

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43341-2022 (O & M)

Date of decision: 29.09.2022

Capital Scaffolding through its Proprietor Salim Chohan and anr.

..... Petitioners

Versus

State of Haryana and another.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Nitin Kaushal, Advocate for the petitioners.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for setting aside the order dated 26.07.2022 passed by the Additional Session Judge, Gurugram (Annexure P-2) in a criminal complaint bearing No.NACT/627/2020 dated 08.01.2020 titled as "M/s Baba Jagta Shuttering Pvt. Ltd. versus Salim Chohan" (Annexure P-3) vide which the order dated 09.05.2022 (Annexure P-4) passed by the Judicial Magistrate Ist Class, Gurugram, allowing an application under Section 143-A of the Negotiable Instruments Act for paying interim compensation has been affirmed.

2. The brief facts of the case are that the complainant-respondent company is in the business of supplying scaffoldings and shuttering material. As per the complaint, the complainant-company (respondent No.2) supplied the material to the petitioner-accused company from time to time. In partial

discharge of its legal liability, a cheque bearing No.373916 dated 28.11.2019 for a sum of Rs.77,25,000/- was issued by the petitioner-accused company. The said cheque was dishonoured leading to the initiation of proceedings under the Negotiable Instruments Act, 1881 (for short “the Act”), the filing of the complaint and consequent summoning order dated 08.01.2020. The petitioner No.2/accused appeared before the Trial Court on 12.11.2021 and was granted bail on the same date. On that very date, finding a prima facie case, the petitioner No.2-accused was served a notice of accusation for having committed an offence under the Act to which he pleaded not guilty and claimed trial. Another application under Section 143-A of the Act praying for interim compensation was moved, which was adjourned for filing a reply. A reply was submitted by the petitioner No.2-accused. It was stated that the grant of interim compensation under Section 143-A of the Act was discretionary in nature depending on the facts and circumstances of each case and since the petitioner No.2-accused had a good case on merits, the compensation ought not to be granted. In fact, the cheque in question, had been given by way of security against the material rented by the accused-petitioners and it was a blank undated cheque, which had been handed over to the complainant-respondent. This fact had been admitted by the complainant-respondent as well and since it was a security cheque as admitted by the complainant-respondent, therefore, it could not be presumed that the cheque was issued towards the discharge of any debt or liability. In fact, the complaint had been filed so that the complainant-respondent could pressurize the petitioners-accused in appropriate civil/criminal actions when initiated by the complainant-respondent. It is also stated in the reply that

the same transaction between the accused-petitioners and the complainant-respondent and this fact had not been disclosed to the Court. An FIR No.09/2021 dated 18.01.2021 under Sections 406/506/120-B IPC was also registered against the accused at the instance of the complaint-respondent with respect to the same facts, circumstances and transactions, in which the petitioner No.2-accused was granted bail. In fact, the entire scaffolding material rented by the accused-petitioners had been recovered by the complainant-respondent, and therefore, no interim relief of compensation ought to be granted to the complainant/respondent.

After hearing the respective contentions of both the parties, the Judicial Magistrate Ist Class, Gurugram, vide order dated 09.05.2022 (Annexure P-4) awarded compensation to the extent of 20% of the cheque amount.

3. Against the aforementioned order, a revision petition was preferred before the Court of Additional Sessions Judge, Gurugram. The grounds raised were similar in nature. It was contended that under Section 143-A of the Act, compensation ought to be granted in cases where delay tactics were being adopted by the accused which was not so in the present case. The provisions were otherwise not mandatory but directory in nature and the reply of the accused-petitioners had not been considered in its proper perspective by the Judicial Magistrate Ist Class, Gurugram. Examining the provisions of Section 143-A of the Act as also the statements of Objects and Reasons behind the insertion of Sections 143-A and 148 in the Act, the Court came to the conclusion that there was conferred a discretion upon the Court to award upto 20% of the cheque amount as interim compensation to

