



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL WRIT PETITION NO. 83/2023

Guljama Shah Jahir Shah
Aged 43 years, occu: Business
Residing at C/o Zaheer Shah, Ziya Colony
Samanvay Nagar, Khamgaon
Taluka Khamgaon-444 303
Dist. Buldhana.

..PETITIONER

v e r s u s

Shri Sadguru Kaka Stone Crusher
through its Proprietor:Nagendra Bhikaji Rohankar
Aged 44 years, occu: Business
Residing at Waman nagar, Khamgaon
Taluka Khamgaon, Dist. Buldhana.

..RESPONDENT

.....
Mr.R.D.Dhande, Adv.for the petitioner
Mr.Bhavin Suchak, Adv. for Respondent
.....

CORAM: ANIL L. PANSARE, J.
DATE OF CLOSING: 12.09.2023
DATE OF PRONOUNCEMENT: 21.09.2023

JUDGMENT:

Rule. Rule, returnable forthwith. Heard finally, with the consent of the learned counsel for the respective parties.

2. By means of this Petition, the petitioner is challenging the order dated 20.12.2022 (Exh.19) passed by learned Judicial Magistrate, First Class, Khamgaon in Summary Criminal Case No.694/2022 thereby allowing the application filed by the respondent/original complainant

under Section 143A of the Negotiable Instruments Act, 1881 (in short 'N.I.Act') awarding interim compensation to the tune of 20 per cent of the cheque amount of Rs. 15,45,500/- and thus directing the petitioner/accused to deposit an amount of Rs.3,09,100/- within a period of sixty days. The parties will be hereinafter referred to by their original nomenclature.

3. Inviting my attention to the judgment passed by the coordinate Bench of this Court, in the case of Ashwin Ashokrao Karokar vs. Laxmikant Govind Joshi, reported in 2023 (1)Mh.L.J.147, Mr. R. D. Dhande, the learned counsel for the accused submits that while deciding the Application u/s 143A of the N.I.Act, the Court has to assign reasons for awarding interim compensation which can be anywhere up to 20% of the cheque amount. He further submits that in the present case the Court has not assigned such reasons.

4. The learned counsel further submits, by referring to the judgment passed by the coordinate Bench of this Court in Ashwin's case (*supra*), that the N.I.Act does not provide any remedy to the accused as regards restitution of interim compensation if the accused is acquitted. This aspect was considered by the Court while answering the question whether the provisions under Section 143A of the N.I.Act is mandatory or directory. The coordinate Bench held that the provisions do not specify as to what would be the effect if the restitution is not made by the complainant and is silent as to what steps would have to be taken by the accused in a case where the accused is acquitted. The Court observed that the legislature in its boundless wisdom, may revisit the provisions for this purpose.

5. Mr. Dhande, the learned counsel for the accused has relied upon the below cited judgments, to contend that appropriate reasons must be assigned by the trial Court while granting interim compensation, in terms of Section 143A of the N.I. Act :-

- (a) L.G.R. Enterprises and others vs. P. Anbazhagan: 2019 (3) MLJ (Cri) 423;
- (b) Rajesh Soni vs. Mukesh Verma : 2021 (3) Crimes 113;
- (c) Deccan Charters Pvt.Ltd. vs. State of Gujarat : 2023 ACD 490.

6. Thus, the main attack against the impugned order is that the trial Court has not assigned any reason while granting interim compensation.

7. Mr. Bhavin Suchak, the learned Counsel for the respondent/complainant has rightly argued that, in fact, the trial Court has considered the judgment passed by this Court, in Ashwin's case (supra) and has in paragraph 6 reproduced that part of the order passed by this Court which deals with the probable considerations while passing interim order, which reads thus:

“ 6..... Grant of interim compensation, would be at the discretion of the Court, based upon consideration of various factors, such as (a) whether the requirements of Section 138 of the N.I. Act were fulfilled, (b) whether the pleadings disclose the drawing of the presumption, (c) whether the proceedings were within limitation and, (d) whether prima facie a legal debt or liability was disclosed from the complaint or the notice of demand preceding it.”

The trial Court has then noted that the complainant before it fulfills all the requirements as quoted under clause (a) to (d) above.

8. The contention of the learned counsel for the accused is that the trial Court ought to have given reasons to indicate that 20% interim compensation, in the facts and circumstances of the case, is justified. In other words, the submission is that in addition to the fulfillment of the conditions enumerated in clauses (a) to (d) above, the trial Court should assign reasons for arriving at a particular percentage of interim compensation which may vary up to 20%.

9. I do not find any substance in the aforesaid submission. One of the reasons of introducing Section 143A of the N.I.Act, by amending Act of 20 of 2018 is to curtail delaying tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings and that the payee of dishonoured cheque has to spend considerable time and resources in court proceedings to realise the value of the cheque. The amendment was introduced with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. If this amendment is to be given effect to in its letter and spirit, in my considered view, once the factors enumerated in clauses (a) to (d) above are satisfied/ fulfilled, then those are reasons enough and thus case for awarding interim compensation exists. In such circumstances, the learned Magistrate will be fully justified in awarding 20% interim compensation. To expect the learned Magistrate to assign additional reasons, in a way, will defeat the

amendment for the reason that every order passed under Section 143A will then be challenged on the ground that there are no additional reasons assigned by the learned Magistrate and if additional reasons are assigned, the challenge will be that the reasons assigned are not adequate etc. thereby opening flood-gates of litigations. However, to reduce the interim compensation, additional reasons may be necessary indicating why it was being so done.

10. The interim compensation is granted at a stage of the proceedings where the accused pleads not guilty to the charges. Thus, despite the requirements in clause (a) to (d) above being fulfilled, if the accused pleads not guilty, to not award interim compensation @ 20% of the cheque amount will only defeat the intent of Sec. 143A. To my mind, it is only in case of doubt as regards fulfillment of any requirement under clause (a) to (d) above, the learned Magistrate may reduce the interim compensation below 20% of the cheque, or not grant it at all.

11. As regards the restitution of the interim compensation, in case the trial results in an acquittal of the accused, additional condition that could be imposed and ought to be imposed, is to seek an undertaking from the complainant that in case of acquittal of the accused or any order having effect of acquittal, the complainant shall deposit the amount of interim compensation along with interest (which may be assessed on the basis of prevailing long term interest rate of the public sector banks on the fixed deposits, from the date of receipt of interim compensation till its realization).

12. In the present case, let there be an undertaking given by the

complainant that he shall deposit the amount of interim compensation, that will be received by him along with interest @ 6% *per annum* thereupon, if the accused is acquitted. The learned Magistrate may impose such a condition in the cases where interim compensation is granted.

13. Having said so, there is absolutely no merit in the Writ Petition. The same stands dismissed. Rule discharged.

(ANIL L. PANSARE, J.)

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