



2024:DHC:3011



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

Reserved on: 19.02.2024
Pronounced on: 16.04.2024

- + **CRL.REV.P. 285/2021 & CRL.M.A. 14618/2021**
- + **CRL.REV.P. 525/2022 & CRL.M.A. 16028/2022, CRL.M.A. 16029/2022**
- + **CRL.REV.P. 527/2022 & CRL.M.A. 16058/2022, CRL.M.A. 16059/2022**
- + **CRL.REV.P. 528/2022 & CRL.M.A. 16065/2022, CRL.M.A. 16066/2022**
- + **CRL.REV.P. 532/2022 & CRL.M.A. 16220/2022, CRL.M.A. 16221/2022**

PRAKASH VASANT AJGAONKAR & ORS. Petitioners
Through: **Mr.Aman Vachher, Mr.Dhiraj,**
Mr.Ashutosh Dubey, Ms.Abhiti
Vachher and Mr.Akshat
Vachher, Advs.

versus

THE STATE NCT OF DELHI & ANR. Respondents
Through: **Ms.Priyanka Dalal, APP**
Mr.Vikas Dutta and Mr.Shiva
Sambyal, Advs. for R-2

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. The above captioned first petition being Crl.Rev.P. No.285/2021 has been filed under Section 397 read with 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the Order dated 24.07.2021 (hereinafter referred to



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as the ‘Impugned Order’) passed by the learned Metropolitan Magistrate – 05, (NI Act), South-District, Delhi (hereinafter referred to as the ‘Trial Court’) in CT Case No.5061/2020, titled as **Addon Realty Private Limited v. Shivalik Ventures Private Limited And Ors.**, allowing the application filed by the respondent no.2 / complainant under Section 143A of the Negotiable Instruments Act, 1881 (in short, ‘NI Act’) and directing the petitioners to pay to the respondents no.2 *interim* compensation at 12% of the cheque amount, that is, Rs.2,71,52,880/- within 60 days of the passing of the order.

2. The above captioned remaining petition(s) being Crl. Rev. P No(s). 525/2022, 527/2022, 528/2022, and 532/2022 have been filed by the petitioners challenging the order(s) dated 11.03.2022 (hereinafter referred to as the ‘Impugned Order’) passed by the Metropolitan Magistrate-01, South District, NI Act, Saket Courts in Complaint Case being CC Nos. 2432/2020, 27675/2019, 4311/2020, and 45926/2019, respectively, allowing the application filed by the respondent no. 2/complainant in each of these petitions under Section 143A of the NI Act and directing the petitioners to pay to the respondent no. 2 herein 10% of the cheque amount involved in each of the Complaint(s) as *interim* compensation, that is, Rs.1,60,00,000/-; Rs.80,00,000/-; Rs.1,60,00,000/-; Rs.80,00,000/-; respectively.

3. As common questions on the application of Section 143A of the NI Act are raised in all these petitions, and they are between the same parties, and common submissions were



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advanced by the parties, they are being disposed of by this common judgment.

Factual Background

4. The respondent no.2/complainant has filed the above complaints under Section 138 of the NI Act *inter alia* against the petitioners herein, alleging that:-

- (a) M/s Shivalik Ventures Private Limited (in short, 'M/s SVPL'), is a company incorporated under the Companies Act, 1956 (in short, 'Companies Act'), and claims to be working as a Service Provider in the field of slum rehabilitation. The petitioner nos.1 to 3 herein are the Directors of M/s SVPL and are responsible for the day-to-day affairs and management of M/s SVPL, while petitioner nos.4 and 5 are the Authorised Signatories of M/s SVPL;
- (b) M/s SVPL had entered into two agreements, dated 16.07.2009 and 12.08.2009, with respondent no.2 / Complainant, whereunder, the respondent no.2 was to purchase built-up commercial and residential area for a total consideration of a sum of Rs.750 Crores. An advance amount of Rs.187.50 Crores was also paid by the respondent no.2 to M/s SVPL in terms of the agreements;
- (c) Due to certain disputes that arose between the parties on account of the non-fulfilment of the contractual



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obligations, the respondent no.2 filed two commercial suits, being Commercial Suit No.1122 of 2015 and Suit No.358 of 2016, both titled as **Addon Realty Pvt. Ltd. v. Shivalik Ventures Pvt. Ltd. & Anr.**, before the High Court of Judicature at Bombay, *inter alia* seeking specific performance of the two agreements entered into between the parties, and restraining the petitioners herein from creating any third party rights in the subject property.