circumstances of each case: Circumstance under which compensation could be awarded was where the accused persons were absconding or had protracted the proceedings or were intentionally evading the proceedings/service for a long time and the presence of the accused was secured only by virtue of non-bailable warrants. This list was not exhausted but more illustrative in nature. The Court came to the conclusion that the merits of the case as to whether the cheques were given as security cheques, etc. were not relevant when the summoning order itself was not being challenged. It was also observed that the petitioner-accused No.2 had moved repeated applications for exemption of his personal appearance, which had delayed the trial, and therefore, the record itself showed that on account of delayed appearance and trial, the order passed by the Judicial Magistrate Ist Class, Gurugram, was justified. Therefore, the revision petition came to be dismissed vide order dated 26.07.2022 (Annexure P-2).

4. The aforementioned two orders (Annexures P-2 and P-4) are under challenge in the present petition.

5. I have heard the learned counsel for the petitioners at length, who has virtually raised the same grounds as those raised in the reply to the application submitted by the accused under Section 143-A before the Trial Court (Annexure P-6).

6. Before proceeding further, it would be relevant to refer to Section 143-A of the Act, which is reproduced hereinbelow:-

“143-A. 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.

(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, shall be reduced by the amount paid or recovered as interim compensation under this section”.

The statements of Objects and Reasons which led to the insertion of Sections 143-A and 148 in the Negotiable Instruments Act, 1881 are reproduced as hereinbelow:-

“Statement of Objects And Reasons

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 [143A](#) 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.

4. The Bill seeks to achieve the above objectives. "

5. In the present case, the complaint was filed on 08.01.2020, pursuant to which, the summoning order was issued on the same date. The order dated dated 08.01.2020 is reproduced as under:-

"Briefly stated, the facts of the present case are that the accused issued cheque No. 373916 dated 28.11.2019 of Rs. 77,25,000/- for the payment to the complainant in discharge of his liability. The said cheque(s) on presentation to the banker of the accused was/were received back with the remarks " Refer to Drawer ". Complainant served a legal notice upon the accused through post demanding the cheque amount. Despite that accused failed to make the payment to the complainant.

2. To substantiate the fact, the complainant stepped into the witness box as CW1 and reiterated the contents of the complaint. Complainant further placed on record the original cheque, return memo, legal notice, postal receipts, etc.

3. Heard. On perusal of documents placed on record, it reveals that the complainant had presented the cheque issued by the accused to his banker in time. Thereafter complainant issued a legal notice to the accused within a period of 30 days from the date of receipt of communication about the fact of dishonour of the cheque, still the accused failed to make payment.

4. Keeping in view the aforesaid discussion there are sufficient grounds to proceed against the accused under Section 138 of the Negotiable Instrument Act. As a necessary corollary of the above discussion accused is hereby summoned for commission of offence u/s 138 of Negotiable Instrument Act. Summons be issued to the accused for 26.02.2020 on filing of process fees through registered cover/ Speed Post/Approved courier Service/e-mail. Summons be given dasti, if so desired.

“Complaint presented today. It be checked and registered. CW-1 is present and tendered his affidavit as Ex. CW1/A along with documents spelled out in the preliminary evidence. Thereafter, preliminary evidence closed.

Arguments on the point of summoning of accused heard. Based on documentary evidence tendered as well as oral submission made by the counsel, this court is satisfied that the present complaint is within limitation and accused has prima facie committed an offence punishable under Section 138 of N.I. Act. Vide my separate order of even date, the accused is ordered to be summoned under Section 138 of the N.I. Act by all modes except publication on filing of PF, RC, etc. on fresh address for 26.02.2020. Summons be given dasti if desired”.

The matter stood adjourned to 26.02.2020, on which date, the following order was passed:-

“Notice through registered post issued to the accused not received back either served or unserved. However, learned counsel for the complainant has placed on record postal receipt along with the track result which shows that item has been delivered.

