IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

25.09.2024
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C.R.R. No. 3331 of 2024

In Re : An application under Section 401 read with Section 482 of the Code of Criminal Procedure now under Section 442 read with Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023.

In Re : Ashok Kumar Dokaniya .....petitioner

Mr. Tarique Quasimuddin
Mr. Irshad Yaqub
Ms. Hera Madni
.... for the petitioner

1. Petitioner is aggrieved by the order dated 20.09.2022. Learned Magistrate directed him to deposit 10 per cent of the cheque amount under Section 143A of the N.I. Act which was upheld by the revisional court in Criminal Revision No. 03 of 2023.

2. Learned Counsel for the petitioner submits the dishonoured cheque had been kept with the complainant as security and there was no legally enforciable debt of liability. He relies on Rakesh Ranjan Shrivastava vs. State of Jharkhand[1] in support of his plea that the direction for interim compensation is contrary to law.

3. I have considered the materials on record. It is alleged in the petition of complaint that petitioner had taken an accommodation loan of Rs.80,00,000/- on 29.04.2019. To repay the loan, he had issued four cheques totaling to Rs.90,00,000/- i.e Rs.80,00,000/- towards loan amount and

[1] AIRONLINE 2024 SC 174

Rs.10,00,000/- towards interest which upon presentation were dishonoured. Notice of dishonor was issued upon the petitioner. Inspite of receipt of notice he failed to repay the amount. Learned Magistrate directed 10 per cent of the cheque amount be paid as interim compensation which was upheld by the revisional court. In Rakesh Ranjan Shrivastava (supra) Hon'ble Apex Court, inter alia, held that interim compensation ought not to be granted mechanically. At that stage, the court must consider nature of transaction, relationship between the parties and capacity of the accused to pay. If the accused has a plausible defence interim compensation may be denied.

4. We have examined the impugned order in the light of the aforesaid proportion of law. It is pleaded in the petition of complaint that the sum of Rs.80,00,000/- was advanced as accommodation loan and the amount remained unpaid. Cheques were issued to repay the loan and the interest therein. Petitioner has admitted the transaction as well as issuance of cheques. He merely contends that the cheques were kept as security. When a debt falls due it is open to the creditor to encash the cheques which have been handed over to him. Nothing is placed on record to demonstrate the incapacity of the petitioner to pay the said amount. On the other hand, it is common knowledge that criminal proceedings would drag on for long and in the event interim compensation is not paid the complainant would suffer irreparable injury.

5. Under such circumstances, I am of the opinion direction to pay interim compensation and the quantum so fixed is lawful and proportionate. No interference is called for.

6. Accordingly, the revisional application is disposed of.

7. Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Joymalya Bagchi, J.)