- (d) The said two suits were disposed of in view of the two Consent Terms dated 02.05.2017, entered into *inter alia* between M/s SVPL and the respondent no.2. In terms of the Consent Terms, M/s SVPL agreed to return back the money invested with them by the respondent no.2, that is, Rs.187.50 Crores, to the respondent no.2 on an agreed repayment scheme, and further gave 300 flats as security to the respondent no.2. The said flats were to be released back to the petitioners / M/s SVPL on the basis of payment made by them to the respondent no.2, on pro-rata basis.
- (e) M/s SVPL made payments to the tune of Rs.94 Crores, however, due to the financial constraints, fell short on the schedule for repayment to the respondent no.2.



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- (f) Being aggrieved of the above act of M/s SVPL, the respondent no.2 filed contempt petition(s), being Contempt Petition No.55 of 2018 and Commercial Contempt Petition (L) No.21 of 2018, both titled as ***Addon Realty Pvt. Ltd. v. Shivalik Ventures Pvt. Ltd. & Ors.*** These contempt petitions were, then, disposed of vide order dated 17.07.2018, *inter alia* revising the repayment schedule for the remaining balance of Rs.93.50 Crores to be paid by M/s SVPL.
- (g) Thereafter, M/s SVPL could pay only a sum of Rs.17 Crores, which again constrained the respondent no.2 to file two Execution Petitions before the High Court of Judicature at Bombay, being Commercial Execution Application No.184 of 2019 and 185 of 2019, both titled as ***Addon Realty Pvt. Ltd. v. Shivalik Ventures Pvt. Ltd. & Ors.*** The respondent no.2 also filed two fresh Contempt Petitions, being Contempt Petition 15 of 2019 and 17 of 2019 before the High Court of Judicature at Bombay.
- (h) During the pendency of the above contempt petitions, the respondent no.2 had also released 133 flats in view of the payment that had already been returned to them.
- (i) The parties, including M/s SVPL and the petitioners herein, and the respondent no.2, entered into fresh Consent Terms dated 23.05.2019, which *inter alia*



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once again amended the schedule for repayment. M/s SVPL also issued post dated cheques in terms of the payment schedule.

- (j) M/s SVPL also paid a sum of Rs.5.25 Crores in terms of the Consent Terms, making a total payment made to the respondent no.2 as Rs.116.25 Crores, and, in view of payments so made, the respondent no.2 also released 33 more flats in favour of the petitioners.
- (k) M/s SVPL could not adhere to the new repayment scheme as well, which led to the respondent no.2 to file contempt petitions, being Contempt Petition No. 136 of 2019 and 137 of 2019 before the High Court of Judicature at Bombay.
- (l) Thereafter, the company, that is, M/s SVPL paid a further sum of Rs.4 crores to the respondent no.2, thereby making a total payment of Rs.120.25 crores, leaving a sum of Rs.87.25 crores in balance and interest thereon. A further sum of Rs.2.40 crores was paid by the company, leaving a balance of Rs.84.85 crores and interest thereon.
- (m) By an order dated 04.11.2019, the High Court of Judicature at Bombay also recorded the statement of the Advocate of M/s SVPL that the said company shall not be creating any third party rights in Plot No.57, bearing CTS Nos 30 (pt) of Village Bandra East, Taluka Andheri, Mumbai Suburban District,



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Golibar Road, Khar (East), Mumbai. The petitioners claim that the said plot is valued at approximately Rs.110 crores.

- (n) The High Court of Judicature at Bombay, vide its order dated 08.01.2020 passed in Commercial Execution Application Nos.184 of 2019 and 185 of 2019, further enjoined M/s SVPL from selling the flats in its project.
- (o) In the meantime, the respondent no.2 filed the subject complaints under Section 138 of the NI Act before the learned Metropolitan Magistrate, complaining therein that the cheques that were issued by the company to the respondent no.2 in terms of the Consent Term dated 23.05.2019, on presentation, were returned dishonored with the remarks "*Fund Insufficient*" vide Returning Memo dated 06.05.2020.
- (p) In the complaints, it was further alleged that the respondent no.2 had issued a legal notice, seeking payment of the amount of the said cheques, however, in spite of the receipt of the said notice, the company or the petitioners had not paid the said amount.
- (q) The petitioners herein were arrayed as accused in the said complaints, alleging that the petitioner nos.1 to 3 herein are the Directors of the company and are responsible for day to day affairs and management of the said company, while the petitioner nos.4 and 5 are



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its authorized signatories and the cheques have been signed by them.

