

20.12.2023
Ct. No.34
S/L No.63
KS

C.R.R. 870 of 2023
Sri Raju Das alias Prodosh Kumar Das
-Vs.-
M/s. Raja Udyog Private Limited & Anr.

Mr. Sanjib Kumar Mukhopadhyay
Ms. Aparupa Bhattacharya
.....For the Petitioner
Mr. Nayan Rakshit
.....For the Opposite Party no.1

In Re. C.R.R. 870 of 2023

Petitioner has prayed for setting aside the order dated February 16, 2023 passed by the learned Judicial Magistrate, 4th Court, Barrackpore in C. Case No.844 of 2019. By the said order, the learned Trial Court has directed the present petitioner under Section 143A of the N.I. Act to deposit a sum of Rs.2,00,000/- (as interim compensation) being 20% of the cheque amount.

Records reflect that the complaint case being, C. Case No.844 of 2019 was initiated in respect of dishonour of a cheque on or about 26th November, 2019. The learned Magistrate after three and half years passed such an order under Section 143A, as such, it can be presumed that what weighed with the learned Court was that the complainant was suffering because of pendency of the case and, as such, was entitled to have an interim compensation as has been incorporated by the legislature by way of an amendment.

Learned advocate appearing for the petitioner has submitted written notes of argument, which incorporates inter se communication between the lawyers, parties as also e-mails being sent, several documents have also been relied upon by the learned advocate before this Court to substantiate the claim that the complainant themselves disputed regarding any dues to the extent of Rs.10,00,000/- but, has inserted the said amount of Rs.10,00,000/- in a blank cheque, which was in their custody and thereafter initiated the case, which has further been pointed out that the accused being aggrieved already initiated a complaint case, which has been dismissed. In order to substantiate the contentions relating to the incidents, which have happened leading to the filing of the case learned advocate has prayed for setting aside such order dated 16th February, 2023, as the main thrust of contention is that there was no legally enforceable debt or liability, since the cheques were in custody and the same has been mis-utilized and, as such, no question arise for interim compensation as there was no legally enforceable debt or liability.

Learned advocate relied upon the cases of *Sripati Singh (since deceased) through His Son Gaurav Singh Vs. The State of Jharkhand & Anr.* reported in *AIR 2021 SC 5732*, *Sudhir Kumar Bhalla Vs. Jagdish Chand* reported in *2008 (7) SCC 137 = AIR 2008 SC 2407*, *Angu Parameswari Textiles (P) Ltd. & Ors. Vs. Sri Rajam & Co.* reported in *2001 Company Cases Vol. (105) 186*, *S. P. Chengalvaraya Naidu Vs. Jagannath* reported in *AIR 1994 SC 853 (Paragraph 5) = 1994 (1) SCC 1*,

Hamza Haji Vs. State of Kerala reported in AIR 2006 SC 3028 = 2006 (7) SCC 416, *Dalip Singh Vs. State of Uttar Pradesh* reported in 2010 (2) SCC 11, *Robert John D’Souza Vs. Stephen V. Gomes* reported in 2015 (9) SCC 96, *Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrajirao Angre* reported in 1988 (1) SCC 692, *State of Haryana & Ors. Vs. Bhajan Lal & Ors.* reported in AIR 1992 SC 604.

Reliance has also been placed upon the judgment of the Bombay High Court in *W.P. No.48 of 2022 (Mr. Ashwin Ashokrao Karokar VS. Laxmikant Govind Joshi.)*.

Emphasis was laid down on paragraph 12 in respect of the questions, which were framed and the answers, which have been given over there, which are as follows:-

<i>(i) Whether the provisions of Section 143-A of the Negotiable Instruments Act, 1881, which empower the Court to direct payment of interim compensation are mandatory or directory and</i>	<i>The provisions of Section 143-A of the N.I. Act are directory and not mandatory.</i>
<i>(ii) In case it is held that the same is directory, whether the Court has to record reasons for determining the quantum of interim compensation to be awarded as contemplated by Section 143-A (2) of the Negotiable Instruments Act, 1881?</i>	<i>The Court has to record reasons for determining the quantum of interim compensation, if it comes to the conclusion based upon the fact position availing, that it is a case which deserves award of interim compensation, which can be anywhere upto 20% of the cheque amount.</i>

Learned advocate appearing for the private opposite party opposes such contention of the accused/petitioner and submits that the case made out before the High Court is on material suppression and the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure has been invoked for conducting a summary trial on the basis of documents, which is exclusive domain of the learned Trial Court.

I have considered the submissions of both the parties and so far as the impugned order, which has been challenged under Section 143A of the N.I. Act and the delay having already taken place for almost three and half years, it can be primarily stated that there has been no progress in the trial as records reflect that dates have been fixed for cross-examination of P.W. 1, if the learned Magistrate in its letter and spirit was of the opinion that the provisions under Section 143A are to be invoked because of the delay, I am of the view that no illegality has been committed by the learned Magistrate while passing the said order.

Accordingly, the order dated 16th February, 2023 passed by the learned Judicial Magistrate, 4th Court at Barrackpore in C. Case No.844 of 2019 is not interfered with.

Consequently, C.R.R. 870 of 2023 is dismissed.

Pending applications, if any, are consequently disposed of.

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

(Tirthankar Ghosh, J.)

