

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1845 of 2022

Saroj Kumar Jena

....

Petitioner

-versus-

Shantanu Kumar Sahu

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER
21.07.2022

Order No.

01. 1. This matter is taken up through Hybrid mode.
2. Heard learned counsel for the Petitioner.
3. The Petitioner in this case has challenged the order dated 4.4.2022 passed by the learned J.M.F.C., Basta in ICC No.7 of 2020 wherein the learned J.M.F.C. has directed the Petitioner to deposit 20% of the offending cheque amount as mandated under Section 143-A of the N.I Act on the ground that the impugned order is unsustainable inasmuch as even though the case has not yet reached the stage to warrant any direction under Section 143-A of the N.I Act, which the learned J.M.F.C has issued vide the impugned order.
4. Section 143-A of the N.I Act speaks that the Court trying an offence under Section 138 of the N.I Act 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.

5. Admittedly, as it is revealed from the impugned order, the case has not reached the stage of charge. Hence, I am unable to understand how the learned J.M.F.C. could say that the case has reached the stage of charge. The order does not show much less in specific that the proceeding has been converted to be tried by warrant procedure. So, it is a case presumed to be tried by summary trial or as a summons case. Even if for the sake of argument it is assumed that the learned J.M.F.C would convert the case to be tried in warrant procedure, the question of award of interim compensation under Section 143-A of the N.I. Act would arise upon framing of charge, and not before then. Learned J.M.F.C taking note of the intention of the Legislature that there would be delay in resolution of the dispute the aforesaid provision has been envisaged in the statute, issued the direction to ameliorate the difficulties of the Complainant who is stated to have a legal enforceable debt or liability and to have accepted the cheque in a good faith which on being presented, was dishonoured. But, the same has not been ordered at the appropriate stage, as mandated in the statute, stated in the preceding paragraph. If the Petitioner pleads guilty, there would be no occasion of delay in resolution of the dispute inasmuch as the learned J.M.F.C in such event then can very well saddle the accused with the liability of compensation upon his conviction, and when he pleads not guilty in a summary trial or a summons case, which ordinarily is the appropriate procedure for trial of

such cases, the question of payment of interim maintenance would arise. So also, if the case is converted to a warrant procedure, the power under Section 143-A of the N.I. Act can be invoked only after framing of charge. If a charge is framed and if the accused pleads guilty, then the discretion will be left open to the learned J.M.F.C either to accept such plea and convict him or to pass any other appropriate order in exercise of his discretion. That is why in the second contingency under Section 143-A of the N.I. Act the question of plea of the accused has not been specifically mentioned.

6. In view of the aforesaid, I am constrained to say that the learned J.M.F.C. has erred in application of the provision under Section 143-A of the N.I. Act without being conscious of the facts and legal requirements. If at all the case was converted to warrant procedure, without framing of charge and putting the accused-petitioner to trial, the learned J.M.F.C. could not have directed him to pay the compensation under Section 143-A of the N.I Act.

7. For the aforesaid reason, the impugned order is set aside. The matter is remitted back to the learned J.M.F.C., Basta to decide the application at the appropriate stage in right perspective.

8. With the aforesaid order, this CRLMC stands disposed of being allowed.

(S. Pujahari)
Judge