- (r) In the meantime, M/s SVPL filed an application before the Supreme Court, being I.A. No.48514/2021 in I.A. No.80216/2020 in Civil Appeal No.10856/2016, titled as ***Bhupender Singh v. Unitech Limited***, seeking modification of the order dated 24.03.2021, passed by the Supreme Court in the above Civil Appeal so as to exclude the application of the said order to the functioning of M/s SVPL.
- (s) The learned Metropolitan Magistrate, in view of the pendency of the application of M/s SVPL before the Supreme Court, vide its order dated 17.04.2021 (in CC No.5061/2020) and order dated 25.01.2022 (in CC No. 2432/2020, 27675/2019, 4311/2020, and 45926/2019), directed that the complaint be proceeded only against the petitioners herein.
- (t) The respondent no. 2 filed applications under Section 143A of the NI Act in the above complaints. As noted herein above, by the Impugned Orders dated 24.07.2021 and 11.03.2022, the learned Metropolitan Magistrate disposed of the said applications directing the petitioners to make the payment of 12% / 10% of the cheque amount as *interim* compensation within a period of 60 days of the said orders.



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(u) Aggrieved of the Impugned Orders, the petitioners filed the present petitions.

SUBMISSION OF THE PETITIONERS

5. The learned counsel for the petitioners submits that the provisions of Section 143A of the NI Act is not '*mandatory*' in nature. It vests a discretion with the learned Trial Court to direct deposit of the *interim* compensation keeping in view the facts of each case.

6. He submits that in the present case, the learned Metropolitan Magistrate has failed to appreciate that the respondent no.2 already had a sufficient security of 120 flats, value of each flat being Rs.62.50 lakhs, which if totalled is much more than the total outstanding amount of Rs.67.25 crores.

7. He submits that a statement has already been made on behalf of the company before the High Court of Judicature at Bombay, that it will not alienate or create any third party rights in the flats mentioned hereinabove. Placing reliance on the judgment of this Court in ***JSB Cargo and Freight Forwarder Pvt. Ltd. and Others v. State and Another***, 2021 SCC OnLine Del 5425, he submits that, therefore, this was not a fit case for awarding *interim* compensation under Section 143A of the NI Act.

8. He further submits that, in any case, the order under Section 143A of the NI Act can be passed only against the drawer of the cheques.

9. He submits that the learned Trial Court, by its Impugned Orders has directed to proceed with the Complaint Case only against the



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petitioners herein, in absence of the company, which is the prime accused. Placing reliance on Section 223 of the Cr.P.C., he submits that the trial only against some of the co-accused cannot continue and the proceedings against the petitioners should have also been stayed.

SUBMISSION OF THE RESPONDENT NO.2

10. On the other hand, the learned counsel for the respondent no.2 submits that keeping in view the objects and reasons for insertion of Section 143A of the NI Act, the said provision should, in fact, be treated as “*mandatory*”. In support, he places reliance on the following judgments:

- (i) ***Bachahan Devi v. Nagar Nigam, Gorakhpur***, (2008) 12 SCC 372;
- (ii) ***Rajesh Soni v. Mukesh Verma***, 2021 SCC OnLine Chh. 1761;
- (iii) ***Surinder Singh Deswal v. Virender Gandhi***, (2019) 11 SCC 341; and,
- (iv) ***L.G.R. Enterprises v. Anbazhagan***, 2019 SCC OnLine Mad 38991.

11. He further submits that the facts of the present case would show that the petitioners have been abusing the process of the Court inasmuch as they have been intentionally not complying with the Consent Terms and not paying the amount as agreed.

12. He submits that the respondent no.2 is and has always been willing and ready to release all the flats that have been held as security by them in terms of the Consent Terms and in accordance therewith.



13. As far as the stay of proceedings is concerned, he submits that there is no order passed by the Supreme Court restraining the continuation as against the petitioners herein.

ANALYSIS AND FINDINGS

14. I have considered the submissions made by the learned counsels for the parties.

15. Section 143A of the NI Act is reproduced herein below:

“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 subsection (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 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.



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(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."*

(Emphasis supplied)

16. Recently, the Supreme Court in ***Rakesh Ranjan Shrivastava v. State of Jharkhand & Anr.***, 2024 SCC OnLine SC 309, considering the objects and reasons for the insertion of the said provision, has held as under:

"MANDATORY OR DIRECTORY

10. There is no doubt that the word "may" ordinarily does not mean "must". Ordinarily, "may" will not be construed as "shall". But this is not an inflexible rule. The use of the word "may" in certain legislations can be construed as "shall", and the word "shall" can be construed as "may". It all depends on the nature of the power conferred by the relevant provision of the statute and the effect of the exercise of the power. The legislative intent also plays a role in the interpretation of such provisions. Even the context in which the word "may" has been used is also relevant.

