



2024:DHC:9738



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 09.12.2024

+ **CRL.M.C. 433/2021 & CRL.M.A. 2299/2021****VANDANA KAPOOR**PetitionerThrough: Ms. Santosh and Mr. Noorulislam,
Advocates

versus

RAJESH KUMAR AGARWALRespondentThrough: Mr. J.S. Arora and Ms. Sheetal Nagar,
Advocates**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J. (ORAL)**

1. The present petition has been filed by the petitioner against the impugned order dated 28.10.2020 whereby the learned Principal District & Sessions Judge, South-East, District Court Saket, New Delhi had dismissed the Crl. Rev. No. 838/2019 filed by the present petitioner.
2. The said Criminal Revision was filed by the petitioner against the order dated 25.09.2019 whereby the learned Metropolitan Magistrate had directed the petitioner/accused to pay an amount of Rs.15 lakhs as interim compensation under Section 143A of the Negotiable Instruments Act, 1881 (for short, 'the Act') to the respondent/complainant within a period of two months from the date of the said order.
3. Learned counsel appearing for the petitioner submits that the cheque



in question was though signed by the petitioner, however, the petitioner was not having any liability towards the respondent. She submits that the loan agreement was also executed between the husband of the petitioner and the respondent. The said loan agreement does not bear the signatures of the present petitioner.

4. She further submits that while passing the impugned order, learned Metropolitan Magistrate did not even *prima facie* considered the merits of the case nor the defence of the petitioner/accused was *prima facie* evaluated. She submits that the Hon'ble Supreme Court in ***Rakesh Ranjan Srivastava Vs. The State of Jharkhand &Anr., (2024) 3 SCR 438*** has laid down that when the court deals with an application under Section 143A of the Act, it will have to *prima facie* evaluate the merits of the case made out by the complainant as well as merits of defence pleaded by the accused in reply to the application under sub-section (1) of Section 143A of the Act. The relevant part of the said decision reads as under:

“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.

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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.”

(emphasis supplied)

5. The reasoning given by the learned Metropolitan Magistrate in the impugned order dated 25.09.2019 reads as under:

“Section 143A is enabling provision and the only two pre-requisites are that the notice have been framed and the accused had pleaded not guilty and claimed trial. The defence of the accused is not to be considered at this stage and the legislature has also protected the rights of the accused, since on acquittal the interim compensation is to be returned along with interest at the prevailing rate fixed by the Reserve Bank of India.”

6. A perusal of the above quoted reasoning if tested on the touchstone of the law laid down in ***Rakesh Ranjan Srivastava (supra)*** shows that the learned Metropolitan Magistrate has not *prima facie* evaluated the merits of the case of the complainant nor the defence of the petitioner/accused has been considered. Further, there is neither any application of mind to the quantum of interim compensation to be granted nor the factors like, nature of the transaction, the relationship, if any, between the accused and the complainant, financial distress etc. have been considered.



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7. Somewhat similar is the position in case of the impugned order dated 28.10.2020 passed by the learned Principal District & Sessions Judge, South-East, District Court Saket, New Delhi. The revisional court has not even *prima facie* evaluated the merits of the case set up in the complaint as well as defence of the petitioner/accused. The factors to be borne in mind for deciding the quantum of interim compensation have also not been adverted to.

8. In view of the above discussion, I am of the opinion that the present petition deserves to be allowed. Accordingly, the impugned order dated 28.10.2020 passed by the learned Principal District & Sessions Judge, South-East, District Court Saket, New Delhi, as well as, the order dated 25.09.2019 passed by the learned Metropolitan Magistrate, are set aside and the matter is remanded back to the learned Metropolitan Magistrate for deciding the application of the complainant/respondent under Section 143A of the Act afresh, keeping in mind the law down in ***Rakesh Ranjan Srivastava*** (supra).

9. The parties are directed to appear before the learned trial court on the date already fixed i.e. 05.02.2025.

10. The petition stands disposed of.

VIKAS MAHAJAN, J

DECEMBER 9, 2024

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