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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 08.12.2022

Pronounced on: 19.12.2022

+ CRL.M.C. 6586/2022

AJAY TYAGI

..... Petitioner

Through: Mr. Vishal Bhatnagar & Ms. Richa
Narang, Advocates

versus

B9 BEVERAGES

..... Respondent

Through: Mr. Rohit Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

CRL.M.C. 6586/2022 & CRL.M.A. 25685/2022 (stay)

1. The issue before this Court is triggered by an application under section 143A, Negotiable Instruments Act ("NI Act") moved by the complainant that sought interim compensation of Rs. 5 Lacs i.e. 20% of Rs. 25 Lacs, the total value of the dishonored cheque. The Ld. MM *vide* Order dated 21st August 2020 heard the complainant and the accused and allowed the said application directing the accused to pay the sum of Rs. 5 Lakhs to the complainant within a period of 2 months. The accused filed a Revision Petition for setting aside this Order contending *inter alia* that unless and until complainant evidence is not completed the Ld. MM could not have decided the Application u/S 143A, NI Act and that the Ld. MM had failed to give any substantial reason while

allowing the Application. The Ld. ASJ dismissed the Revision *vide* order dated 25th August 2022 which is impugned in this petition before this Court.

2. The Ld. Counsel for the Petitioner contends that the reason stated in the application filed by the complainant was that they were in financial difficulty and that does not come within the ambit of S. 143A, NI Act scope and purview. He relied upon the judgements of the Courts at Madras and Karnataka viz. ***V. Mahadevan Iyer v. P. Anbazhagan***, 2019 SCC OnLine Mad 38927 and ***Vijaya v. Shekhapappa***, 2022 SCC OnLine Kar 515, where it was held that there has to be application of mind in allowing S. 143A, NI Act application. He further submitted that the conduct of the accused post the order of the Ld. MM had also been adverted to by the Ld. ASJ which would not be relevant in order for the revisional court to decide on the correctness of the Court below. He further contended that at the stage of s. 251 CrPC the accused is not liable to give documents in support of his answer to whether he pleads guilty or not. Further, he states that in his answer to the notice u/s 251 CrPC, he had stated that the cheque bears a signature, but the rest of the particulars on the cheque had not been filled by him. As per the Counsel for the petitioner, the complainant evidence had not been initiated as yet, which fact was refuted by the Respondent who stated that pre-summoning evidence was complete, notice had been issued and fixed for the cross examination of the complainant.

3. The Respondent's counsel further contented that s. 143A, NI Act is mainly interim compensation which is without prejudice to the right of the accused to be refunded these amounts in case the accused

was held as not guilty. He submitted that the possibility of s.143A, NI Act interim compensation was triggered where the accused pleaded not guilty as per the language of the provision. The purpose of this provision was to allow some recompense to the complainant if the trial was getting unnecessarily dragged. Supporting this, he submitted that his application itself had stated that the case was instituted in 2019, the matter was posted for mediation in January 2020, the mediation failed since the accused refused to pay any amount and then the accused adopted dilatory tactics and has also failed to appear before the Ld. MM until non-bailable warrants were issued. He also pointed out that the accused has taken a contradictory stance, as recorded in the impugned order, in that while he admits the signature on the cheque, he states, on the one hand that he made payment to the accused to the tune of Rs. 6,82,981/-, a figure which has no basis and has not been supported by any specific detail or context; and on the other hand states that he has to make more payments to the complainant as also wished to settle the matter.

4. It may be useful to examine the following relevant extracts from the decisions cited by the counsel for the Petitioner:

- i. In ***V. Mahadevan Iyer v. P. Anbazhagan***, 2019 SCC OnLine Mad 38927, the Hon'ble High Court of Madras stated as under.

*“3. Along with this amendment, Section 148 of the Negotiable Instruments Act was also brought into force which enabled the Appellate Court to insist for the deposit of 20% of the fine or compensation amount, awarded by the Trial Court against the accused person. The scope of this provision came up for consideration before the Hon'ble Supreme Court in **Surinder***

Singh Deswal @ Col.S.S. Deswal v. Virender Gandhi in Criminal Appeal Nos. 917-944 of 2019. While considering the scope of the amendment, namely the Amendment Act 20 of 2018, the Hon'ble Supreme Court has held as follows:

“7. We have heard the learned counsel for the respective parties at length.