11. The power under sub-section (1) of Section 143A is to direct the payment of interim compensation in a summary trial or a summons case upon the recording of the plea of the accused that he was not guilty and, in other cases, upon framing of charge. As the maximum punishment under Section 138 of the N.I. Act is of imprisonment up to 2 years, in view of clause (w) read with clause (x) of Section 2 of the Code of Criminal Procedure,



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1973 (for short, 'the Cr.PC'), the cases under Section 138 of the N.I. Act are triable as summons cases. However, sub-section (1) of Section 143 provides that notwithstanding anything contained in the Cr.PC, the learned Magistrate shall try the complaint by adopting a summary procedure under Sections 262 to 265 of the Cr.PC. However, when at the commencement of the trial or during the course of a summary trial, it appears to the Court that a sentence of imprisonment for a term exceeding one year may have to be passed or for any other reason it is undesirable to try the case summarily, the case shall be tried in the manner provided by the Cr.PC. Therefore, the complaint under Section 138 becomes a summons case in such a contingency. We may note here that under Section 259 of the Cr.PC, subject to what is provided in the said Section, the learned Magistrate has the discretion to convert a summons case into a warrant case. Only in a warrant case, there is a question of framing charge. Therefore, clause (b) of sub-section (1) of Section 143A will apply only when the case is being tried as a warrant case. In the case of a summary or summons trial, the power under sub-section (1) of Section 143A can be exercised after the plea of the accused is recorded.

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13. *Non-payment of interim compensation by the accused does not take away his right to defend the prosecution. The interim compensation amount can be recovered from him treating it as fine. The interim compensation amount can be recovered by the Trial Court by issuing a warrant for attachment and sale of the movable property of the accused. There is also a power vested with the Court to issue a warrant to the Collector of the District authorising him to realise the interim compensation amount as arrears of land revenue from the movable or*



immovable property, or both, belonging to the accused. For recovery of the interim compensation, the immovable or movable property of the accused can be sold by the Collector. Thus, non-payment of interim compensation fixed under Section 143A has drastic consequences. To recover the same, the accused may be deprived of his immovable and movable property. If acquitted, he may get back the money along with the interest as provided in sub-section (4) of Section 143A from the complainant. But, if his movable or immovable property has been sold for recovery of interim compensation, even if he is acquitted, he will not get back his property. Though, the N.I. Act does not prescribe any mode of recovery of the compensation amount from the complainant together with interest as provided in sub-section (4) of Section 143A, as subsection (4) provides for refund of interim compensation by the complainant to the accused and as sub-section (5) provides for mode of recovery of the interim compensation, obviously for recovery of interim compensation from the complainant, the mode of recovery will be as provided in Section 421 of the CrPC. It may be a long-drawn process involved for the recovery of the amount from the complainant. If the complainant has no assets, the recovery will be impossible.

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16. *In the case of Section 143A, the power can be exercised even before the accused is held guilty. Sub-section (1) of Section 143A provides for passing a drastic order for payment of interim compensation against the accused in a complaint under Section 138, even before any adjudication is made on the guilt of the accused. The power can be exercised at the threshold even before the evidence is recorded. If the word 'may' is interpreted as 'shall', it will have drastic consequences as in every complaint under Section 138, the accused will have to pay*



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interim compensation up to 20 per cent of the cheque amount. Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice. If such an interpretation is made, the provision may expose itself to the vice of manifest arbitrariness. The provision can be held to be violative of Article 14 of the Constitution. In a sense, subsection (1) of Section 143A provides for penalising an accused even before his guilt is established. Considering the drastic consequences of exercising the power under Section 143A and that also before the finding of the guilt is recorded in the trial, the word "may" used in the provision cannot be construed as "shall". The provision will have to be held as a directory and not mandatory. Hence, we have no manner of doubt that the word "may" used in Section 143A, cannot be construed or interpreted as "shall". Therefore, the power under sub-section (1) of Section 143A is discretionary.

17. Even sub-section (1) of Section 148 uses the word "may". In the case of Surinder Singh Deswal v. Virender Gandhi, 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 Deswa, 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



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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."

(Emphasis added)

18. 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

19. 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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22. 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



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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.”

17. A reading of the above would show that the Supreme Court has already clarified that the exercise of power under Section 143A(1) of the NI Act is “discretionary”. It has also laid down the broad parameters for exercising the discretion under the said provision.

18. In the present case, the Impugned Order dated 24.07.2021 reflects that the learned Trial Court was of the opinion that Section 143A of the NI Act, is ‘mandatory’ in nature and interim compensation has to be granted to the complainant in terms of the same as a rule and not as an exception. This view of the learned Trial Court cannot be upheld in view of the judgment of the Supreme Court in **Rakesh Ranjan Shrivastava** (supra).

