* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision :20.03.2023***

36.

\+ **CRL.M.C. 1899/2023**

ROHITGUPTA ..... Petitioner

Through: Mr. Nityanand Singh, Mr. Durgesh Singh and Mr. Saurabh Upadhaya, Advocates.

versus

VIJAY KUMAR VERMA HUF ..... Respondent

Through: Mr. Pranav Gupta, Mr. Siddhant Verma, Mr. Pushkal Awasthi and Ms. Khushboo Sharma, Advocates.

37.

\+ **CRL.M.C. 1900/2023**

ROHIT GUPTA ..... Petitioner

Through: Mr. Nityanand Singh, Mr. Durgesh Singh and Mr. Saurabh Upadhaya, Advocates.

versus

VINEET VERMA HUF ..... Respondent

Through: Mr. Pranav Gupta, Mr. Siddhant Verma, Mr. Pushkal Awasthi and Ms. Khushboo Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J (ORAL)

CRL.M.A. 7229/2023 in CRL.M.C. 1899/2023

CRL.M.A. 7231/2023 in CRL.M.C. 1900/2023

1. Exemption allowed, subject to all just exceptions.

2. The applications stand disposed of.

CRL.M.C. 1899/2023 AND CRL.M.A. 7230/2023 (stay) in CRL.M.C. 1899/2023
CRL.M.C. 1900/2023 AND CRL.M.A. 7232/2023 (stay) in CRL.M.C. 1900/2023

3. The present petitions have been filed under Section 482 Cr.P.C. for setting aside the order dated 25.01.2023 passed by Principal District and Sessions Judge, Dwarka Court in CR/10/2023 and in CR/11/2023.

4. It is submitted by learned counsel for the petitioner that no reasons have been cited by the Trial Court in exercising discretion while granting the compensation under Section 143A of NI Act. It is further submitted that in a case, when the order under Section 143A(1) is passed while exercising discretion without assigning any reason then it would not be possible for the revisional/appellate court to see as to under what circumstances the discretion has been exercised, therefore, it is argued that the impugned order is liable to be set aside. It is further argued by learned counsel for the petitioner that there is nothing on record to show that petitioner has evaded service or was avoiding the court's dates or his conduct has gone

overboard, so the discretion exercised by the Trial Court as per Section 143A NI Act is unwarranted.

5. It is also argued that if the accused person has absconded for a long time or the enforceable debt or liability is borne out by overwhelming materials, the accused person accepts the debt or liability partly, or the accused person does not cross examine the witnesses and keeps on dragging with the proceedings then the learned trial Court can exercise its jurisdiction under Section 143A(l) of the Act by directing the accused person to pay the interim compensation of 20% to the complainant. It is further argued that as the loan money had already been repaid, there was no obligation of granting any directive to the accused to pay 20% of the cheque amount as interim compensation as that would amount to 'double jeopardy'. In support of his contention learned counsel for petitioner has relied upon ***'L. G. R. Enterprises and Anr. vs. P Anbazhagan'*** in **Crl. O. P. Nos. 15438 and 15440 of 2019 decided on 12.07.2019** and ***'M/s. JSB Cargo and Freight Forwarder Pvt. Ltd. and Ors vs. State & Anr.'*** *in* **Crl. M.C. 2663/2021 and Crl. M. C. 2730/2021 decided on 20.12.2021** to bring home the point that there should be reasons given by the learned Trial Court while awarding the interim compensation under Section 143A(1).

6. On the other hand, learned counsel for the respondent who appears on advance notice submits that there is no infirmity in the impugned order dated 25.01.2023 passed by Principal District and Sessions Judge and order dated 19.10.2022 passed

by learned MM. It is further submitted by learned counsel for petitioner, the learned MM in its order dated 19.10.2022 has categorically spelt out reasons for exercising the discretion as conferred by Section 143A NI Act and has also argued that petitioner has admitted his signature on the cheques and has also stated that he has repaid the complete amount in cash in instalments which is a bald expression and nothing has been placed on record to show that the said amount was repaid as alleged by the petitioner.

7. For the purpose of deciding these petitions, it is imperative to reproduce the relevant portions of the order passed by learned MM vide order dated 19.10.2022, the order 25.01.2023 passed by Principal District and Sessions Judge and the Section 143A of NI Act.

