

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRM-M-21815 of 2024 (O&M)
Date of Decision: 03.05.2024

Vinod Kumar

...Petitioner

Versus

Abhi Agencies

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Vipul Sachdeva, Advocate
For the petitioner.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner/ accused seeking quashing of order dated 25.08.2023 (Annexure P-4) passed by the Court of Judicial Magistrate Ist Class, Chandigarh in a criminal complaint NACT-7382 of 2019 titled as Abhi Agencies Vs. Vinod Kumar vide which the application filed by respondent/ complainant under Section 143-A of Negotiable Instruments Act (for brevity, NI Act) is allowed with direction to the petitioner to pay 20% of the cheque amount by way of interim compensation to respondent/ complainant.

2. The counsel for the petitioner submits that respondent filed criminal complaint against the petitioner on the basis of dishonor of cheque worth Rs.16,30,600/- issued by the petitioner in its favour. The respondent also filed an application under Section 143-A of NI Act. Reply to the same was filed by the petitioner and the said application was allowed by the learned trial Court in a mechanical manner vide order Annexure P-4. The counsel for the petitioner further submits that vide impugned order maximum permissible compensation has been awarded by the trial Court

without assigning any reason. The counsel for the petitioner while referring to the latest decision of Hon'ble Supreme Court in **Rakesh Ranjan Srivastava Vs. State of Jharkhand & Anr. 2024(2) RCR(CrI.) 279** submits that the exercise of power under sub-Section 1 of Section 143-A is discretionary and is not mandatory. The counsel for the petitioner further submits that the impugned order is not sustainable in the light of the law laid down by Hon'ble Supreme Court in Rakesh Ranjan's case (supra).

3. I have considered the submissions made by counsel for the petitioner and gone through the case law referred by the counsel, wherein the Hon'ble Apex Court held as follows:-

“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 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 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 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.

20. The Appeal is partly allowed on the above terms.”

4. The Hon’ble Supreme Court while dealing with the provisions of Section 143-A NI Act made it clear that first of all the Court will have to *prima facie* see the merits of the case made out by the complainant and the defence pleaded by the accused in the reply to the application and then to take into consideration other factors as are detailed above.

5. Now adverting to the facts of present case it appears that the defence, if any, taken by the petitioner was not taken into consideration by the trial Court and the said Court passed the impugned order and awarded maximum of the permissible compensation of 20% of the cheque amount by invoking provisions of Section 143-A under the impression that the said provision is mandatory in nature.

6. In the light of above discussion, the impugned order deserves to be set aside being not passed in consonance with the provision of Section 143-A NI Act as is explained and clarified by the Hon'ble Supreme Court in Rakesh Ranjan's case (supra).

7. Consequently, the present petition is allowed and impugned order is set aside with direction to the learned trial Court to decide the matter afresh at the earliest in the light of the aforesaid settled position of law and till then no coercive action is to be taken against the petitioner. The petitioner is directed to appear before the learned trial Court on the date already fixed before the trial Court. However, any observation made hereinabove is not to be treated as an expression of opinion on the merits of the case.

8. Keeping in view the nature of order being passed, no notice is required to be issued to the respondent. However, if he feel dis-satisfied with this order, he may move an application to recall the same.

03.05.2024

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(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No