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

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Date of Decision: 29th January, 2024

+ CRL.M.C. 356/2024 & CRL.M.A. 1451/2024 (stay)

GEETA MONGA

..... Petitioner

Through: Mr. Lalit Bhardwaj and Mr. A.K.
Dhupar, Advocates

versus

GNG STOCK HOLDING PVT. LTD THROUGH ITS
MANAGING DIRECTOR SH. SUMIT GUPTA RespondentThrough: Mr. Shivender Kumar Sharma,
Advocate**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This petition has been filed on behalf of the Petitioner assailing impugned orders dated 18.08.2023 and 11.12.2023 passed by the learned Metropolitan Magistrate and learned Additional Sessions Judge, respectively in respect of interim compensation of Rs.3,00,000/- awarded in favour of the Respondent herein being 20% of the amount under the cheque, which was dishonoured on presentation by the Respondent. Respondent is the Complainant and Petitioner herein is the Accused before the learned Trial Court and the parties are hereinafter referred to by their litigating status before this Court.

2. Factual matrix to the extent necessary is that a complaint was filed under Sections 138 and 142 of the Negotiable Instruments Act, 1881



(‘NI Act’) through Sh. Sumit Gupta, Managing Director, GNG Stock Holding Pvt. Ltd./Respondent herein against the Petitioner Smt. Geeta Monga, in respect of cheque No. 142144 dated 11.03.2020 for Rs.15,00,000/-, issued by the Petitioner in favour of the Respondent and which on presentation with the bank on 12.03.2020 was dishonoured vide memo dated 13.03.2020 with remarks ‘Exceeds Arrangement’. Petitioner and her husband were informed of the dishonour of the cheque, who kept on assuring that the outstanding debt will be cleared and upon their request, the cheque was again presented on 12.04.2020 but was dishonoured vide memo dated 15.04.2020 with remarks ‘Funds Insufficient’. Legal notice dated 17.06.2020 was issued by the Respondent calling upon the Petitioner to pay the cheque amount but to no avail and finally, the complaint was filed by the Respondent.

3. As per record, cognizance of the offence was taken under Section 138 of NI Act on 28.03.2022 and notice under Section 251 Cr.P.C. was framed on 11.01.2023. Application filed by the Petitioner seeking discharge was dismissed on 20.03.2023, alluding to the decision of the Supreme Court in ***Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881; Suo Moto Writ Petition Crl. No. 0212020 dated 16.04.2021.***

4. Respondent filed an application before the learned M.M. seeking payment of interim compensation by the Petitioner to the tune of 20% of the cheque amount, on the ground that notice under Section 251 Cr.P.C. has been framed against her and Petitioner has admitted her signatures on the cheque in question and therefore, presumption under Section 139 of the NI Act arises in favour of the Respondent. It was also urged that Petitioner was adopting delaying tactics to prolong the conclusion of the trial, which was



evident from the fact that on multiple occasions, exemption applications were filed by the Petitioner and on one date, adjournment cost of Rs.2,000/- was also imposed by the Court. As per the Respondent, such a conduct warranted exercise of discretion under Section 143A of the NI Act in favour of the Respondent to give some respite to the Respondent Company, which was suffering financial losses for the last several years. By order dated 18.08.2023, the learned M.M., after hearing the parties allowed the application and directed the Petitioner to make payment of 20% of the cheque amount i.e. Rs.3,00,000/- as interim compensation within 60 days. This order was carried in a revision petition being CR No. 626/2023 by the Petitioner, however, the petition was dismissed upholding the order of the learned M.M. Both the orders are assailed before this Court.

5. Arguing on behalf of the Petitioner, learned counsel submits that the impugned orders suffer from an error, inasmuch as the learned Trial Court while holding in paragraph 12 of the order dated 18.08.2023 that the only factor which could come to the rescue of the accused while deciding the present application would be if she could show that she has not been dragging/delaying the proceedings, takes a view that the Petitioner has delayed the proceedings, which is clearly contrary to the Trial Court record as reflected from the various order sheets. It is urged that whenever adjournments were sought by the Petitioner, they were allowed by the Trial Court and therefore, today it cannot be said that the adjournments were without any basis, for the purpose of awarding interim compensation against the Petitioner. Impugned orders also overlook that Petitioner has raised a plausible defence that the cheque was never issued in favour of the Respondent by the Petitioner and there was no legally enforceable or



recoverable debt towards the Respondent, justifying the award of interim compensation. The impugned orders are against the spirit of Section 143A of NI Act, which stipulates that the interim compensation shall not exceed 20% of the cheque amount but does not lay down that in all cases 20% must be awarded. There is no reasoning in the impugned orders indicating why the Trial Court awarded the maximum limit and not any lesser percentage, while exercising the discretion available to it.

