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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.886 OF 2022

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Lyka Labs Ltd & Anr.

... Applicants

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Aabad Ponda, Senior Advocate with Mr. Bhomesh Bellian i/by Mr. Jugal Kanani for the applicant.

Mr. A.R. Patil, APP for respondent no.1/State.

Mr. Jatin P. Shah with Ms. Snehankita M. Munj and Ms. Shraddha Kamble for respondent no.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 15, 2023

RC.:

1. The applicants who are original accused nos.1 to 3 are challenging order under section 143A of the Negotiable Instruments Act, 1881 (hereafter "NI Act", for short) directing applicants to deposit 20% of the amount of the cheque.

2. In so far as the case of applicants nos.2 and 3 is concerned, this Court by detailed judgment dated 8th March 2023 in a group of matters, lead matter being Criminal Application No.886 of 2022, held that authorized signatory of a cheque issued by the company is not the "drawer" in terms of section 143A of the NI Act. Therefore, for the reasons stated in the said order, it has to be held

that applicants nos.2 and 3 being directors of applicant no.1/company, cannot be directed to pay the amount under section 143A of the NI Act. Therefore, the impugned order to the extent of applicants nos.2 and 3 is quashed and set aside.

3. In so far as the application filed by applicant no.1/company (Drawer) is concerned, the learned senior advocate invited my attention to various documents filed on record to urge the following three contentions: (i) reasons do not support the impugned order; (ii) the cheques in question are forged; charge-sheet for the offence of forgery has already been filed against the complainant; however, this material factor has not been considered by the Magistrate while passing an order against applicant no.1; and (iii) previous payments made by applicant no.1, as reflected in reply to demand notice, have not been considered in the impugned order.

4. *Per contra*, the learned advocate for the complainant invited my attention to the reply to the application under section 143A and reply to the statutory notice. He submitted that in the reply filed to an application under section 143A only contention raised on behalf of applicants nos.2 and 3 is that they are not drawers, and it is applicant no.1/company which is liable. Except this, no other defence was raised before the Magistrate. Petitioner No. 1 failed to contest the application. He submitted that the contentions raised before the Magistrate were restricted to the liability of applicants nos.2 and 3 as not being a drawer. The submissions made in the present petition were not argued before the Magistrate and, therefore, considering the limited scope of inquiry

under section 143A, the impugned order need not be interfered with at the instance of applicant no.1.

5. Rival contentions fall for consideration.

6. In the judgment dated 8th March 2023, this Court emphasized early disposal of applications under section 143A of the NI Act. The purpose and object of inserting section 143A are to grant immediate relief to the complainant by holding a summary inquiry under section 143A of the NI Act. The reasons that the Magistrate needs to assign while holding an inquiry under section 143A must show application of mind to the merits of the case. While holding such an inquiry, the Magistrate is not expected to consider questions of fact which should have been raised before it. True it is that while considering such an application, prima facie finding regarding the liability of the accused need to be recorded. However, such adjudication need not travel beyond prima facie ingredients of section 138 of the NI Act.

7. The issue of forgery, as raised by applicant no.1, being purely a question of fact which was undisputedly not raised before the Magistrate, the decision-making process of the Magistrate cannot be faulted for non-consideration of this aspect. The proviso to section 143A protects the rights of litigants like applicants, which takes care of a situation where a party is directed to pay the amount which is permitted to be withdrawn subject to filing an undertaking that he will reimburse the accused amount withdrawn along with interest at the prevailing bank rate.

8. The next contention regarding part-payment/full amount of

cheque amount is also the question of fact. In the absence of such contention being raised before the Magistrate, the validity and legality of the impugned order cannot be faulted on the question of fact raised before this Court for the first time. Ultimately, while deciding the complaint by holding a trial, the Magistrate is expected to consider all legal defences raised by the accused. At that time, it will be open for the applicants to raise all such contentions of fact as are raised before this Court in this application.

9. Learned senior advocate submitted that to consider the handwriting expert's report, which has held that the signature on the cheque does not tally with the signature of the accused person, was not placed before the Magistrate. It is submitted that this being a crucial document, which, if considered, can change the entire complexion of the matter, needs to be considered by the Magistrate in the interest of justice. As having held in the judgment dated 8th March 2023, the purpose and object of inquiry under section 143A are to provide immediate relief to the complainant. Such inquiry cannot be faulted based on non-consideration of new material, which requires adjudication on fact.

10. It will be open for the applicant to produce all documentary evidence permissible in law at the time of trial. Therefore, considering the purpose and object of section 143A, the absence of defence as regards points of fact raised before this Court, in my opinion, the impugned order discloses sufficient reasons to show the application of mind on the part of the learned Magistrate to direct applicant no.1 to pay 20% of the amount of cheque.

11. For the aforesaid reasons, the criminal application at the instance of applicant no.1 deserves to be dismissed. In the result, I pass the following order:

The impugned order to the extent of direction against applicants nos.2 and 3 is set aside; however, the impugned order is confirmed against applicant no.1.

12. Since the ad-interim relief was operating in favour of the applicants from 12th October 2022, the same is continued for a period of four weeks from today though the learned advocate for respondent no.2 objects to continuation.

(AMIT BORKAR, J.)