Case called several times since morning but none has appeared on behalf of the accused. It is already 3.30 PM. Waited sufficiently. Further, wait not justified. Hence, accused is ordered to be summoned through bailable warrants to the sum of Rs. 5000/- with one surety in the like amount against the accused be issued for 01.04.2020”

On 23.03.2020, the following order was passed:-

“File taken up today i.e. 23.03.2020 in view of letter bearing Endst. No. 2307 dated 23.03.2020 passed by Learned District & Sessions Judge, Gurugram as in view of the notification of Haryana Government with regard to lock down in the territorial jurisdiction of District Gurugram on account of prevailing situation arising due to outbreak of Noval Coronavirus COVID-19 and further as per order of

Hon'ble High Court dated 22.03.2020, the matter stands adjourned for _____ for the purpose already fixed. Parties/counsel/witnesses be informed accordingly ”.

The matter stood adjourned to 02.07.2020, on which date the following order was passed:-

“File taken up today i.e. 02.07.2020. None has appeared on behalf of the parties as process to secure their presence before this court not issued in view of extension of lock down period on account of spread of Novel Coronavirus (Covid-19) Pandemic since 23.03.2020 till 31.07.2020 at intervals. Hence, in view of order bearing Endst. 3091 dated 30.06.2020 passed by Ld. Sessions Judge, Gurugram passed by Ld. Sessions Judge, Gurugram as in view of the notification of Haryana Government with regard to lockdown in the territorial jurisdiction of District Gurugram on account of prevailing situation arising due to outbreak of noval coronavirus COVID-19 and further as per order no. 13/Spl./RG/Misc. dated 29.04.2020 of Hon'ble High Court, the matter stands adjourned for _____ and process be issued to secure presence of accused for the date fixed”.

On 03.11.2020, the following order was passed:-

“None has appeared on behalf of the parties as process to secure their presence before this court not issued in view of extension of lock down period on account of spread of Novel Coronavirus (Covid-19) Pandemic. In view of order bearing Endst. No. 5070 dated 26.10.2020 passed by Ld. District and Sessions Judge, Gurugram. Let, the matter stands adjourned for _____ for the purpose already fixed. Parties/counsel/witnesses be informed accordingly”.

On 29.01.2021, the following order was passed:-

“Bailable warrants against the accused not issued by the concerned Ahlmad. Ahlmad is warned to be careful in future. Ahlmad

is directed to issue fresh bailable warrants in the sum of Rs. 5000/- with one surety in the like amount against the accused for 28.04.2021”.

The matter stood adjourned to 28.04.2021, on which date, the following order was passed:-

“File taken up in view of order bearing Endst. 2105 dated 15.04.2021 passed by Ld. Sessions Judge, Gurugram in continuation Endst. no. 46/RG/Spl./Misc. Dated 08.01.2021 of Hon'ble High Court, the matter stands adjourned for _____ for the purpose already fixed. Parties/counsel/witnesses be informed accordingly”.

On 07.09.2021, the following order was passed :-

“An application for exemption from furnishing surety bond and request for adjournment filed. Heard. Keeping in view the contents mentioned in the application, same is hereby allowed subject to the cost of Rs. 500/- to be deposited in DLSA, Gurugram. Now, case stands adjourned to 21.10.2021 for serving notice of accusation as well as furnishing surety bonds”.

Once again, an application seeking exemption from personal appearance was moved as the petitioner No.2/accused had not appeared in the Court and the same was dismissed on 21.10.2021. The order dated 21.10.2021 reads as under:-

“Previous cost of Rs. 500/- deposited in DLSA by accused. An application seeking exemption from personal appearance of the accused Salim Chohan has been filed on record. Accused Salim Chohan not appeared in the court, his application is not maintainable and the same stands dismissed. Hence bail of the accused is hereby cancelled. His bail bonds and surety bonds forfeited to State of Haryana. Let non-bailable warrant against accused and notice to his surety and identifier be issued for 25.10.2021”.

