

12.11.2025
Ct. No.42

Sl. No.6
Mujahid

CRR 1495 of 2024

Mrs. Rekha Harsh
Vs.
Sanjiv Sharma

Mr. Ranjan Kali
Ms. Mitul Chakraborty
Ms. Payel Nath

...for the petitioner

Mr. Mayukh Mukherjee
Ms. Chumky Agarwal
Mr. Akshay Kumar Jain Kukhani

...for the respondent

1. Present petition has been filed challenging the order dated 1st December, 2023 in CS-41362/19 whereby learned Metropolitan Magistrate 19th Court, Calcutta in the proceeding under Section 138 of the Negotiable Instruments Act, allowed the application under Section 143A(1)(a) filed by the opposite party/complainant and directed the petitioner to make payment of 20% of the total cheque value in favour of the complainant.

2. Learned counsel for the petitioner submits that the present order is in teeth of the latest judgment of the Supreme Court in ***Rakesh Ranjan Shrivastava vs. The State of Jharkhand & Anr.*** in Criminal Appeal No.741 of 2024. Learned counsel for the petitioner submits that the impugned order is bereft of any reason and has been passed mechanically. Learned

counsel therefore prays that the impugned order may be set aside.

3. Per contra, learned counsel for the opposite party/complainant submits that the petition itself is liable to be dismissed on the ground of delay and misrepresentation of facts. Learned counsel submits that under Article 131, the revision petition has to be filed within 90 days from the date of the impugned order. Learned counsel submits that the impugned order is of 1st December, 2023 and the petition has been filed on 8th April, 2024. Learned counsel submits that even if the period consumed in getting the certified copy is deducted the petition is barred by limitation. Learned counsel submits that as per the certified copy itself, the application for certified copy was given only on 13th February, 2024 and the certified copy was delivered on 16th February, 2024. Learned counsel also submits that as per the revision petition, the learned advocate made a representation that the revisional intimation is in time. Learned counsel submits that therefore there is also misrepresentation of facts. In addition to it learned counsel submits that the petitioner has merely given the title of petition under Section 482 Cr.P.C., whereas in sum and substance it is a revision petition.

4. Learned counsel for the petitioner has refuted all the averments and submits that the present petition is under 482 Cr.P.C. and in which there is no limitation.

5. The Apex Court in *Rakesh Ranjan Shrivastava (supra)*

while dealing with an issue that what are the factors to be considered while exercising power under sub-section (1) of Section 143A of the NI Act, inter alia, held 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.

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.”

6. The Apex court further laid down the broad parameters for exercising the discretion under Section 143A which are reproduced herein below:-

“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.”

7. Perusal of the above order makes it clear that the order under Section 143A of the NI Act cannot be pass mechanically. Learned Metropolitan Magistrate is under bounden duty to exercise the discretion only after prima facie evaluating merits of the case and the defence pleaded by the accused. The court is also required to apply its mind to the quantum of interim compensation to be granted. The life line of any judicial order are the reasons given in the same. The reasons given in the judicial order are in fact for the benefit of not only the litigants but also for the appellate court to examine that whether the order in question has been passed after due application of mind. As far as the question as to the limitation and misrepresentation of facts is concerned, the court considers that since there is an apparent violation of the guidelines of Section 143A and the judgment of the Supreme Court as laid down in **Rakesh Ranjan Shrivastava (supra)** the same may be ignored for the substantive justice.

8. In view of the discussion made herein above, the impugned order dated 1st December, 2023 is set aside. Learned Metropolitan Magistrate 19th Court, Calcutta is directed to decide the application petition under Section 143A of the NI Act filed by the opposite party/complainant afresh positively within the period of two months from the date of communication of this order in accordance with the law after giving the parties an opportunity as being heard. No expression made herein shall tantamount to be an expression on the merits of the case.

Learned trial court shall decide the application independently of the order passed by this court.

9. Accordingly, CRR 1495 of 2024 stands disposed of.

10. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)