IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

IA No: CRAN/5/2023
In
CRR 89 of 2022

Mr. Susanta Chakraborty
Vs.
Dey's Construction

For the petitioner: Mr. Sayan Chattapadhyay, Adv.,
Ms. Payel Shome, Adv.

For the O.P: Mr. Debasis Kar, Adv.,
Mr. Subhajit Chowdhury, Adv.

Heard on: 03 April, 2023.
Judgment on: 04 May, 2023.

BIBEK CHAUDHURI, J. : –

1. The present revisional application has been preferred challenging orders dated 7th October, 2021 and 3rd December, 2021 passed by the learned Judicial Magistrate, 4th court at Barrackpur and the learned Judicial Magistrate, 5th Court at Barrackpur in Complaint Case No.C-448/2020 under Section 138 of the Negotiable Instruments Act.

2. It is submitted on behalf of the petitioner that the opposite party being a proprietorship concern represented by its sole proprietorship Mrs. Soma Dey lodged a complaint against him under Section 138 of the Negotiable Instruments Act. The complaint was initially filed before the learned Judicial Magistrate, 4th court at Barrackpur alleging, inter alia,

that the accused/petitioner submitted an order of bulk quantity of N-95 (5 layers) Mask and Surgical Mask at a consideration price of Rs.5,24,608/-. At the time of placing the order the accused/petitioner paid a sum of Rs.20,000/- in favour of the complainant/opposite party through bank transfer. After receiving the goods the petitioner issued an account payee cheque dated 14th August, 2020 amounting to Rs.5,04,608/- drawn on Jana Small Financial Bank. When the complainant deposited the said cheque for encashment to her banker, it was dishonoured due to insufficiency of fund. Thereafter the complainant issued statuary notice to make payment of the amount involved in the cheque within the stipulated period of time and on his failure she filed the complaint against the petitioner on 4th February, 2021 in the 4th Court of learned Judicial Magistrate. It is further stated by the petitioner that the opposite party was examined under Section 200 of the Cr.P.C. The complainant filed her evidence on affidavit in terms of Section 145(1) of the Negotiable Instruments Act. On perusal of the petition of complaint and initial deposition of the complainant as well as other materials the learned Magistrate issued process against the petitioner directing him to appear/surrender before the trial court on 6th May, 2021. However due to outbreak of Covid-19 the petitioner could not appear before the trial court and the case was adjourned to 24th September, 2021. On 24th September, 2021 the petitioner through his learned Advocate prayed for time for his appearance and the learned Magistrate fixed 7th October, 2021 for service return and appearance of the accused. On 7th October, 2021 the accused surrendered before the learned Judicial Magistrate, 4th Court at Barrckpur and he was released on bail. The complainant also filed an application under Section 143A of the Negotiable Instruments Act praying for a direction upon the accused for payment of interim compensation. The learned Magistrate fixed next date for payment of interim compensation by the accused without mentioning any mode of payment. Subsequently the said case was fixed on 3rd December, 2021 for examination of the accused under Section 251 of the Cr.P.C and payment by the accused person on the self same date. The learned Advocate for the accused filed a petition praying for modification of the order dated 7th October, 2021 along with a petition for adjournment. The prayer for adjournment was refused and the accused was examined under Section 251 of the Cr.P.C by the learned Magistrate thereafter the case was fixed for examination of PW1 on 15th March, 2022 and hearing of the petition under Section 143A of the Negotiable Instruments Act.

3. It is contended on behalf of the petitioner that Section 143 of the Negotiable Instruments Act states that the Court 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.

4. The grievance of the petitioner is that the application under Section 143A of the Negotiable Instruments Act was allowed on 7th October, 2021 without plea of the petitioner being recorded by the learned Magistrate. It

is also alleged by the petitioner that the learned Magistrate was factually wrong while passing order dated 3rd December, 2021 stating, inter alia, that the application under Section 143A of the Negotiable Instruments Act was not heard and disposed of. The learned Magistrate also acted illegally fixing the date of the hearing of the application under Section 143A of the Negotiable Instruments Act on 15th March, 2022 without setting aside the order dated 7th October, 2021. It is further submitted by the petitioner that Case No.448/2020 filed by the opposite party was pending before the learned Judicial Magistrate, 4th Court at Barrackpur passed the order dated 3rd December, 20121, although on that date the learned Judicial Magistrate, 4th Court at Barrackpur was present. Thus it is submitted by the learned Advocate for the petitioner that the orders dated 7th October, 2021 and all subsequent orders are illegal, inoperative and liable to be set aside.

5. I have heard the learned Advocates for the petitioner and as well as the opposite party.

6. At the outset it appears to this Court that the accused/petitioner has been adopting all sorts of dilatory tactics to drag the hearing of Complaint Case No.C448 of 2020.