7.1. The short question which is posed for consideration before this Court is, whether the first appellate Court is justified in directing the appellants-original accused who have been convicted for the offence under Section 138 of the N.I. Act to deposit 25% of the amount of compensation/fine imposed by the learned Trial Court, pending appeals challenging the order of conviction and sentence and while suspending the sentence under Section 389 of the Cr.P.C, considering Section 148 of the N.I. Act as amended?

7.2. While considering the aforesaid issue/question, the statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, as amended by way of Amendment Act No. 20/2018 and Section 148 of the N.I. Act as amended, are required to be referred to and considered, which read as under:

“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 realize 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 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.

.....

4. The effect of Section 143A of the Negotiable Instruments Act regarding its applicability to the pending cases, need not require a very detailed discussion and this Court can safely adopt the very same reasoning given by the Hon'ble Supreme Court in the above judgment. The amendment through which Section 143A was brought into force will be applicable even to pending proceedings. If such a

purposive interpretation is not given to this provision, it will defeat the very purpose of amendment which was brought in as a beneficial piece of legislation for the complainant prosecuting a criminal complaint under Section 138 of the Negotiable Instrument Act.

.....

6. A reading of the above provision makes it clear that the Court trying an offence under Section 138 of the Negotiable Instruments Act “may” (emphasis supplied) order the drawer of the cheque to pay interim compensation to the complainant. The provision itself shows that the discretion is vested with the Trial Court to direct interim compensation to be paid by the complainant. It is not necessary that in all cases, the trial Court must necessarily direct the complainant to pay interim compensation and such a direction should be given only on a case to case basis, by taking into consideration the facts of each case. The legislature has intentionally not used the word “shall”, since it would have prevented the accused persons, even in genuine cases, from defending themselves without paying 20% as interim compensation amount to the complainant. This would have directly affected the fundamental right of an accused person to defend himself in a criminal case. This is the reason why the legislature had thoughtfully used the word “may” under Section 143A(1) of the Negotiable Instruments Act. Therefore, it is not possible to read the word “shall” into the word “may” which is used in the provision.

.....

8. Therefore, whenever the trial Court exercises its jurisdiction under Section 143A(1) of the Act, it shall record reasons as to why it directs the accused person (drawer of the cheque) to pay the interim compensation to the complainant. The reasons may be varied. For instance, the accused person would have absconded for a longtime and thereby would have protracted the proceedings or the accused person would have intentionally evaded service for a long time and only after repeated attempts, appears before the Court, or the enforceable debt or liability in a

case, is borne out by overwhelming materials which the accused person could not on the face of it deny or where the accused person accepts the debt or liability partly or where the accused person does not cross examine the witnesses and keeps on dragging with the proceedings by filing one petition after another or the accused person absconds and by virtue of a non-bailable warrant he is secured and brought before the Court after a long time or he files a recall nonbailable warrant petition after a long time and the Court while considering his petition for recalling the nonbailable warrant can invoke Section 143A(1) of the Act. This list is not exhaustive and it is more illustrative as to the various circumstances under which the trial Court will be justified in exercising its jurisdiction under Section 143A(1) of the Act, by directing the accused person to pay the interim compensation of 20% to the complainant

9. The other reason why the order of the trial Court under Section 143A(1) of the Act, should contain reasons, is because it will always be subjected to challenge before this Court. This Court while considering the petition will only look for the reasons given by the Court below while passing the order under Section 143A(1) of the Act. An order that is subjected to appeal or revision, should always be supported by reasons. A discretionary order without reasons is, on the face of it, illegal and it will be set aside on that ground alone.”

(emphasis added)

- ii. In **Vijaya v. Shekhapappa**, 2022 SCC OnLine Kar 515, the Hon’ble High Court of Karnataka stated as under.

“13. Application of mind in exercise of discretion is discernible only in an order that contains reasons, and reasons can be found only if they are recorded in writing, and if reasons are recorded in writing, it is only then the order will be within the counters of law.