Thereafter, non-bailable warrants were issued against the petitioner for 25.10.2021. The order dated 25.10.2021 reads as under:-

“Non-bailable warrants issued against the accused not received back either executed or unexecuted. Let, fresh non-bailable warrants against the accused be issued for 10.11.2021. Notice to his surety and identifier be also issued for the date fixed”.

The matter stood adjourned to 10.11.2021, on which date, the following order was passed:-

“Non-bailable warrants issued against the accused not received back either executed or unexecuted. Let, fresh non-bailable warrants against the accused be issued for 12.11.2021. Notice to his surety and identifier be also issued for the date fixed”.

Once again, fresh non-bailable warrants were issued on 10.11.2021 for 12.11.2021. On 12.11.2021, the following order was passed:-

“An application for bail has been moved by accused through his counsel. Learned counsel for accused has submitted that the applicant is resident of Pune and due to the shutting down of the Airport, accused could not appear before the court. Considering the fact that trial will take long time and no purpose will be served by sending the accused behind bars, bail application in hand stands allowed. Notice under section 446 Cr.P.C. served upon the accused to which he pleaded guilty and fine of Rs. 1000/- imposed upon him. Fine paid. Accused is hereby enlarged on bail on furnishing of surety bond in the sum of Rs. 2,00,000/- with one surety in the like amount. Bail bonds and surety bond (Copy of Sale Deed) furnished, accepted and attested. Accused be released forthwith.

In compliance of order dated 01.06.2018 in CWP No. 4898 of 2018, let necessary directions through separate letter be issued to the concerned Tehsildar for not transferring the vehicle to any person/entity without prior permission of this court. Let copy of sale

deed be also attached with letter. Endorsement of the compliance be made on the order sheet by concerned Reader within three days.

Arguments heard on notice of accusation. Finding a prima-facie case, accused has been served by way of notice of accusation for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 to which he pleaded not guilty and claimed trial.

Another application under Section 143-A of NI Act has been moved by complainant through his counsel. Adjournment sought. Heard. Now, case stands adjourned to 26.11.2021 for submitting plea of defence and for filing reply of above-mentioned application”.

Once again, on 26.11.2021, an application for exemption from personal appearance was moved by the petitioner No.2/accused which was allowed. The order dated 26.11.2021 is as follows:-

“An application seeking exemption from personal appearance of accused has been filed. Considering the grounds mentioned in the application, the same stands allowed for today only subject to cost of Rs. 500/- to be paid to complainant by accused. Now to come up on 25.01.2022 for submitting plea of defence and for filing reply of application under Section 143A of NI Act”.

On 25.01.2022, the matter stood adjourned on account of Covid-19 pandemic and the following order was passed:-

“In pursuance of directions passed by Hon’ble District & Sessions Judge, Gurugram on 04.01.2022 conveyed vide Endst. No. 104-111 and on 11.01.2022 conveyed vide Endst. No. 1/Spl., vide which it is directed that the ordinary matters shall be adjourned suitably, to avoid the spread of pandemic CORONA VIRUS (COVID-19). Accordingly, the present case file is adjourned to 15.02.2022 for the same proceedings, already fixed vide previous order. Parties as well as Counsel be informed accordingly”.

On 15.02.2022, once again an application for exemption from personal appearance was moved by the petitioner No.2-accused, which was allowed as per the following order:-

“File put up before me being Link Magistrate as Sh. Puneet Limbha, JMFC is on Quarantine Leave w.e.f. 12.02.2022 to 19.02.2022.

An application seeking exemption from personal appearance of the accused has been filed. Considering the grounds mentioned in the application, the same stands allowed for today only. Now to come up on 28.02.2022 for submitting plea of defence and for filing reply of application under Section 143A of NI Act. File be sent back to the concerned court immediately”.