8. The relevant portion of the order dated 19.10.2022 passed by learned MM reads as follows:-

> *"In the present complaint, the court finds it appropriate to exercise its discretion in the favour of the complainant, for the reasons which will be discussed now:*
> *(1) Loan given to accused in cash / through bank - Through bank*
> *(2) Existence of any loan agreement/Promissory Note - Yes, dated 04.03.2016*
> *(3) Conduct of the accused - The accused entered appearance on 02.08.22 and has been regularly appearing-before the court.*
> *(4) Plea of guilt of the accused under section 251 CrPC - Not Guilty*
> *(5) Statement in defence by the accused under section*

251 CrPC - Admitted his signature on the cheque but stated that the he has already repaid the complete amount in cash in instalments.
(6) Admission and denial of documents by the accused under section 294 CrPC Admitted to genuineness and correctness of Bank return memos, cheques but denied all other documents
(7) Time elapsed since the commencement of proceedings under section 138, NI Act - The proceedings commenced on 25.03.22 and more than 6 months have elapsed.
(8) Steps, if any, taken to resolve the matter through mediation - The accused had entered appearance on 02.08.22 and decided to contest the matter."

9. Likewise vide order dated 25.01.2023, learned Principal District and Session Judge has observed as follows:-

"20. I am of the considered opinion that the Ld. Trial court should have elaborated the aforesaid glaring aspect of the case in a comprehensive manner. The reasons should be specified very clearly. I have already noticed above the stand taken by the accused. He does not dispute the fact that he had received the loan through online transfer. He also does not dispute his signatures on the cheques in question. His only defence is that he has repaid the entire loan, total of which comes to Rs. 30 lacs by cash, in installments. There is only a bald averment to that effect. He does not have any proof or receipt of any such payment allegedly made by him in cash. Things would have been little different had he placed on record any proof to the aforesaid effect. In any such situation, naturally, the court would have considered the same and might not have exercised its discretion so as to ensure that there is no case of 'double jeopardy'. In the present case, the defence taken by the accused looks quite improbable as he wants the court to believe that he had made substantial payment of Rs. 30 lacs in cash. If the court starts giving credence to such

bald and unsubstantiated averment of repayment of loan in cash,, without there being any corresponding proof, it would be a get-away tool for any such accused for frustrating the benevolent provision provided u/s 143A NI Act.

21. Be that as it may, the conduct of the accused is not always the sole deciding factor. It also needs to be seen as to what is his defence. As already noticed above, he has come up with a bald averment that he has repaid the loan without bothering to place on record any proof of any nature whatsoever.

22. Therefore, I am of the view that the trial court has rightly exercised its discretion in favour of the complainant, albeit, it should have specified and elaborated the reasons in a better and effective manner. It is expected that the aforesaid reasoning aspect would be kept in mind by the Ld. Trial court, in future."

10. Section 143A of the NI Act which came into force with effect from 1st September, 2018 reads as under:

"143A – Power to direct interim compensation-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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 summon case, where the drawer pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing charges.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be pad within sixty days from the date of the order under sub-section (1), 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.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the

amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial years, 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 complainant.
(5) The interim compensation payable under this section may be recovered as if it were a find under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).
(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974).”

11. A bare perusal of the order dated 19.10.2022 passed by learned MM relevant portion of which has been reproduced hereinabove clearly reveals that the petitioner has not denied that the loan was given to him through Bank and also the Loan Agreement dated 04.03.2016 which was executed between the parties. Learned MM though observed that petitioner has been appearing regularly in the Court, however, in my opinion the regular appearance of the petitioner in the Court cannot be a ground for not granting interim compensation as envisaged in Section 143A NI Act. It has also been observed by the learned MM while exercising discretion under Section 143A and during the course of admission and denial that the petitioner admitted to the genuineness and correctness of the Bank Return Memos, Cheques, but had denied the other documents.

12. Learned Principal District and Session Judge in order dated 25.01.2023 has observed that learned trial court should

have elaborated the glaring aspect of the case in a comprehensive manner and reasons should have been clearly specified but it is not that the order of learned MM is bereft of details. Learned MM has assigned reasons and there is no straight jacket formula as to what reasons are sufficient and what reasons are insufficient while exercising discretion under Section 143A, it varies from case to case.

13. As far as the judgement of '***M/s. JSB Cargo and Freight Forwarder Pvt. Ltd. and Ors'*** **(supra)** relied upon by counsel for the petitioner is concerned, the same is not applicable and is distinguishable to the present facts and circumstances of this case as the impugned order reproduced in para 4 of the judgement clearly shows that it was actually bereft of reasons with regard to discretion being exercised while granting the interim compensation.

14. Moreover, notice under Section 251 Cr.P.C. in which he has admitted cheques in question issued under his signatures but the defence taken by him is that loan has been repaid in cash to the complainant and this averment is short of any details and no proof or receipt has been placed on record in this regard. Furthermore, it does not strike to logic that if the amount was paid by the respondent through cheque or through online transfer, why he would accept the repayment in cash, on the contrary why the petitioner would make cash payment without taking any proofs of such payments from the petitioner.

Therefore, I find no infirmity in the impugned order dated 25.01.2023. Accordingly the petitions stand dismissed along with pending applications, if any.

RAJNISH BHATNAGAR, J

MARCH 20, 2023

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