14. The consequence of non-payment of interim compensation so awarded is penal, as proceedings can be initiated by the complainant under Sections 357 and 421 of the Cr.P.C. which are recoverable as fine paid under Section 421 of the Cr.P.C. The impugned action now alleged is that in terms of the order passed by the competent Court, the proceedings for attachment of the property are initiated by the complainant and the property of the petitioner is put to auction. Therefore, the consequences of such order are grave where the petitioner whose liability is yet to be determined will have to face grave hardship in the event of non-payment. It is therefore imperative for the learned Magistrates to pass appropriate orders which bear application of mind and record reasons as to why interim compensation is to be awarded in a given case.”

(emphasis added)

5. There is yet another judgment of the Karnataka High Court which is to be noted, namely **V. Krishnamurthy v. Diary Classic ICE Creams (P) Ltd.**, 2022 SCC OnLine Kar 1047, relevant extracts from which are as under:

“16. Application of mind and passing of a reasoned order of grant of compensation becomes necessary in the light of penal consequences that ensue an accused who failed to comply with the order granting 20% compensation as the complainant is given several remedies of recovery which result in the accused being taken into custody. Therefore, such orders which result in such penal consequences should be rendered giving cogent reasons which would demonstrate application of mind and such orders should be passed only after hearing the accused in the matter. In cases where the learned Magistrate is to exercise discretion, such discretion should become two fold.

First fold: Where an application is so made, the learned Magistrate has to apply his mind whether such an application is to be considered at all, as every application that is made need not result in grant of 20% interim compensation. Several factors need be gone into for considering such applications bearing in mind the reason and backdrop of the amendment. As quoted herein-above the bedrock of the amendment was to stall unscrupulous drawers of cheques

drawing proceedings with frivolous applications, absenting themselves, seeking continuous adjournments causing delay and grave prejudice to the case of the complainants. In these factors, the learned Magistrate after analyzing the conduct of the accused should grant compensation which would vary from 1% to 20% after recording reasons.

In a given case if the accused is cooperating with the trial without seeking any unnecessary adjournments, not absenting himself or his counsel on any date and cooperating with the conclusion of the trial in such cases, the learned Magistrate will have to apply his mind, exercise his discretion as to whether such applications should he entertained at all. Therefore, it forms two classes of litigants. One who would cooperate with the proceedings and the other who would not. In cases where there is complete co-operation from the hands of the accused in the trial, the Court may consider whether interim compensation has to be granted at all and in cases where there is no cooperation on the part of the accused, the Court may proceed to consider the application.

Second fold: *The second fold of discretion in any given case, the compensation may vary from 1% to 20%. It is nowhere depicted in the statute that the amount of interim compensation should be of a particular figure. It can vary from 1% to 20%. It is this variance that gives the learned Magistrate power to exercise discretion to grant such compensation. The mandate of the statute is that it should not exceed 20%. In the cases where learned Magistrate proceeds to grant compensation, has to bear in mind the amount involved in the instrument, as certain transactions would run to several cores and the accused may have formidable defence against the complainant. In such cases, the learned Magistrate should exercise discretion in a cautious manner. Here again the conduct of the accused should be noticed. Therefore, the aforesaid two fold discretion is sine qua non for an order to be passed by the learned Magistrate while considering the application under Section 143A of the Act.*

19. *There is no reason recorded by the learned Magistrate that the accused in the case at hand has adopted any of the factors as narrated hereinabove that would entail consideration of an application under Section 143A of the Act. With the reason that is rendered by the learned Magistrate as quoted (supra), the order granting 10% compensation, in the case at hand, becomes*

unsustainable. This Court is flooded with litigation with regard to grant of compensation under Section 143A of the Act by criminal courts. In several cases discretion is exercised for grant of compensation and in several other cases there are no reasons for exercise of such discretion. Therefore, it has become necessary to direct learned Magistrates that while considering applications filed under Section 143A of the Act, to notice at the outset, the conduct of the accused. If the accused has been unnecessarily evading the proceedings by seeking adjournments, consideration of the application would become imperative as the amendment itself is introduced to compensate such payees of delay tactics adopted by unscrupulous drawers of cheques."

