Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NOS. 41 AND 42 OF 2023

Vijay Vasant Harmalkar ... Petitioner
Versus
Prashant Parab ...Respondent

Mr. Preetam Talaulikar, Advocate*for the Petitioner.*

Mr. Deepak Gaonkar, Advocate *for the Respondent.*

CORAM: PRAKASH D. NAIK, J
DATED: 7th AUGUST, 2023

ORDER

1. Heard both sides.

2. Common issue is involved in both petitions. Parties are same. Hence, petitions are disposed off by common order.

3. The petitioner in both the petitions is the original complainant. Complaints are filed for an offence under Section 138 of the Negotiable Instruments Act, 1881. Respondent is arrayed as accused in the complaints.

4. Criminal Case no. OA/179/NIA/2020/F is pending before the Court of learned Judicial Magistrate First Class, Mapusa. The complaint relates to the dishonour of cheque issued by respondent for an amount of Rs.16,41,900/-. It was dishonoured with bank endorsement 'drawer's signature differs'. Legal notice was issued to the accused. Reply was posted by accused denying the facts. Complaint was filed for an offence under Section 138 of the Negotiable Instruments Act, 1881, (herein after referred to as 'NI Act'). Process was issued. Pursuant to service of summons, the respondent/accused appeared before the Court. The petitioner/complainant filed an application under Section 143-A of the NI Act seeking direction to the accused to pay interim compensation to the complainant in terms of Section 143-A of the NI Act. The application was opposed by the accused by filing reply dated 20.08.2022. The learned Magistrate vide order dated 13.12.2022, rejected the application.

5. The impugned order dated 13.12.2022 passed in Criminal Case no. OA/179/NIA/2020/F is challenged in Criminal Writ Petition No. 41 of 2023.

6. The petitioner filed another complaint viz. Criminal Case No. OA/180/NIA/2020/F for offence under Section 138 of the NI Act against the respondent before the same Court. The complaint relates to the dishonour of cheque bearing no. 000152 dated 29.05.2020 issued by the respondent for an amount of Rs.5,70,000/- for the reason 'drawer signature differs'. Demand notice was issued. Complaint was filed. Process was issued. The complainant filed an application under Section 143-A of the NI Act on 30.04.2022. The application was opposed by filing reply. Vide order dated 13.12.2022, the application preferred by the petitioner was rejected.

7. The impugned order dated 13.12.2022 passed in Criminal Case no. OA/179/NIA/2020 is challenged in Criminal Writ Petition no. 42 of 2023.

8. Learned Advocate for the petitioner submitted that the impugned orders are contrary to law. The reasons assigned by the learned Magistrate for disallowing the application under Section 143-A of NI Act are erroneous. The orders suffer from non-application of mind. The Court failed to exercise its discretion in the present cases. The Court failed to consider the presumption of law under Section 139 of the NI Act. The findings are contrary to evidence on record. The learned Magistrate considered the defence of the accused which was to be pleaded during the trial. The Court relied upon the complaint filed by the respondent to the police in respect to the alleged incident of forcefully obtaining the cheques from the accused. The police complaint was filed belatedly. That could not be a ground for refusing the compensation under Section 143-A of the Act. In the reply of the accused dated 23.06.2020, he has admitted that amount of Rs.7,90,000/- have been given by accused to the complainant which proves the case of complainant that the accused had received the amount and liable to repay the same.