7. Section 143A of the Negotiable Instruments Act was incorporated in the Statue by virtue of Amending Act 20 of 2018 with effect from 1st September, 2018. Section 143A runs thus:

> *"**143-A 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 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, (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."

8. A plain reading of Section 143A suggests that the Court may in suitable circumstance order the drawer of the cheque to pay interim compensation to the complainant. Clause (a) and (b) of Section 143A speaks of the stage when the trial court may pass an order under Section 143A of the Negotiable Instruments Act.

9. On perusal of the order dated 7th October, 2021 it appears that the accused surrendered before the Court and he was granted bail. The complainant also filed an application under Section 143A praying for direction to pay interim compensation by the accused/petitioner. On 7th October, 2021 the learned Judicial Magistrate, 4th Court passed the following order:

> "Considering the fact and circumstance and considering the nature of offence I am inclined to grant bail on Rs.1,000/- on surety of like amount id to J/c if on bail under Section 143 of the Negotiable Instruments Act is allowed."

10. It is contended by the learned Advocate for the petitioner that simultaneously while granting bail to the accused, the application under Section 143A of the Negotiable Instruments Act filed by the complainant was allowed.

11. Again it is submitted by the learned Advocate for the petitioner that on 3rd December, 2021 the accused was examined under Section 251 of the Cr.P.C and he pleaded not guilty. On that date the petition was filed by the accused praying for modification of the order dated 7th October, 2021. The said petition was heard and considered it appears that the petition under Section 143A of the Negotiable Instruments Act has not been heard and disposed of. The learned Magistrate also held that the disposal of the said petition as shown in the order dated 7th October, 2021 is clerical error. Therefore, the learned Magistrate took up the said examination on the date of examination of the accused under Section 251

of the Cr.P.C and passed an order that the petition under Section 143A of the Negotiable Instruments Act will be heard on the next date. After recording of plea of the accused, the learned Magistrate fixed 15^{th} March, 2022 for hearing of the petition dated 7^{th} October, 2021 under Section 143A of the Negotiable Instruments Act.

12. By filing a supplementary affidavit, the petitioner has filed a copy of the order dated 15^{th} March, 2022. The petitioner prayed for adjournment on the ground that challenging the order dated 7^{th} October, 2021 and 3^{rd} December, 2021 he has preferred the instant revision and therefore cross-examination of PW1 and hearing of the petition under Section 143A may be adjourned. The learned Magistrate adjourned the hearing of the application under Section 143A of the Negotiable Instruments Act. However as the accused failed to cross-examine PW1, his opportunity to cross-examination of PW1 was taken away and next date was fixed on 5^{th} April, 2022 for examination of the accused under Section 313 of the Cr.P.C and hearing of the petition under Section 143A of the Negotiable Instruments Act.

13. After filing of the instant revision this Court called for a report of the learned Additional Chief Judicial Magistrate, Barrackpur raising the question as to whether the order dated 3^{rd} December, 2021 was passed by the learned Judicial Magistrate, 5^{th} Court at Barrackpur and if such order was passed by the learned Magistrate, 5^{th} Court at Barrackpur, under what circumstance said order was passed.

14. The learned Additional Chief Metropolitan Magistrate in charge, Barrackpur submitted a report stating, inter alia, that both the orders dated 7th October, 2021 and 3rd December, 2021 were passed by the learned Judicial Magistrate, 4th Court at Barrackpur however in the order dated 3rd December, 2021 the word "5th J.M." was inadvertently made and it was absolutely a clerical error.

15. Vide order dated 3rd December, 2021 the learned Magistrate himself found that the petition under Section 143A of the Negotiable Instruments Act was not disposed of and on the basis of a petition filed by the accused the learned Magistrate modified the order dated 7th October, 2021 and fixed 15th March, 2022 for hearing of the petition dated 7th October, 2021 under Section 143 of the Negotiable Instruments Act.

16. I have already recorded that Section 143A empowers a Court to pass an order on interim compensation in favour of the complainant where the accused pleads not guilty to the accusations made in the complaint. This does not mean that on the date of examination of the accused under Section 251 of the Cr.P.C the application under Section 143A should mandatorily be disposed of, it can be disposed of at any point of time. Therefore this Court does not find any illegality or material irregularity in the order dated 3rd December, 2021 and irregularity in the order dated 7th October, 2021 which was rectified by the learned Magistrate himself vide order dated 3rd December, 2021.

17. Subsequently vide order dated 15th March, 2022 the learned Magistrate takes away right of cross-examination of the complainant by

the accused/petitioner. This Court is of the view that for ends of justice the accused should be given an opportunity to cross-examine PW1. On the next date of cross-examination of PW1 fixed by the learned Magistrate, the application under Section 143A of the Negotiable Instrument Act shall also be disposed of by the trial court without giving any adjournment to either of the parties.

18. With the above direction the instant revision is disposed of on contest. However, under the facts and circumstances, without any costs.

19. All connected application are also disposed of.

(Bibek Chaudhuri, J.)