19.09.2023
Item no. 14
Ct.34
(Suvendu)

C.R.R. 702 of 2023

In the matter of :- Soumen Banik

... Petitioner

Ms. Afreen Begum,
Mr. Mostafizur Rahaman

...for the petitioner

The present revisional application has been preferred against the order dated 20th October, 2022 passed by the learned 4th Judicial Magistrate, Serampore, Hooghly in connection with CR Case No. 143 of 2021 thereby alleging the commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

The grievance of the petitioner is that the learned Magistrate has allowed the application under Section 143A of the N.I. Act thereby granted interim compensation of Rs. 1,00,000/- (20% of the cheque amount, i.e. Rs. 5, 00, 000/-).

According to the learned advocate appearing for the petitioner, no reason has been assigned by the learned Magistrate while allowing such application and it has been only stated that as the accused did not plead guilty as such the application under Section 143 of the N.I. Act should be allowed.

In order to substantiate her contention, learned advocate relies upon the judgment of the Hon'ble High Court of Bombay being *Ashwin Ashokrao Karokar Vs. Laxmikant Govind Joshi,* reported in *2022 SCC OnLine Bom 8577*. Learned advocate draws attention of this Court to the paragraph nos. 48, 53 and 55 of the said judgment which are as follows.

> "48 it is further material to note that the legislature was aware of the provisions of Sections 138 to 147 of the N.I.Act, the purpose of which they were enacted, the delays which were being caused in the disposal of the proceedings, which is evident from the aims and object of the amending Act 20 of 2018, it was thus open for the legislature to have used an express language that in all cases under Section 138 of the N.I. Act, which were pending trial, the complainant was entitled to compensation upto 25% of the cheque amount. However, such express words, have not been used, though it was open for the Legislature to do so, which again indicates that the use of the word 'may', as occurring in Section 143-A(1) of the N.I. Act, was not mandatory but was directory and a discretion was conferred upon the Court, to either grant or not to grant interim compensation. The fact that a discretion was conferred upon the Court is further evident from the use of the expression 'shall not exceed' as occurring in Section 143-A (2) of the N.I. Act which again confers a discretion upon the Court 'trying the offence', to direct the grant of interim compensation anywhere between the range of 0 (zero) to 20

(twenty) % of the cheque amount, indicating that in a given case, it would be permissible for the Court, to even decline awarding of any interim compensation, of course, for reasons to be recorded. Thus, when the power is wide enough to cover both the grant and refusal to grant, the power would be discretionary [see Dharti Dhan (P) Ltd. (supra)], as no absolute right has been conferred upon the complainant to claim interim compensation, but a discretion has been conferred upon the Court to so direct, the exercise of which discretion will depend upon the Court holding in favour of the complainant, depending upon whether a case was made out for the same or not, based upon the facts availing on record, in each case.

53. The use of the expression 'shall not exceed twenty per cent of the amount of the cheque', as occurring in Section 143-A (2) of the N.I. Act, also does not make the provision mandatory, as the use of the word 'shall' in Section 143-A (2) has to be viewed in the background of the word 'may' as used in Section 143-A(1), which colors the content of the entire provision. The expression "shall not exceed twenty per cent" in Section 143-A (1) merely caps the limit of the discretion which the Special Court is permitted to exercise in the matter and nothing else. The word "shall" as used in the above expression does not transcend beyond the limits of discretion of the Special Court, in the matter of awarding interim

compensation, which as already discussed above could be anywhere between 0% to 20% of the cheque amount.

55. In my considered opinion, in view of the discussion above, it has to be held that Section 143-A of the N.I. Act, is discretionary and not mandatory and the view taken in *L.G.R. Enterprises* (supra) holding that the word “may”, as occurring in Section 143-A (1) of the N.I. Act empowers the Court with a discretion to direct interim compensation and it is not necessary that in all cases the trial Court must necessarily direct the interim compensation to be paid and such direction should be given only on a case to case basis based upon the facts of each case, which is followed in *K. Ranjithkumar* (supra); in *Ajay Vinodchandra Shah* (supra) to the extent holding that Section 143-A (1) of the N.I. Act leaves it to the discretion of the Court to pass an order of interim compensation upto the ceiling limit of 20% of the cheque amount and a difference is found between the provisions of Section 143-A(1) and 148 of the N.I. Act, though *Ajay Vinodchandra Shah* (supra), it has been declared not to be a good law, in *Surinder Singh Deswal* (supra) only insofar as consequences of non-compliance of condition of suspension of sentence is concerned, as noticed in *JSB Cargo and Freight Forwarder Pvt. Ltd.* (supra) and thus what is held therein would hold good, except to the extent as indicated in *Surinder Singh Deswal* (supra); *JSB Cargo and Freight Forwarder Pvt. Ltd.* (supra) which holds that the provisions of Section 143-

A(1) of the N.I. Act, are directory and not mandatory; *G.K. Construction Company, Through its owner Govind Katariya Vs. Balaji Makan Samagri Stores, Through its Proprietor Mallaram* [S.B. Criminal Misc. (Pet.) No. 189/2022] decided on 04/03/2022 by a learned Single Judge of the Rajasthan High Court at Jodhpur and *D.L. Sadashiva Reddy* (supra) which holds that the power under Section 143-A (1) of the N.I.Act is discretionary lay down the correct position. It is also material to note that *D.L. Sadashiva Reddy* (supra) was carried to the Hon'ble Apex Court vide S.L.P. No. 10151/2021 wherein while dismissing the same on 07/01/2022, it has been held as under :

"*Though the power under Section 143A of the Negotiable Instruments Act is discretionary power, we, having considered the matter on merits, find that the direction to deposit 20% of the amount is perfectly justifi8ed. As Such, in the facts and circumstances of the case, we do not find any ground to interfere with the order impugned in this petition. Accordingly, the special leave petition stands dismissed.*"

Learned advocate for the petitioner also relies upon a judgment of the Hon'ble High Court of *Karnataka being Vijaya Vs. Shekhapappa & Anr.*, reported in *2022 SCC OnLine Kar 515*, dealing with the same issue under Section 143 of the N.I. Act. The reference has been made to paragraph nos. 10 to 15 of the said judgment.

The summary contention of both the aforesaid judgments is to the effect that the reasoning has to be assigned while allowing an application under Section 143 N.I. Act. The word “may” has been emphasized for such reasoning to be awarded.

In this case the application was taken out at the instance of the complainant for interim compensation. Now, this Court while deciding such an issue need not restrict itself to the reasons assigned or not assigned by the learned Magistrate but in the totality of the circumstances would assess the correctness of the order and supplant reasons so far as the order is concerned if it is found that the conclusion of the finding arrived at by the learned Magistrate or the learned trial court is correct.

What I find from the present case is that the cheque was issued on 02.01.2021, more than two years eight months have passed since the cheque was presented for encashment. A person who is involved in commercial business venture and is out of pocket for such a long period of time and has to recover money by way of litigation is entitled to have a remedy in the Court of law if the legislature in its wisdom has incorporated a provision.

The delay which has occasioned itself is a ground for the interim compensation to be paid under the provisions of Section 143A of the N.I. Act. It was incumbent upon the learned Magistrate to assign the said reason. The absence of assigning of such reasons automatically do not make the order illegal.

The aforesaid reasons would be deemed to be incorporated in the order dated 20th October, 2022 and the present accused petitioner would be entitled to pay the interim compensation.

In the alternative under Section 421 of the Cr.P.C., the complainant would invoke jurisdiction of the learned Magistrate for execution proceeding in respect of the said amount.

With the aforesaid observations, CRR 702 of 2023 is disposed of.

All parties to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)