

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 485 OF 2023

VIDYASAGAR GUNWANT GANJURE

VERSUS

SUNIL SIDHRAM KURLE

...

Advocate for Petitioner : Mr. Pathan Hamzakhan I.

Advocate for Respondent : Mr. Shirsat Suhas R.

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CORAM : KISHORE C. SANT, J.

DATE : 27th APRIL 2023.

Per Court :

Heard both the parties.

1. The challenge in this petition is to an order dated 13.10.2022 passed by the learned Judicial Magistrate First Class, Nilanga, directing the petitioner to deposit 10% of the cheque amount towards interim compensation under Section 143-A of the Negotiable Instruments Act, 1881.

2. It is the case of the petitioner that Section 143-A of the N.I. Act is not mandatory, but only discretionary. When the discretionary order is

passed, it must be supported by cogent reasons. Learned Advocate for the petitioner submits that in this case, no reasons are assigned by the Court while passing this order. His further submission is that the petitioner is not in a position to pay that much amount. There is no question of respondent giving him the amount of Rs.18,00,000/- as hand loan etc. He relied upon the judgment in the case of **L.G.R. Enterprises, represented by its Proprietrix Sindu @ Lakshmi, W/o. V. Mahadevan Iyer and Others Vs. P. Anbazhagan**, reported in 2019 DGLS(Mad.)686. In paragraph no.8 of the said judgment, it is discussed that the provision of Section 143-A of the N.I. Act is only discretionary and not mandatory. It is necessary to show good reasons for passing such order. Paragraph No.8 of the said judgment is reproduced below:

“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 non-bailable warrant petition after a long time and the Court while considering his petition for recalling the non-bailable 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."

3. He further relied upon the judgment in the case of **Ajay Vinodchandra Shah Vs. State of Maharashtra and Another**, reported in 2019 DGLS(Bom.) 198. It is held that the liberty should not be curtailed by such order. However in the facts of this case, the complaint was filed prior to the amendment coming in to force as the order was passed on 03.08.2018 and the amendment adding Section 143-A came into force on 01.09.2018.

4. The learned Advocate for the respondent opposes the petition. He

filed Affidavit-in-Reply in support of his submission. He also produced before the Court a copy of the Roznama in S.C.C. No.148/2021 pending on the file of the learned J.M.F.C. at Nilanga. He submits that the impugned order is rightly passed by the learned C.J.J.D., Nilanga. In his affidavit, he stated that the petitioner in his defence has nowhere pleaded/averred that he has not filled in particulars/details in the cheque in question, however, he flatly denied that he has issued the said cheque and it was given to his employer towards security to his services. He further submits that this conduct and acts of the petitioner clearly frustrate the object of Negotiable Instruments Act. He prays for rejection of the petition.

5. In view of the above, this Court finds that both the judgments relied upon by the learned Advocate for the petitioner are on the point that the order under Section 143A of the N.I. Act is discretionary and not mandatory. There is no dispute about the said proposition. The question before this Court in the present case is only that, whether the order passed by the learned Magistrate can be said to be perverse or without jurisdiction so as to invoke jurisdiction vested in this Court

under Article 227 of the Constitution of India. Section 143A gives power to the trial Court to direct to pay interim compensation. The only fetter is that the said compensation should not exceed 20% of the cheque amount. In this case, the trial Court has directed to pay interim compensation of 10% of the amount of the cheque. The main concern of the petitioner is that while passing such order, reasons ought to have been assigned by the Court. Since its discretionary order, the Court has to show that the Court has applied its mind and has exercised jurisdiction. On examining the order, this Court finds that while passing the order, the Court has considered the submission of the Advocates at length. The Court has thereafter considered the material on record and in view of presumption under Section 139 of the N.I. Act, the Court has directed to pay the interim compensation. In this view, this Court finds that the order cannot be said to be perverse or against law. Hence, no interference is called for. The Writ Petition stands dismissed.

[KISHORE C. SANT, J.]

Najeb.