



Crl.R.C.(MD).No.335 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 08.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.335 of 2023

B.Ayyappan

... Petitioner /Respondent /Accused

Vs.

V.Saravana Babu

... Respondent/Petitioner/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the order dated 03.01.2023 passed in Crl.M.P.No.5925A of 2022 in S.T.C.No.211 of 2022 on the file of the Learned Judicial Magistrate, Vadipatti, Madurai District by allowing this Criminal Revision Petition.

For Petitioner : Ms.K.Ravi

For Respondent : Mr.R.Saravana Kumar



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ORDER

The petitioner/accused filed this revision challenging the order dated 03.01.2023 passed in Crl.M.P.No.5925A of 2022 in S.T.C.No.211 of 2022 by the learned Judicial Magistrate, Vadipatti, Madurai District.

2.The respondent/complainant initiated the proceedings against the petitioner under Section 138 r/w. 142 of Negotiable Instrument Act with the allegation that the petitioner borrowed a sum of Rs.12,00,000/- from the respondent and to repay the same, he issued a blank cheque as security for repayment on 25.04.2021, but the same was dishonoured and returned on 29.11.2021. Hence, the respondent issued a statutory notice to the accused. Thereafter, the respondent filed a complaint under Section 138 of NI Act, before the learned Judicial Magistrate, Vadipatti, Madurai District. The learned Judicial Magistrate taken the complaint on file in STC.No.211 of 2022.

3.During the pendency of the proceedings, the respondent filed a petition in Cr.M.P.No.5925A of 2022 under Section 143A of the NI Act seeking interim compensation, before the learned Judicial Magistrate, Vadipatti, Madurai District. The learned Judicial Magistrate allowed the petition and directed the



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petitioner to pay the interim compensation of 25% of the cheque amount.

Challenging the same, the petitioner filed this petition.

4.The learned counsel appearing for the petitioner submitted that he produced number of defence in the proceedings. He further submitted that there was no debtor-creditor relationship between them. Apart from that, the blank cheque was misused by the defacto complainant. He further submitted that he regularly appeared before the trial Court. Hence, he seeks for setting aside the order passed by the learned Judicial Magistrate, Vadipatti, Madurai District.

5.The learned counsel appearing for the respondent/complainant submitted that it is a statutory provision. The learned trial Court, satisfied with the requirement of the provision of Section 143A of NI Act, imposed a condition to pay the interim compensation of 25% of the cheque amount. He further submitted that this revision has been filed to prolong the payment. Further, the Hon'ble Supreme Court also stated that the Court below has jurisdiction to look into facts and circumstances of each cases to impose the conditions. Hence, there is no need to interfere in the order passed by the learned Judicial Magistrate, Vadipatti, Madurai District.



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6. This Court has considered the rival submissions made by both sides and also perused the records and impugned order.

7. Before going into the merits of the case, this Court extracts 143A of the Negotiable Instrument Act, which is as follows:

143A. Power to direct interim compensation.

—
(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(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 paid within sixty days from the date of the order under subsection

(1), or within such further period not



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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 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.]



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8.From the reading of the above provision and the interpretation given by the Hon'ble Supreme Court in the case of ***Rakesh Ranjan Shrivastava Vs. The State of Jharkhand and another*** reported in ***CDJ 2024 SC 213***, the Hon'ble Supreme Court has applied purposive interpretation to the word “may” and also the non obstinate clause, namely, “notwithstanding anything containing the Code of Criminal Procedure” and has held as follows:

*15. Even sub-section (1) of Section 148 uses the word “may”. In the case of **Surinder Singh Deswal v. Virender Gandhi**1, this Court, after considering the provisions of Section 148, held that the word “may” used therein will have to be generally construed as “rule” or “shall”. It was further observed that when the Appellate Court decides not to direct the deposit by the accused, it must record the reasons. After considering the said decision in the case of **Surinder Singh Deswal**1, this Court, in the case of **Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited & Ors.**2, in paragraph 6, held thus:*

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the appellate court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the appellate court is satisfied that the condition of deposit of 20%



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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.” (Emphasis added)

15.1. As held earlier, Section 143A can be invoked before the conviction of the accused, and therefore, the word “may” used therein can never be construed as “shall”. The tests applicable for the exercise of jurisdiction under sub-section (1) of Section 148 can never apply to the exercise of jurisdiction under subsection(1) of Section 143A of the N.I. Act.

