



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.606 OF 2024

Ashok Baliram Pawar,
Age-66 years, Occupation-Pensioner,
R/o. "Torna", Shriram Nagar,
Shivneri Colony, Beed,
District Beed

.. Petitioner
(Accused)

Versus

Mohammad Meraj Gulam Mohammad,
Age-61 years, Occupation-Pensioner,
R/o. Chunlane, Sarafa Road, Beed,
Taluka and District Beed

.. Respondent
(complainant)

Mr. Sudarshan J. Salunke, Advocate for Petitioner

CORAM : S. G. MEHARE, J.

DATE : 16-07-2024

PER COURT :-

1. Heard the learned counsel for the petitioner.
2. The petitioner has impugned the judgment and order of the learned Judicial Magistrate First Class-8, Beed, below Exhibit-8, Beed in Summary Criminal Case No.983 of 2022, dated 25.05.2023 and confirmed by the judgment and order of the learned Sessions Judge, Beed, in Criminal Revision No.60 of 2023 (80 of 2023), dated 30.10.2023.
3. The petitioner was the accused in a case under Section 138

of the Negotiable Instruments Act, 1881 (for short, "N.I.Act"). After recording his plea, the complainant moved an application for directing the petitioner/accused to pay *interim* compensation as provided under Section 143-A of the N.I.Act. The complainant's case, in brief, was that against the earnest amount, the petitioner/accused had received Rs.27,50,000/- from the respondent/complainant. Out of that amount, Rs.20,00,000/- (Twenty lacs) were paid through R.T.G.S. The agreement to sell could not be executed. Therefore, the petitioner issued him a cheque, which was dishonoured.

4. Learned Sessions Judge Beed recorded the conduct of the petitioner/accused. He also recorded the findings that the petitioner agreed to make the complainant's son a petrol pump partner. He offered partnership and accepted Rs.20,00,000/-; thereafter, he declined to give him a partnership and then agreed to sell the said land to the complainant. The petitioner, all the while, showed illintention.

5. Learned counsel for the petitioner has relied on ***Jamboo Bhandari Versus M.P. State Industrial Development Corporation Ltd. & Ors. Criminal Appeal No.2741 of 2023 (@ SLP (CRL.) NO(S). 4927 of 2023)***, decided on 04.09.2023. Referring to the observations of the Honourable Supreme Court, in this case, he submits Sections 143-A and 148 of the N.I.Act are

identical. Both sections provide for the discretion of the Court. On reading the observations of the Honourable Supreme Court in paragraphs Nos.6 and 9, he has vehemently argued that the impugned orders were without discussing exceptions to exercise the powers. However, the ratio laid down in the said case is very clear that, normally, the Appellate Court will be justified in imposing the condition of deposit as provided in Section 148 of N.I.Act. However, in a case, where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

6. The law clearly states that the Court should only avoid exercising power under Section 148 of the N.I. Act in exceptional cases. He has correctly pointed out that there shall be no specific plea of the accused about the exception. However, it seems that those are the findings about Section 389 of the Code of Criminal Procedure, wherein it has been observed that when an accused applies under Section 389 of the CR.P.C. for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exception or not.

7. Section 143-A of the N.I.Act, opens with *non-obstante* clause. It provides that notwithstanding anything contained in Cr.P.C the Court trying the offence under Section 138 may order the drawee of the cheque to pay interim compensation. However, the interim compensation should not exceed twenty per cent of the amount of the cheque. In this section, the word 'may' has been used. So, it is the discretion of the Court. The Court trying the offence can not exercise his powers under Section 143-A, until the accused plead not guilty in summary case or the charge has been framed in other cases. In such circumstances, only source to exception is the pleadings of the parties. In a trial under Section 138 of the N.I.Act, the only source is the reply to the statutory notice demanding the amount of dishonour of the cheque because at the stage of the framing charge and pleading not guilty, his defence is not opened.

8. Learned counsel for the petitioner tried to argue that since the upper limit for awarding interim compensation is twenty per cent the Court in every case it should not pass an order directing the deposit of *interim* compensation up to 20%.

9. In the case at hand both Courts have considered the material available on record and they were satisfied that no exception was made out under Section 143-A of the N.I.Act. The record shows that the Learned Judicial Magistrate has correctly recorded that directing the petitioner/ accused to deposit interim

compensation does not deny his right to cross-examine the witnesses to be examined on behalf of the complainant, as already observed in the case **Noor Mohammed Vs. Khurram Pasha (2022) AIR (SC) 3592**. This Court also observed that this amount would be subject to the adjustment or would be deducted from the compensation.

10. Both orders are well reasoned. The petitioner failed to satisfy that there were exceptional circumstances not to exercise discretion under Section 143-A of the N.I. Act. Probably, as usual, it may be an attempt on the part of the accused to protract the trial. The Courts are flooded with cases under Section 138 of the N.I. Act and several matters have been pending for last many decades. It was a summary trial but tried is conducted more than a session trial. The accused as experienced, is mostly interested in protracting the trial, and for that purpose he impugne each order of the Court. This Court does not comment on the rights of the parties to avail themselves of the provisions of law. It is a general experience of the trials under N.I. Act. The purpose of the Act should not be frustrated. There are various presumptions under the N.I. Act to believe the case of the complainant. *Prima facie* material was there to pass the impugned order.

11. As observed above, both orders are free from infirmities. Hence, do not warrant interference at the hands of this Court.

12. The Criminal Writ Petition stands dismissed at the admission stage.

(S. G. MEHARE)
JUDGE

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