6. *Per contra*, learned counsel for the Respondent argues that Trial Court had framed a notice under Section 251 Cr.P.C. on a *prima facie* case being established in favour of the Respondent. Petitioner has admitted her signatures on the cheque in question and presumption under Section 139 of NI Act, therefore, arose in favour of the Respondent. Petitioner was adopting all tactics to ensure that the trial is not concluded expeditiously and on several occasions exemption applications were filed. On 20.03.2023, the Trial Court had imposed an adjournment cost of Rs.2,000/- looking at the conduct of the Petitioner and therefore, grant of interim compensation was justified so that it could give some respite to the Respondent. It is not open to the Petitioner to plead that she was not responsible for several adjournments as this is a matter of record and order sheets speak for themselves. Preliminary objection on the maintainability of this petition is also raised on the ground that proceedings under Section 482 Cr.P.C. cannot be used as a garb to file a second revision, which is statutorily prohibited by Section 397(3) Cr.P.C. and in this context, reliance is placed on the judgments of this Court in ***Kapoor Chand Gupta v. State and Others, 2023 SCC OnLine Del 3373; Tathagat Exports Pvt. Ltd. and Others v. PEC***



Limited, 2020 SCC OnLine Del 405 and Maa Tarini Industries Ltd. and Another v. PEC Limited, 2020 SCC OnLine Del 406.

7. I have heard the learned counsels for the parties and examined their contentions.

8. Respondent has raised a preliminary objection on the maintainability of this petition on the ground that having availed off the remedy of filing the revision petition before the learned Sessions Judge, Petitioner cannot be permitted to seek a second revision in the garb of the present petition under Section 482 Cr.P.C. In ***Rajan Kumar Manchanda v. State of Karnataka, 1990 Supp SCC 132***, the Supreme Court observed that the bar under Section 397(3) Cr.P.C. cannot be overcome merely by stating that petition was filed invoking inherent powers of the High Court under Section 482 Cr.P.C. In ***Surender Kumar Jain v. State & Anr., 2012 SCC OnLine Del 571***, this Court observed that the High Court does enjoy inherent powers under Section 482 Cr.P.C. but that power has to be exercised sparingly and with great caution, particularly, when the person approaching the High Court has already availed remedy of first revision in the Sessions Court. Reliance was placed by this Court on the judgments of the Supreme Court in ***Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551*** and ***State of Orissa v. Ram Chander Agarwala and Others, (1979) 2 SCC 305***. In ***Rajinder Prasad v. Bashir and Others, (2001) 8 SCC 522***, the Supreme Court held as follows:-

“7. though the power of the High Court under Section 482 of the Code is very wide, yet the same must be exercised sparingly and cautiously, particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of



the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held: (SCC p. 248, para 10)

“10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person — accused/complainant — cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code.”

9. In ***Kailash Verma v. Punjab State Civil Supplies Corporation and Another***, 2005 SCC OnLine SC 120, the Supreme Court observed as under:-

“5. It may also be noticed that this Court in Rajathi v. C. Ganesan [(1999) 6 SCC 326 : 1999 SCC (Cri) 1118] said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.”

10. From a reading of the aforesaid judgments, there can be no doubt that power under Section 482 Cr.P.C. has to be sparingly exercised and should not be used as a substitute for a second revision *albeit* there can be no doubt that when there is a serious miscarriage of justice or abuse of process of the Court or where mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction has not been exercised correctly by the Revisional Court, it can interfere as held by the Supreme Court in ***Kailash Verma (supra)***. Thus, the question is whether



Petitioner has made out an extraordinary case warranting interference by this Court exercising jurisdiction under Section 482 Cr.P.C.