Thereafter, the matter came up for hearing on 28.02.2022, on which date, the following order was passed:-

“An application seeking exemption from personal appearance of accused has been filed. Considering the grounds mentioned in the application, the same stands allowed for today only. Now to come up on 09.03.2022 for submitting plea of defence and for filing reply of application under Section 143A of NI Act”.

On 09.03.2022, the reply to the application under Section 143-A was filed and the plea of evidence of the accused was recorded separately. The matter was adjourned to 08.04.2022. The order dated 09.03.2022 reads as below:-

“Reply to application under Section 143A of NI Act has been filed. Copy supplied. Plea of defence of accused recorded separately. An application under Section 145(2) of NI Act for cross examination of complainant has been moved. Copy supplied. In view of the facts mentioned in the application, the same stands allowed. Now to come up on 08.04.2022 for cross-examination of complainant as well as argument on application u/s 143A of NI Act”.

On 08.04.2022, once again, an application seeking exemption from personal appearance was filed, which was allowed as per the following order:-

“An application seeking exemption from personal appearance of the accused has been filed. Considering the grounds mentioned in the application, the same stands allowed for today only. Now to come up on 22.04.2022 for cross-examination of complainant as well as argument on application u/s 143A of NI Act”.

On 22.04.2022, once again an application for exemption from personal appearance of the petitioner No.2-accused was moved, which was allowed. The order dated 22.04.2022 is reproduced hereinbelow-

“An application seeking exemption from personal appearance of the accused has been filed. Considering the grounds mentioned in the application, the same stands allowed for today only subject to cost of Rs. 1000/- paid to complainant. Now to come up on 09.05.2022 for cross-examination of complainant as well as argument on application u/s 143A of NI Act.”

Thereafter, on 09.05.2022, the impugned order (Annexure P-4) ordering 20% interim compensation was passed by the Judicial Magistrate Ist Class, Gurugram.

6. The aforementioned facts/Zimni orders as narrated clearly shows that the petitioner No.2-accused has adopted dilatory tactics by moving repeated applications for exemption before and after obtaining bail. In fact, bailable warrants/non-bailable warrants had also been issued against the accused on a few occasions. Further, as per interim bail order dated 30.07.2021 (Annexure P-11) in FIR No.09 dated 18.01.2021 under Sections

these proceedings when his counsel gave an undertaking to this effect to the Court of the Additional Sessions Judge, Gurugram, pursuant to which he finally appeared on 12.11.2021 and was granted bail. The statement of Objects and Reasons as enumerated hereinabove clearly show that the need for the insertion of Section 143-A to the Negotiable Instruments Act, 1881 was in order to prevent delaying tactics of unscrupulous drawers of dishonoured cheques. The present case is a classic case wherein the petitioner No.2-accused has delayed proceedings significantly. Therefore, no fault can be found with the passing of the impugned orders.

7. The arguments of the learned counsel for the petitioners as set-out in the present petition are a virtual reproduction of the reply to the application under Section 143-A of the Act, which have been dealt with by the Courts below. I may, however, reiterate here that all the grounds raised in the present petition pertain to a subsequent defence of the accused which he shall take at the stage of Trial of the case. Whether the cheque, in question, had been issued as a security cheque or was a blank cheque or whether the filing of the complaint was a pressure tactic or not etc. are not matters to be examined by the Court while adjudicating upon an application under Section 143-A of the Act. If the merits of the case was to be minutely examined at this stage, it would amount to the conducting of a virtual mini trial thereby defeating the very purpose of Section 143-A of the Act, which seeks to provide succour to an aggrieved person. Even otherwise, by depositing the amount in question, no irreparable loss would ever accrue to the petitioners-accused who shall be refunded the amount alongwith the interest in case he succeeds in the prosecution launched against him.

8. In view of the aforementioned discussion, I find no merit in the present petition. The same is, therefore, dismissed.

(JASJIT SINGH BEDI)
JUDGE

September 29, 2022
sukhpreet

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No