of the trial.

39. I need not discuss separately the judgments relied upon by the respective parties on the principles interpretation of statutes since there cannot be any quarrel with regard to the propositions of law laid down in those cases.

40. In view of the aforesaid findings, this revisional application C.R.R. No. 1555 of 2021 is dismissed without interfering with the order of the learned Magistrate in the Court below.

41. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)