9. Learned Advocate for respondent submitted that grant of relief under Section 143-A of NI Act is discretionary. The learned Magistrate has used his discretion while rejecting the application preferred by the petitioner. The respondent could demonstrate that there was no liability in respect to the cheques. Cheques were forcefully taken by the complainant. Complaint was lodged with Police Station with regards to the incident of forcefully obtaining the cheques. *Prima facie,* the case was false and hence there is no infirmity in the impugned orders. The accused is not liable to pay the disputed cheque amount which is the subject matter of complaints and there is no legally enforceable debt or liability on the part of the accused. Section 143-A of the NI Act stipulates that the Court "may" order the drawer of the cheque to pay interim compensation to the complainant. Discretion is vested with the Magistrate to direct interim compensation to be paid to the complainant. The legislature has intentionally not used the word "shall" since it would have prevented the accused even in genuine cases from defending themselves by paying 20 percent of the interim compensation amount to the complainant. The respondent had denied the liability while replying the demand notice issued by the complainant. The impugned orders do not require interference. Nothing was due and payable to the complainant. The complainant had presented the cheque after filling up the amount in the blank cheques. According to complainant the liability was Rs. 36 Lakhs but the cheque amount is 48 Lakhs. The respondent had denied having issued disputed cheques. Complainant threatened the accused, his mother and sister with knife along with unknown persons and forcibly took signed blank cheques bearing nos. 000151 to 000200. The accused lodged complaint with Police Station on 26.06.2020. The accused sent letter to bank not to entertain any cheque from above parties.

10. Learned Advocate for the respondent has relied upon the following decisions :

(i) **V. Krishnamurthy vs. Diary Classic ICE Creams Pvt. Ltd.**[1]

(ii) **JSB Cargo and Freight Forwarder Pvt. Ltd. & Ors. vs. State and Anr.**[2]

11. Section 143-A of the NI Act was inserted to provide the grant of interim compensation to the complainant. The Court trying the offence under Section 138 of the NI Act, may order the drawer of the cheque to pay interim compensation to the complainant. The interim compensation shall not exceed 20 percent of the amount of cheque.

1 2022 SCC OnLine Kar 1047

2 2021 SCC OnLine Del 5425

The interim compensation shall be paid 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 drawer of the cheque.

12. The word "may" stipulated in Section 143-A gives discretion to the Court for issuing directions under Section 143-A of the NI Act. However, it is expected that the discretion is exercised by the Court judiciously. The learned Magistrate had observed that there exists a dispute in respect of the payment of the cheque amount wherein it is the contention of the complainant that the cheque amount is not paid. The accused had lodged a complaint with the police on 22.06.2020 and that the letter dated 26.06.2020 was issued to the bank.

13. The complainant's case is that the accused had approached him for financial assistance and amount was parted to the accused by the complainant. The complaints relate to the cheques for an amount of Rs.5,70,000/- and Rs.16,41,900/-. Respondent had contended that he had lodged a complaint to the police against the complainant. It is pertinent to note that the complaint was lodged on 22.06.2020 alleging that the accused was threatened by the complainant and forced to hand over the cheque. The alleged incident had occurred in September, 2019. The complaint was filed belatedly. The purported defence of the complainant which was urged in the present case ought not to have been considered for refusing the relief sought by the complainant under section 143-A of the NI Act. The learned Magistrate lost sight of the fact that there is presumption under Section 139 of the NI Act with regards to the existence of liability. It is true that the Court is empowered to exercise its discretion while adjudicating the application under Section 143-A of the NI Act. However, such discretion is required to be exercised judiciously and not arbitrarily. The impugned order reflects non-application of mind. The decisions relied upon by the learned Advocate for the respondent indicate that the Court has discretion under Section 143-A of the NI Act while deciding the application. There is no debate on the issue. However, in the present case, the impugned orders were passed mechanically and in casual manner which are contrary to law and required to be set aside.

ORDER

(i) Criminal Writ Petition No. 41 of 2023 and Criminal Writ Petition No. 42 of 2023 are allowed.

(ii) Impugned Orders dated 13.12.2022 passed in Criminal Case No. OA/179/NIA/2020/F and Criminal Case No. OA/180/NIA/2020/F are set aside.

(iii) The Respondent is directed to pay compensation in accordance with Section 143-A of the NI Act to the extent of 20 percent of the cheque in each case within a period of sixty days from the date of uploading this order.

(iv) Petitions stand disposed of.

PRAKASH D. NAIK, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
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