11. Before proceeding further to examine the present case on its facts, it would be useful to allude to the legislative history of Section 143A of NI Act, which is reproduced hereunder for ready reference:-

“143A. Power to direct interim compensation.- (1) *Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), the Court trying cm 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 sub-section (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.

(5) The interim compensation payable under this section may be recovered as if it were a fine under Section 421 of the Criminal Procedure Code, 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.”

12. In this context, it would be profitable to refer to the judgment of the Madras High Court in ***V. Mahadevan Iyer v. P. Anbazhagan, 2019 SCC OnLine Mad 38927***, where the Court has taken note of the aims and object



of introducing the Negotiable Instruments (Amendment) Bill, 2017 to provide *inter alia* for inserting Section 143A, so as to enable a Court trying an offence under Section 138 of the NI Act to award interim compensation to the complainant, where the accused pleads not guilty to the accusation and claims trial. Relevant paragraphs are as follows:-

“3. Along with this amendment, Section 148 of the Negotiable Instruments Act was also brought into force which enabled the Appellate Court to insist for the deposit of 20% of the fine or compensation amount, awarded by the Trial Court against the accused person. The scope of this provision came up for consideration before the Hon'ble Supreme Court in Surinder Singh Deswal @ Col. S.S. Deswal v. Virender Gandhi in Criminal Appeal Nos. 917-944 of 2019. While considering the scope of the amendment, namely the Amendment Act 20 of 2018, the Hon'ble Supreme Court has held as follows:

7. We have heard the learned counsel for the respective parties at length.

7.1. The short question which is posed for consideration before this Court is, whether the first appellate Court is justified in directing the appellants-original accused who have been convicted for the offence under Section 138 of the N.I. Act to deposit 25% of the amount of compensation/fine imposed by the learned Trial Court, pending appeals challenging the order of conviction and sentence and while suspending the sentence under Section 389 of the Cr.P.C, considering Section 148 of the N.I. Act as amended?

7.2. While considering the aforesaid issue/question, the statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, as amended by way of Amendment Act No. 20/2018 and Section 148 of the N.I. Act as amended, are required to be referred to and considered, which read as under:

“The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to



spend considerable time and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following namely:-

(i) to insert a new section 143A in the said Act to provide that the Court trying an offence under Section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court.

4. The Bill seeks to achieve the above objectives

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4. The effect of Section 143A of the Negotiable Instruments Act regarding its applicability to the pending cases, need not require a very detailed discussion and this Court can safely adopt the very same reasoning given by the Hon'ble Supreme Court in the above judgment. The amendment through which Section 143A was brought into force will be applicable even to pending proceedings. If such a purposive interpretation is not given to this provision, it will defeat the very purpose of amendment which was brought in as a beneficial piece of legislation for the complainant prosecuting a criminal complaint under Section 138 of the Negotiable Instrument Act.

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6. A reading of the above provision makes it clear that the Court trying an offence under Section 138 of the Negotiable Instruments Act “may” (emphasis supplied) order the drawer of the cheque to pay interim compensation to the complainant. The provision itself shows that the discretion is vested with the Trial Court to direct interim compensation to be paid by the complainant. It is not necessary that in all cases, the trial Court must necessarily direct the complainant to pay interim compensation and such a direction should be given only on a case to case basis, by taking into consideration the facts of each case. The legislature has intentionally not used the word “shall”, since it would have prevented the accused persons, even in genuine cases, from defending themselves without paying 20% as interim compensation amount to the complainant. This would have directly affected the fundamental right of an accused person to defend himself in a criminal case. This is the reason why the legislature had thoughtfully used the word “may” under Section 143A(1) of the Negotiable Instruments Act. Therefore, it is not possible to read the word “shall” into the word “may” which is used in the provision.

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8. Therefore, whenever the trial Court exercises its jurisdiction under Section 143A(1) of the Act, it shall record reasons as to why it directs the accused person (drawer of the cheque) to pay the interim compensation to the complainant. The reasons may be varied. For instance, the accused person would have absconded for a longtime and thereby would have protracted the proceedings or the accused person would have intentionally evaded service for a long time and only after repeated attempts, appears before the Court, or the enforceable debt or liability in a case, is borne out by overwhelming materials which the accused person could not on the face of it deny or where the accused person accepts the debt or liability partly or where the accused person does not cross examine the witnesses and keeps on dragging with the proceedings by filing one petition after another or the accused person absconds and by virtue of a non-bailable warrant he is secured and brought before the Court after a long time or he files a recall non-bailable warrant petition after a long time and the Court while considering his petition for recalling the non-bailable warrant can invoke Section 143A(1) of the Act. This list is not exhaustive and it is more illustrative as to the various circumstances under which the trial Court will be justified in exercising its jurisdiction under Section 143A(1) of the Act, by directing the accused person to pay the interim compensation of 20% to the complainant.