FACTORS TO BE CONSIDERED WHILE EXERCISING DISCRETION

16. When the court deals with an application under Section 143A of the N.I. Act, 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 under sub-section (1) of Section 143A. The presumption under Section 139 of the N.I. Act, by itself, is no ground to direct the payment of interim compensation. The reason is that the presumption is rebuttable. The question of applying the presumption will arise at the trial. Only if the complainant makes out a prima facie case, a direction can be issued to pay interim compensation. At this stage, the fact that the



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accused is in financial distress can also be a consideration. Even if the Court concludes that a case is made out for grant of interim compensation, the Court will have to apply its mind to the quantum of interim compensation to be granted. Even at this stage, the Court will have to consider various factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant and the paying capacity of the accused. If the defence of the accused is found to be prima facie a plausible defence, the Court may exercise discretion in refusing to grant interim compensation. We may note that the factors required to be considered, which we have set out above, are not exhaustive. There could be several other factors in the facts of a given case, such as, the pendency of a civil suit, etc. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all the relevant factors.

17. In the present case, the Trial Court has mechanically passed an order of deposit of Rs. 10,00,000/- without considering the issue of prima facie case and other relevant factors. It is true that the sum of Rs.10,00,000/- represents less than 5 per cent of the cheque amount, but the direction has been issued to pay the amount without application of mind. Even the



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High Court has not applied its mind. We, therefore, propose to direct the Trial Court to consider the application for grant of interim compensation afresh. In the meanwhile, the amount of Rs. 10,00,000/- deposited by the appellant will continue to remain deposited with the Trial Court.

18. Hence, impugned orders are set aside, and the application made by the complainant in Complaint Petition No. 1103/2018 under Section 143A (1) of the N.I. Act is restored to the file of Judicial Magistrate First Class, Bokaro. The learned Judge will hear and decide the application for the grant of interim compensation afresh in the light of what is held in this judgment. The amount deposited by the appellant of Rs. 10,00,000/- shall be invested in a fixed deposit till the disposal of the said application. At the time of disposing of the application, the Trial Court will pass an appropriate order regarding refund and/or withdrawal and/or investment of the said amount.

19. 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



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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,



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which cannot be exhaustively stated. The parameters stated above are not exhaustive.

20. The Appeal is partly allowed on the above terms

9.From the consideration of the above law laid down by the Hon'ble Supreme Court and the contention of the petitioner that the Court below erred in imposing the condition to deposit 25% of the cheque amount cannot be accepted. But, the percentage of the amount, which has to be deposited could be assessed on the facts and circumstances of each case. In this case, it is the specific case of the petitioner that the petitioner admitted the signature in the cheque. He did not send reply to the statutory notice issued by the respondent. It is the defence of the petitioner that he is no way connected with the respondent. He had business relationship with the owner of the Royal Transport, Dindigul and from him, he had received the loan of Rs.5,00,000/- in cash during January 2021. At that time, he handed over the blank cheque as security. He repaid the said amount in the month of April, 2021 to the owner of the Royal Transport, Dindigul. The owner of the said Royal Transport handed over the said blank cheque to one Sekar. The said Sekar died. Without handing over the cheque, the said cheque was misused by the complainant. The said defence has to be proved by the petitioner. Therefore, from the above sequence of the events, this Court prima facie feels



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that the respondent/complainant is entitled to receive the compensation. But, the compensation amount fixed by the trial Court is onerous one and hence, this Court is inclined to reduce the condition imposed by the learned trial Judge, vide orders, dated 03.01.2023, from 25% of compensation amount to 10% of compensation amount.

10. Accordingly, this Criminal Revision Case is partly allowed with the following conditions:

(i) The impugned order passed in Crl.M.P.No.5925A of 2022 in S.T.C.No. 211 of 2022, dated 03.01.2023, by the learned Judicial Magistrate, Vadipatti, Madurai District, is modified.

(ii) The petitioner is directed to deposit 10% of compensation amount **on or before 09.08.2024**, failing which, the order passed by the learned trial judge shall be restored.

(iii) On such deposit being made, the learned trial Judge is directed to re-deposit the amount in an interest bearing account of a bank.



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(iv) The learned trial Judge is further directed to dispose of the case within a period of six months thereafter from **09.08.2024**.

08.04.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

1. The Learned Judicial Magistrate,
Vadipatti, Madurai District.
2. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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