IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4576 OF 2022

Nikhil P. Thampi And Anr. ...Petitioners

Versus

State Of Maharashtra And Anr. ...Respondents

....

Mr. Niranjan Mundargi a/w Adv. Keral Mehta Mr. Tanmay Bhave i/by Mr. Shlok Parekh, Advocate for the Petitioners.

Adv. Chaula Solanki a/w Mr. H. H. Nagi, Mr. Ameya Vaidya, Adv. Niranjana Pradhan i/by Nagi & Associates, Advocate for Respondent No.2.

Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 1st FEBRUARY, 2024.

P.C.:

1. The Petitioners are challenging the Order dated 14th September, 2022 passed by the learned Metropolitan Magistrate, 56th Court, Mazgaon, Mumbai in C.C. No.1587/SS/2021 allowing the application Exh.33 preferred by the Respondent No.2 under Section 143-A of the Negotiable Instruments Act, 1881 (for short 'N.I. Act'). The Petitioners are directed to pay 20% of the cheque amount i.e. amount of Rs.28,00,000/- towards interim compensation to the complainant within 60 days.

2. The complaint was filed by Respondent No.2 before the Court of learned Metropolitan Magistrate for offence under Section 138 of N.I. Act. The complainant has alleged that during the period of 17th January, 2019 till the loan amount of Rs.1,40,00,000/- in the form of inter-corporate deposit, the Accused had executed the bill of exchange on 4th February, 2019 for Rs.1,40,00,000/- and also gave a collateral security of the shop bearing No.14 situated at Anand Nagar, New Link Road, Oshiwara, Jogeshwari (West), Mumbai. The debt was acknowledge by bill of exchange, agreement and promise to repay the debt. Resolution was passed by the Court and were signed by all the Directors. Cheque was issued for an amount of Rs.1,40,00,000/- dated 4th August, 2021, it was dishonoured on 29th September, 2021. Demand notice was forwarded on 14th October, 2021. Complaint was filed.

3. The complainant preferred an application under Section 143-A of N.I. Act on 16th April, 2022. In the said application it was stated that the cheque amount is Rs.1,40,00,000/- and 20% of the cheque amount may be given to the complainant. The Petitioners filed reply opposing. The Respondent/complainant preferred another application under Section 143-A of N.I. Act seeking similar directions. The learned Magistrate allowed application vide Order

dated 14th September, 2022 and directed the Accused to pay the amount of Rs.28,00,000/- towards interim compensation to the complainant within 60 days.

4. Learned Advocate Mr. Mundargi appearing for the Petitioners submitted that the Petitioners were impleaded in the complaint as directors of the Accused No.1 company. The Petitioners are not the drawers of the cheque in consonance with Section 143-A of the Act. The Petitioners cannot be directed to deposit the amount of compensation. The application preferred by the Respondent was vague. During the pendency of the first application the complainant preferred another application. The first application was opposed by filing reply. The trial Court proceeded to pass Order on second application and allowed the said application. The impugned Order is contrary to law. The drawer of the cheque is the company. The Petitioners are not the signatory to the cheque. Reliance is placed on decision of this Court in the case of ***Lyka Labs Limited & Anr. V/s. The State of Maharashtra & Anr. passed in Criminal Application No.886 of 2022 dated 8th March, 2023*** and several other connected matters. It is submitted that drawing an analogy from the said decision, the Petitioners cannot be directed to deposit the compensation amount in accordance

with Section 143-A of the N.I. Act.

5. Learned Advocate for the Respondent/complainant submitted that the Petitioner Nos.1 and 2 are the Directors and authorized signatory of Accused No.1 company. The MCA report from the Ministry of Corporate Affairs website demonstrate that the Petitioner No.1 is the Director from 14th February, 2007 and Petitioner No.2 is the Director from 25th July, 1995. Board resolution dated 4th February, 2019 was produced on record with the compliant which demonstrate that the Petitioners had singed the said resolution. The bill of exchange produced on record is also signed by the Petitioners. The signatory to the cheque is Accused No.4 Mr. Pradeep Thampi. Accused No.4 has expired. The Petitioners are incharge and responsible to the company for the conduct of the business of the company it is evident from the documents produced by the complainant. The loan of Rs.1,40,00,000/- were procured by the Accused. All of them are responsible for procuring the loan. The cheque was issued by the Accused. It has been dishonoured. The cheque was issued by the Accused in connivance with each other. All of them has knowledge of issuance of cheque. The decision of this Court in the case of *Lyka Labs Limited & Anr. (supra),* was dealing with the issue whether