9. The other reason why the order of the trial Court under Section 143A(1) of the Act, should contain reasons, is because it will always be subjected to challenge before this Court. This Court while considering the petition will only look for the reasons given by the Court below while passing the order under Section 143A(1) of the Act. An order that is subjected to appeal or revision, should always be supported by reasons. A



discretionary order without reasons is, on the face of it, illegal and it will be set aside on that ground alone.”

13. The Statement of Objects and Reasons of the Amendment to Section 148 of NI Act as amended by way of Amendment Act No. 20 of 2018, reflects that the amendment was brought in the backdrop of several representations made to the Central Government by the public including trading community, relating to huge pendency of cheque dishonour cases. The delay tactics adopted by unscrupulous drawers of dishonoured cheques coupled with stay on proceedings was leading to injustice to the payee of a dishonoured cheque, who was spending considerable time and resources in Courts to realize the cheque amount. Such delays were also compromising the sanctity of cheque transactions. In order to address the issue of undue delays in final resolution of these cases and strengthen the credibility of cheque transactions, as well as with a view to allow some recompense to the complainant, if the trial was unduly prolonged, Section 143A was introduced providing for interim compensation to the complainant with a cap of 20% of the cheque amount. As held by the Madras High Court, discretion is vested with the Trial Court to direct interim compensation in favour of the complainant and in each case the discretion has to be exercised depending on its facts, as provision of Section 143A is directory and not mandatory. It was further observed that whenever the Trial Court exercises its jurisdiction under Section 143A(1) of NI Act, it shall record reasons as to why it is directing payment of the interim compensation to the complainant. The Court further observed that the reasons may be varied, for instance accused has absconded for a long time or evades service or the liability to pay is borne out by overwhelming material or where the accused keeps on



dragging the proceedings and this list of illustrations is only illustrative. The duty of the Court to give reasons in support of award of interim compensation is reiterated by the High Court of Karnataka in ***Vijaya v. Shekhapappa and Another, 2022 SCC OnLine Kar 515.***

14. From the impugned order dated 18.08.2023 passed by the learned Trial Court, it is discernable that one of the reasons that weighed with the Court to award interim compensation was the adjournments sought by the Petitioner from time to time leading to the conclusion of the trial being delayed. Therefore, in this context, it would be useful to allude to the observations of the Karnataka High Court in ***V. Krishnamurthy v. Diary Classic ICE Creams Pvt. Ltd., represented by Myluswamy, 2022 SCC OnLine Kar 1047***, as follows:-

“16. Application of mind and passing of a reasoned order of grant of compensation becomes necessary in the light of penal consequences that ensue an accused who failed to comply with the order granting 20% compensation as the complainant is given several remedies of recovery which result in the accused being taken into custody. Therefore, such orders which result in such penal consequences should be rendered giving cogent reasons which would demonstrate application of mind and such orders should be passed only after hearing the accused in the matter. In cases where the learned Magistrate is to exercise discretion, such discretion should become two fold.

First fold: Where an application is so made, the learned Magistrate has to apply his mind whether such an application is to be considered at all, as every application that is made need not result in grant of 20% interim compensation. Several factors need be gone into for considering such applications bearing in mind the reason and backdrop of the amendment. As quoted herein-above the bedrock of the amendment was to stall unscrupulous drawers of cheques drawing proceedings with frivolous applications, absenting themselves, seeking continuous adjournments causing delay and grave prejudice to the case of the complainants. In these factors, the learned Magistrate after analyzing the conduct of the accused should grant compensation which would vary from 1% to 20% after recording reasons.