(emphasis added)

6. This Court in *JSB Cargo and Freight Forwarder Pvt. Ltd and Ors v. State and Anr.* 2021 SCC Online Del 5425 has also adverted to these decisions of Karnataka and Madras High Court. It is however evident from the analyses made in these decisions that the learned MM has to apply it mind in granting interim compensation under Section 143A and assess the conduct of the accused and should pass such orders only after hearing the accused. Lack of cooperation in the proceedings has been considered as an important and critical factor for the learned MM to lean towards granting interim compensation. Instances have been culled out in these decisions which should potentially be taken into account, *inter alia* absconsion of the accused from the proceedings resulting in protraction of proceeding; intentionally evading service for a long time; availability of material which *prima facie* has not been satisfactory denied by the accused; securing the presence of the accused by non-bailable warrants; seeking of unnecessary adjournments. As stated earlier this list is not exhaustive but only indicative of the factors which could be considered in exercising discretion.

7. From a perusal of the above decisions and the Statement of Objects and Reasons, it is evident that S. 143A, NI Act was introduced as an ameliorative measure to remedy injustice caused to the payee of a dishonoured cheque resulting from delay tactics of unscrupulous drawers of the dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. Even though full discretion has been given to the court seized of the complaint, in deciding the application u/s 143A, the court has to exercise its discretion rationally, in particular keeping into account the facts and circumstances including dilatory tactics adopted by the accused. Even though the Order of the Ld. MM may not have been expansive in its articulation, it was evident that the discretion had been exercised and the application allowed on the basis of the contradictory stands taken by the accused as well as dilatory tactics adopted. This further gets reinforced in the revisional order which is impugned before this Court.

8. The Ld. ASJ has also noted that the summons were issued to the accused on 25th May 2019, due to non-appearance bailable warrants were issued on 17th July 2019 and 16th September 2019, and subsequently NBWs were issued for 14th October 2019, which were stayed on 27th November 2019. Again, due to non-appearance NBWs were issued on 29th November 2019, but later on appearance of the accused, he was admitted to bail. It was further noted that the accused had not appeared on at least 6 more dates in 2020 and 2021, and therefore on 27.09.2021, the Ld. Court issued non bailable warrants again. The conduct of the accused is clearly egregious and has been consistently geared towards adopting dilatory tactics.

9. Besides the statement of the petitioner that he had not filled in any further details in the cheque; or had given the cheque as a security; or that

had already made a payment of Rs 6.82 Lakhs; or that he had to make more payments; or that finally he wanted to settle the matter, clearly shows prevarication by the accused. The decisions of Madras and Karnataka High Courts are premised on the fact that a decision u/s. 143A, NI Act should be supported by reasons and circumstances in allowing such a petition, which could be *inter alia* due to dilation of proceedings, absconsion by the accused, etc. It was categorically highlighted that this list was not exhaustive but merely illustrative. There is also no merit in the contention of the accused that the Revision Order took into account the conduct of the accused even pursuant to the ld. MM's order. The Ld. ASJ tracks in detail the conduct of the accused ever since the issue of summons in May 2019 till August 2020 (when the Ld. MM granted the s. 143A, NI Act compensation) and thereafter as well. The Ld. ASJ was right in noting these facts to buttress its conclusion that dilatory tactics were consistently being adopted by the accused. The contention that the complainant had only pleaded financial difficulty as a ground in their application is also unmerited since in the application the issue of dilation was categorically averred by the accused.

10. At this stage, where this Court has also examined the records of the case and notes that significant dilatory tactics were adopted by the accused (Petitioner) as also took irrational and contradictory stands relating to the cheque in question, it would not attract exercise of powers u/S 482 CrPC of this Court. It is also noted that while the order for interim compensation was passed on 21st August 2020, the Petitioner filed the revision petition after 21 months on 23rd May 2022 and pursuant to the dismissal by the impugned order in August 2022 filed a second revision petition in November 2022 before this Court which was disposed off as withdrawn

and then has approached this Court vide this quashing petition. The rights of the Petitioner, notwithstanding the payment of interim compensation, are in any event duly protected.

11. The petition is therefore dismissed.
12. The order be uploaded on the website of this Court.

ANISH DAYAL, J

DECEMBER 19, 2022