the authorized signatory can be held responsible for payment of compensation forwarded under Section 143-A of the N.I. Act. The Petitioners are the Directors of the company. The said decision does not relate to the responsibility of the Directors under Section 143-A of the N.I. Act. Aprt from that the said decision suffers from doctrine of per incuriam. This Court while deciding the issue in the batch of petitions in the case *Lyka Labs Limited & Anr. (supra),* has not taken into consideration, the law laid down by the Apex Court in the case of ***P. Mohanraj And Others V/s. Shah Brothers Ispat Private Limited***[1] wherein the Apex Court has laid down the ratio that the proceedings under Section 138 are criminal proceedings, penal in nature and in view of the moratorium period under Section 14 of Insolvency and Bankruptcy Code, 2016, the Directors/persons incharge and responsible for the conduct of the company cannot get the protection of Section 14 of Insolvency and Bankruptcy Code, 2016. The proceedings under Section 138 of the N.I. Act shall continue against the erstwhile Directors/persons incharge of and responsible for the conduct of the business of corporate debtor. It is further submitted that this Court while deciding the aforesaid issue and the case is enumerated in view above has also not taken into consideration the decision of the

1 (2021) 6 SCC 258

Supreme Court in the case of ***Ajay Kumar Radheyshyam Goenka V/s. Tourism Finance Corporation of India Limited***[2] wherein the Apex Court has held that the proceedings under Section 138 of the N.I. Act had already commenced with the Magistrate taking cognizance upon the complaint and during the pendency, the company gets dissolved, the signatories/Directors cannot escape from the liability under Section 138 of the N.I. Act on the ground that the company is dissolved. What is dissolved is only the company not the penal liability of the Accused covered under Section 141 of the N.I. Act. In the light of the analogy arrived at by the Apex Court in the said decision the Directors cannot be absolved from payment of interim compensation under Section 143-A of the N.I. Act. Therefore, this Court may consider the law laid down by the Apex Court in the aforesaid decision and dismiss the petition.

6. Mr. Mundargi in rejoinder submitted that the contention of the Respondents that this Court in the decision of *Lyka Labs Limited & Anr. (supra),* was only dealing with the issue whether the authorized signatory are responsible to pay compensation under Section 143-A of the N.I. Act and that this Court had not considered the liability of the Directors of the company to pay

2 (2023) 10 SCC 545

interim compensation under Section 143-A of the N.I. Act is devoid of merits. It is submitted that pursuant to the said decision this Court has passed several orders allowing the applications challenging the Orders passed by the learned Magistrate directing the Directors to pay the compensation in accordance with Section 143-A of N.I. Act by observing that from the analogy reflected in the Order dated 8th March, 2023 passed by this Court in the case of *Lyka Labs Limited & Anr. (supra)* and various other connected matters, the Directors are not the drawers of the cheque. They cannot be held liable for payment of compensation under Section 143-A of the N.I. Act.

7. Section 143-A of the N.I. Act reads as follows :

> "[**143-A. 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.
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> (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
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> (b) in any other case, upon framing of charge.
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> (2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.
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> (3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or

within such further period not exceeding third 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 complaint 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 year, 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 fine 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), shall be reduced by the amount paid or recovered as interim compensation under this section]"

8. While dealing with the issues relating to the liability of the persons responsible to pay compensation in accordance with Section 143-A of the N.I. Act, this Court had formulated the issues. Although the prime question before the Court was whether the authorized signatory can be held liable to pay the compensation by considering the drawer of the cheque vide Section 143-A N.I. Act. However, this Court has analyzed the scope and object of Section