In a given case if the accused is cooperating with the trial without seeking any unnecessary adjournments, not absenting himself or his counsel on



any date and cooperating with the conclusion of the trial in such cases, the learned Magistrate will have to apply his mind, exercise his discretion as to whether such applications should be entertained at all. Therefore, it forms two classes of litigants. One who would cooperate with the proceedings and the other who would not. In cases where there is complete co-operation from the hands of the accused in the trial, the Court may consider whether interim compensation has to be granted at all and in cases where there is no cooperation on the part of the accused, the Court may proceed to consider the application.

Second fold: The second fold of discretion in any given case, the compensation may vary from 1% to 20%. It is nowhere depicted in the statute that the amount of interim compensation should be of a particular figure. It can vary from 1% to 20%. It is this variance that gives the learned Magistrate power to exercise discretion to grant such compensation. The mandate of the statute is that it should not exceed 20%. In the cases where learned Magistrate proceeds to grant compensation, has to bear in mind the amount involved in the instrument, as certain transactions would run to several cores and the accused may have formidable defence against the complainant. In such cases, the learned Magistrate should exercise discretion in a cautious manner. Here again the conduct of the accused should be noticed. Therefore, the aforesaid two fold discretion is sine qua non for an order to be passed by the learned Magistrate while considering the application under Section 143A of the Act.

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19. There is no reason recorded by the learned Magistrate that the accused in the case at hand has adopted any of the factors as narrated hereinabove that would entail consideration of an application under Section 143A of the Act. With the reason that is rendered by the learned Magistrate as quoted (supra), the order granting 10% compensation, in the case at hand, becomes unsustainable. This Court is flooded with litigation with regard to grant of compensation under Section 143A of the Act by criminal courts. In several cases discretion is exercised for grant of compensation and in several other cases there are no reasons for exercise of such discretion. Therefore, it has become necessary to direct learned Magistrates that while considering applications filed under Section 143A of the Act, to notice at the outset, the conduct of the accused. If the accused has been unnecessarily evading the proceedings by seeking adjournments, consideration of the application would become imperative as the amendment itself is introduced to compensate such payees of delay tactics adopted by unscrupulous drawers of cheques.”



15. The aforesaid principle is reiterated by this Court in ***JSB Cargo and Freight Forwarder Pvt. Ltd. and Others v. State and Another, 2021 SCC OnLine Del 5425***, on which emphasis has been placed even by the Trial Court. From the conspectus of the aforesaid judgments, the points that emerge are: (a) provision of Section 143A of the NI Act is ‘directory’ and not ‘mandatory’; (b) while exercising discretion, one of the factors that the Trial Court can take into account for deciding the award of interim compensation is the non-cooperation and/or the delay caused by the accused impeding expeditious conclusion of the trial; and (c) the interim compensation can vary from 1% to 20%, but cannot exceed the maximum of 20% and the learned Magistrate is required to give reasons that have weighed for awarding the compensation. Indisputably, from the Statement of Objects and Reasons, it is evident that the purpose of inserting the said provision was an ameliorative measure to recompense the complainant, who has been unable to realize the debt due to him, due to dishonour of the cheque when presented and the delay in conclusion of the trial resulting from delay tactics adopted by unscrupulous drawers of the dishonoured cheques.

16. Coming to the facts of this case in light of the provisions of Section 143A of the NI Act and the judgments of various Courts and this Court, it needs to be examined whether the Trial Court has exercised its discretion rationally, keeping into account the facts of the case and the conduct of the Petitioner and if the exercise of discretion warrants any interference by this Court while exercising inherent powers under Section 482 Cr.P.C. Impugned order dated 18.08.2023 shows that the learned Magistrate has passed a reasoned order supporting the award of compensation in favour of



the Respondent. Trial Court observed that Petitioner has admitted her signatures on the cheque in question as well as the factum of issuance of the cheque from her account, leading to the mandatory presumptions under Sections 118A and 139 of the NI Act against her to the effect that the cheque was drawn by her for a consideration and the Respondent Company had received the same in discharge of a debt/liability, from the Petitioner. Trial Court rightly observed that the only factor which could then have come to the rescue of the Petitioner while deciding the application was that Petitioner was not responsible for dragging or delaying the proceedings. Having so stated, the Trial Court, on perusal of the order sheets, came to a finding that on multiple occasions exemption applications were filed on behalf of the Petitioner and on 20.03.2023, cost of Rs.2,000/- was also imposed, however, despite this, adjournment was sought on account of unavailability of the counsel. In this backdrop, the Trial Court directed the Petitioner to pay 20% of the cheque amount as interim compensation to provide some respite to the Respondent, who is awaiting the conclusion of a long drawn and expensive legal process.