19. As far as the Impugned Order dated 11.03.2022 is concerned, though the learned Trial Court took note of the judgment of this Court in **JSB Cargo and Freight Forwarder Pvt. Ltd.** (supra), which had held that the provision of Section 143A of the NI Act was ‘directory’ and not ‘mandatory’ in nature, still it proceeded to direct the petitioners to pay 10% of the cheque amount to the respondent no. 2,



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observing that the petitioners have not specifically disputed the liability to pay the cheque amount.

20. In ***Rakesh Ranjan Shrivastava*** (supra), the Supreme Court clarified that the presumption under Section 139 of the NI Act, by itself, is no ground to direct the payment of *interim* compensation; presumption being rebuttable, the question of applying the same will arise only at the trial. It was further held that the financial distress of the accused shall also be a factor that should be taken into consideration by the Trial Courts while considering an application under Section 143A of the NI Act.

21. The Impugned Orders do not reflect any consideration of the learned Trial Court to the plea of the petitioners that the respondent no.2 also holds security in form of the flats and in form of a statement made in the course of the proceedings before the High Court of Judicature at Bombay that the said company will not be disposing of the flats or creating any third-party rights in the plot of land which is the subject property. This was an important consideration which should have been taken into account by the learned Trial Court while deciding on the application filed by the respondent no.2 under Section 143A of the NI Act.

22. What is also relevant is that Section 143A of the NI Act empowers the Court to pass a direction for payment of *interim* compensation only against the “*drawer of the cheque*”. In the present case, admittedly, the drawer of the cheques is the company and not the petitioners. The petitioners have been arrayed as accused invoking Section 141 of the NI Act.



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23. Section 141 of the NI Act contains a deeming provision wherein, though offence under Section 138 of the NI Act is committed by a company, the persons mentioned in the said Section are deemed to be guilty of that offence and are liable to be proceeded against and punished accordingly. Section 141 of the NI Act is quoted herein below:

“141. Offences by companies.—(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of



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the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, —

- (a) “company” means any body corporate and includes a firm or other association of individuals; and*
- (b) “director”, in relation to a firm, means a partner in the firm.”*

24. The above provision is not intended to make such persons “drawer” of the cheque. In **Anil Hada v. Indian Acrylic Ltd.**, (2000) 1 SCC 1, the Supreme Court clarified that the offender in Section 138 of the NI Act is the drawer of the cheque, and that such drawer alone would have been the offender thereunder if the Act did not contain other provisions; it is because of the Section 141 of the NI Act that penal liability under Section 138 of the NI Act is cast on other persons connected with the company. In **N. Harihara Krishna v. J. Thomans**, (2018) 13 SCC 663, the Supreme Court clarified that person signing a cheque on behalf of the company does not become ‘drawer of the cheque’.

25. It is to be noted that Section 143A of the NI Act, though inserted post the judgment of the Supreme Court in **Anil Hada** (supra) and **N. Harihara Krishana** (supra), still makes only the “drawer of the cheque”, and not the other persons, who may be deemed to have committed the offence under Section 138 of the NI Act due to Section 141 of the NI Act, liable to pay the *interim* compensation. It is not for this Court to read into Section 143A of the NI Act, the deeming



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provision of Section 141 of the NI Act. If that was the intent of the Legislature, Section 143A of the NI Act would have expressly stipulated the same.

26. A learned Single Judge of the High Court of Judicature at Bombay in *Lyka Labs Ltd. & Anr. v. State of Maharashtra & Anr*, 2023 SCC OnLine Bom 560, rightly so, also has held that the power to direct *interim* compensation cannot be traced under Section 141 of the NI Act in addition to Section 143A of the NI Act.

27. The Impugned Order dated 11.03.2022, however, relies upon Section 141 of the NI Act to hold that a direction to pay the *interim* compensation under Section 143A of the NI Act can be made even against persons who, though are not the '*drawer of the cheque*', are still deemed to have committed the offence under Section 138 of the NI Act. This view of the learned Trial Court cannot be sustained.

28. In view of the above discussion, the Impugned Orders, having been premised on incorrect appreciation of law and having ignored vital and relevant considerations for passing an order under Section 143A of the Act, cannot be sustained.

29. The petitions are accordingly allowed. The Impugned Orders dated 24.07.2021 and 11.03.2022 passed by the learned Trial Court are hereby set aside. There shall be no order as to costs.

30. Pending application(s), if any, are also disposed of being infructuous.

NAVIN CHAWLA, J

APRIL 16, 2024/Arya/SS

[Click here to check corrigendum, if any](#)