143-A and has categorically held as to who could be drawer of the cheque in consonance with Section 143-A. In Paragraph 18 of the said decision, it is observed that on conjoint reading of Sections 30, 31 and 138 of the N.I. Act, it is evident that the obligation to honour the cheque is on the drawer. Reading Section 138 of the N.I. Act makes it clear that the duty to maintain sufficient funds on the date of presentation of the cheque is cast on the drawer. On receipt of demand notice, Section 31 creates the right to receive compensation from the drawee bank if the drawer has sufficient funds in the account maintained by him and the drawee bank fails to honour the cheque. Such compensation needs to be paid only to the drawer. Unless demand notice served on the drawer, the offence under Section 138 of N.I. Act, is not complete. The drawer of the cheque is the principal offender who is liable for the offence under Section 138 of the N.I. Act. The drawer of the cheque is deemed to have committed an offence when the cheque drawn by him is returned unpaid on the specified grounds. This Court then considered the liability of the drawer in the light of language of Section 143-A allows for a plain interpretation to the exclusion of all other rules of interpretation. The word 'drawer' in Section 143-A has a clear and unambiguous meaning. The legislature's intention as to who should pay the interim compensation is clear in plain and simple language in Section 143-A. The plain interpretation of the expression ‘Drawer’ in Section 143-A gets support from the intent and purpose of the provision of the Act. The Court considered the statement of object and reasons of the N.I. Act and further observed the object is to make the payee of the cheque to pay interim compensation to provide relief to drawees from undue delay in the final resolution of dishounoured cheque. The legislature’s purpose was to provide interim relief is the drawee by directing the drawer to pay temporary compensation. This compensation was made payable by the cheque’s drawer or issuer. By specifically fastening the liability on the drawer/issuer, the legislature excluded anyone else from being made liable to pay interim compensation. The plain language Section 143-A clearly spells out the intention of the parliament by resorting to the golden rule of interpretation that a statute must be read plainly to arrive at its meaning. Principal offender under Section 138 N.I. Act. in case cheque issued by the company is the drawer(company). Drawer alone would have been the offender thereunder if the Act did not contain Section 141. By virtue of Section 141 of the Act that penal liability under Section 138 is cast on other persons connected with the company. Therefore, there is no need to interpret the word ‘drawer’ to include authorized signatory. In Paragraph No.33 of the said decision, it is observed that to interpret expression 'drawer' to include 'authorized signatory' who may be a shareholder or director it is necessary to refer to settled principles of company law which are relevant for adjudication of the issues. The true legal position in regard to the character of a corporation for a company which owes its incorporation to a statutory authority, is that the entity of the corporation is entirely separate from that of its shareholders, it bears its own name and has a seal of it own; its assets are separate and distinct from those of its members; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them and the creditors of the members have no rights to the assets of the corporation. It was further observed that the directors serve as an agent and hence are not liable personally for the acts and actions of the company. When the word 'drawer' has been defined under the N.I. Act, its meaning would not very when the same word is used at more than one place in the same statute, as otherwise, it will defeat the very object of the definitive section.

9. Pursuant to the said decision the issue whether the Directors can be held liable to interim compensation is accordance with Section 143-A of the N.I. Act had come up for consideration in

various matters and this Court passed several orders drawing an analogy from the aforesaid decision and held that the Directors cannot be held liable to pay interim compensation as per Section 143-A of the N.I. Act. Reference can be made to the Orders passed by this Court in Criminal Writ Petition No.4128 of 2021 (Order dated 15th March, 2023), Criminal Writ Petition No.2075 of 2022 (Order dated 29th March, 2023), Criminal Writ Petition No.201 of 2022 (Order dated 15th March, 2023), Criminal Application No.886 of 2022 (Order dated 15th March, 2023), Criminal Application No.1205 of 2022 and other connected matters (Order dated 15th March, 2023), Criminal Writ Petition No.2644 of 2022 (Order dated 29th March, 2023), Criminal Writ Petition No.1250 of 2022 (Order dated 15th March, 2023) and Criminal Writ Petition No.201 of 2022 (Order dated 15th March, 2023).

10. The decisions relied upon by the learned Advocate for the Respondent are not dealing with issue involved in this matter. The ratio laid down in the said decisions cannot be applied to the present case. In fact in the decision of this Court in the case of *Lyka Labs Limited & Anr. (supra),* in Paragraph No.35 this Court has taken note of the submissions about effect legal impossibility such as under Section 14 of Insolvency and Bankruptcy Code, 2016,

which prevents drawer company from being compelled to pay interim compensation, and it was observed that the said provision does not derives support to include authorized signatory within expression drawer as such legal impossibility is create by Act of the parliament of which the legislature is deemed to be fully aware of at the time of enacting Sections 143-A and 148 of the N.I. Act. The legislature enacted Sections 143-A and Section 148 much after the legislature enacted the Insolvency and Bankruptcy Code, 2016. Therefore, at the time of bringing Section 143-A into force, the legislature was aware that drawer companies could not be made to pay interim compensation in the light of the moratorium imposed by Section 14 of Insolvency and Bankruptcy Code, 2016 on companies undergoing corporate insolvency resolution process. The legislature was also aware that there could be natural persons who may have drawn/issued the cheque but could not be made to pay interim compensation under Section 143-A of the N.I. Act on account of the moratorium imposed by Sections 95 and 96 of the Insolvency and Bankruptcy Code, 2016. Despite this knowledge, the legislature chose a language in its enactment that limits the liability to the drawer/issuer and does not extend it vicariously/severally onto any other person. Therefore, the words of the enactment are clearly intended to be limited to drawers, be they natural persons or companies.

11. Considering the observations of this Court in the case of *Lyka Labs Limited & Anr. (supra)* and several Orders passed there, it is crystal clear that the Directors cannot be held liable to pay compensation under Section 143-A by terming them as drawers of the cheque.

ORDER

i. Criminal Writ Petition No.4576 of 2022 is allowed;

ii. Impugned Order dated 14th September, 2022 passed by the learned Metropolitan Magistrate, 56th Court, Mazgaon, Mumbai is quashed and set aside.

iii. Petition stands disposed off.

(PRAKASH D. NAIK, J.)