17. The order was thereafter challenged in a revision petition by the Petitioner and the Revisional Court dismissed the revision petition on the ground that the order of the Trial Court warranted no interference, in the absence of any patent defect and/or error of jurisdiction or law, since the discretionary power had been validly exercised by the Trial Court. Relying on the judgment of the Supreme Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and Others*, (2015) 3 SCC 123 and of this Court in *Taron Mohan v. State and Another*, 2021 SCC OnLine Del 312, the Revisional Court was of the view that in the limited powers available to



a Revisional Court, it could only concern itself with the legality and propriety of the findings and could not substitute its own conclusion for that of the Trial Court.

18. During the course of hearing, counsel for the Petitioner has handed over the order sheets of the Trial Court, which reflect that on 11.11.2022, application was filed seeking exemption from personal appearance on medical grounds, which was allowed. Yet again, when the matter was fixed for complainant's evidence on 20.03.2023, exemption was sought on the ground that Petitioner was out of station. This application was allowed, subject to payment of cost of Rs.2,000/- and the matter was adjourned to 06.05.2023 for filing of reply to Respondent's application under Section 143A of the NI Act and its consideration. On 06.05.2023, when the application was to come up for consideration, counsel for the Petitioner again sought adjournment on the ground that he was expecting a hard copy of the application and did not check his e-mail ID or WhatsApp, which were, in fact, proof of the fact that copy of the application had been furnished. Hard copy of the application was furnished to the counsel for the Petitioner in Court and the matter was adjourned for reply and arguments. On 31.07.2023, again adjournment was sought by the Petitioner on the ground of unavailability of her counsel. Having perused the order sheets, this Court concurs with the finding of the Trial Court that dilatory tactics were being adopted by the Petitioner by seeking repeated adjournments. The order awarding 20% of compensation also merits no interference for other reasons also, as noted by the learned Trial Court and the Revisional Court that Petitioner admitted her signatures on the cheque as well as the factum of the cheque having been issued from her account *albeit* the defence was that



her business was primarily looked after by her husband and she had no knowledge of the cheque being issued or its dishonour, which would be a matter of trial.

19. As noticed in the earlier part of the judgment, power under Section 482 Cr.P.C. has to be exercised sparingly and not as a substitute for second revision. High Court can entertain a petition under Section 482 Cr.P.C. where there is serious miscarriage of justice and abuse of process of Court or an error of jurisdiction or violation of mandatory provisions of law, however, this provision cannot be invoked calling upon the High Court to substitute its findings for that of the Trial Court or the Revisional Court, particularly, on findings of fact rendered therein or to interfere where discretion has been exercised by the Trial Court on sound reasoning. In ***Pooja Walia v. State & Anr., 2011 SCC OnLine Del 2462***, this Court held that when same set of grievances are raised which are elaborately decided by the Revisional Court, in essence the petition under Section 482 Cr.P.C. becomes a second revision. Although Section 482 Cr.P.C. starts with a *non-obstante* clause and therefore, the High Court can exercise jurisdiction in a given case, even where revision has been dismissed by the Sessions Court, the exercise must be in a narrow window for securing the ends of justice. Ordinarily, in the absence of any such reason, Courts should discourage a party to file a petition under Section 482 Cr.P.C. camouflaged as a second revision petition. It is equally settled if the impugned orders record a finding of fact as concurrent findings, based on detailed appreciation of material before it, the High Court should be extremely slow in interfering. The object of Section 482 Cr.P.C. is to set right a patent defect or an error of jurisdiction of law which has to be a well-founded error in the given case.



2024:DHC:1231



[Ref. Manju Ram Kalita v. State of Assam, (2009) 13 SCC 330 and Malkeet Singh Gill v. State of Chhattisgarh, (2022) 8 SCC 204].

20. This Court sees no reason to exercise jurisdiction under Section 482 Cr.P.C. in light of the findings of the Trial Court and a concurrent finding by the Revisional Court and the petition is dismissed being devoid of merits. Pending application also stands disposed of.

JYOTI SINGH, J

JANUARY 29, 2024/kks/shivam