

28.03.2024

Item No.14
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 1040 of 2023

In the matter of : **Dr. Kartick Kumar Sarkar** ... Petitioner.

Mr. Kishore Mukherjee ... For the Petitioner.

The petitioner has challenged the order dated 27.09.2022 wherein the learned Judicial Magistrate, 4th Court, Serampore, Hooghly was pleased to direct the present petitioner to pay interim compensation to the complainant of an amount of Rs.70,000/- under Section 143A of the Negotiable Instruments Act.

Having regard to the reasons so assigned by the learned Judicial Magistrate, 4th Court, Serampore, in connection with C.R. No. 403 of 2019, I direct the learned Magistrate would reconsider his order dated 27.09.2022 in view of the observations made in paragraph 22 of the judgement of the Hon'ble Supreme Court passed in Rakesh Ranjan Shrivastava Vs. State of Jharkhand and Another reported in 2024 SCC OnLine SC 309. Paragraph 22 of the said judgement is set out hereunder :

*“**22.** Subject to what is held earlier, the main conclusions can be summarised as follows:*

- a. The exercise of power under sub-section (1) of Section 143A is discretionary. The provision is directory and not mandatory. The word “may” used in the provision cannot be construed as “shall.”*

- b. *While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.*
- c. *The broad parameters for exercising the discretion under Section 143A are as follows:*
 - i. *The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.*
 - ii. *A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.*
 - iii. *If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.*
 - iv. *If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.*
 - v. *There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.”*

The learned Magistrate would check whether the aforesaid guidelines laid down by the Hon'ble Supreme Court in respect of Section 143A of the Negotiable Instruments Act

have been followed and thereafter pass his order afresh. The order dated 27.09.2022 passed by the learned Judicial Magistrate, 4th Court, Serampore is set aside. However, this is not an indication that the learned Magistrate will not exercise his discretion independently. As the reasons are lacking, this Court feels that the direction of the Hon'ble Supreme Court and the guidelines set out therein for Section 143A of the Negotiable Instruments Act are to be followed.

With the aforesaid observations, the revisional application being CRR 1040 of 2023 is disposed of.

Pending connected application, if any, is consequently disposed of.

Certified copy so submitted by the learned advocate appearing for the petitioner be kept with the record.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)