



**Crl.R.C.(MD)No.1128 of 2022**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 06.01.2023

CORAM:

**THE HON'BLE MR.JUSTICE G.ILANGO VAN**

**Crl.R.C.(MD)No.1128 of 2022**

**and**

**Crl.M.P(MD) No.14236 of 2022**

T.Noorzahan

... Revision Petitioner /Respondent/  
Accused

Vs

M.A.Rameesh

... Respondent / Petitioner /  
Complainant

**Prayer:** This Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C., to call for the records relating to the order made in Crl.M.P No.1898 of 2021 in C.C.No.232 of 2020 on the file of the Learned Judicial Magistrate No.1, Sivagangai, dated 20.10.2022 and set aside the same.

For Petitioner : Mr. Antony Arul Raj.T

For Respondent : Mr. Pinayagash

### **ORDER**

The revision has been preferred against the order passed by the trial Court in Crl.M.P No.1898 of 2021 in C.C.No.232 of 2020 dated 20.10.2022.



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**2. Fact in brief:**

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The respondent herein has filed a private complaint under Section 200 Cr.P.C, stating that the revision petitioner herein has committed the offence punishable under Section 138 of Negotiable Instrument Act. Since the revision petitioner has to pay Rs.30,00,000/- as per the statutory demand notice dated 18.11.2020, the above said private complaint was filed on 18.12.2020 before the trial Court and the same was taken cognizance. Pending trial process, the respondent has filed Cr.M.P.No.1898 of 2021 seeking order to direct this revision petitioner to pay Rs.6,00,000/- as interim compensation that was filed in the month of March 2021. Counter was also filed by the revision petitioner. After hearing both sides, the above said order was passed directing the revision petitioner to pay 20% of the cheque amount as interim compensation.

3. A short point has been raised by the revision petitioner to the effect that no reason has been stated by the respondent in seeking the above said discretionary relief. Without assigning any reason, the trial Court has passed such an order, as if it is the matter of right of the respondent to claim the interim compensation, when revision petitioner denies the liability. For that purpose he would straight away rely upon the judgment of this Court in ***L.G.R.Enterprises, represented by its propreitrix Sindu and another Vs. P.Anbazhagan reported***



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*in 2019 SCC Online Mad 38991*, wherein the following observation has been made by this Court in Paragraph NoS.5 to 7 can be reproduced for better appreciation and the paragraphs No.5 to 7 are extracted hereunder,

*5.The next question that arises for consideration is the manner in which this provision is to be put into operation in the pending proceedings. It will be relevant to extract Section 143A(1) as follows:*

*"143A.(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant--*

*(a)in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and*

*(b)in any other case, upon framing of charge."*

*6.A reading of the above provision makes it clear that the Court trying an offence under Section 138 of the Negotiable Instruments Act "may" (emphasis supplied) order the drawer of the cheque to pay interim compensation to the complainant. The provision itself shows that the discretion is vested with the Trial*  
*<http://www.judis.nic.in>Court to direct interim compensation to*



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*be paid by the complainant. It is not necessary that in all cases, the trial Court must necessarily direct the complainant to pay interim compensation and such a direction should be given only on a case to case basis, by taking into consideration the facts of each case.*

*The legislature has intentionally not used the word "shall", since it would have prevented the accused persons, even in genuine cases, from defending themselves without paying 20% as interim compensation amount to the complainant. This would have directly affected the fundamental right of an accused person to defend himself in a criminal case. This is the reason why the legislature had thoughtfully used the word "may" under Section 143A(1) of the Negotiable Instruments Act. Therefore, it is not possible to read the word "shall" into the word "may" which is used in the provision.*

*7. In view of the above finding, the word "may", gives the discretion to the Trial Court to direct the accused to*



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*pay interim compensation to the complainant. The exercise of discretion must always be supported by reasons, failing which the exercise of discretion will become arbitrary.*

4. As rightly contented by the revision petitioner, the above said discretionary power has not been properly exercised by the trial Court. In the petition filed seeking interim compensation, it has been stated by the respondent that since the revision petitioner denied the liability, he must be directed to pay the compensation. Now let us go back to the above said judgment and further extracted the paragraph No.8 hereunder,

*8. Therefore, whenever the trial Court exercises its jurisdiction under Section 143A(1) of the Act, it shall record <http://www.judis.nic.in> 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*



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*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.*

5. So, when we approach the reason mentioned in the petition in the background of the above said principles that has been light of this Court in the



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above said judgment does not satisfy the law. On the sole ground, this revision is liable to be allowed and accordingly allowed. The liberty also available to the respondent herein to move the appropriate petition within appropriate time before the concerned Court and the order will not bar the subsequent petition.

**6. In the result, the revision is allowed and accordingly allowed.**

**Consequently, the connected Miscellaneous Petition is closed.**

**06.01.2023**

NCC : Yes/No  
Index :Yes/No  
Internet:yes/No  
indu

To

The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**G.ILANGO VAN,J.**

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