

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

CRR 22 of 2024

**Sri Dipankar Bose
Vs.
The State of West Bengal & Anr.**

For the petitioner	:	Mr. Kumar Shantanu Mr. Taiab Sahadat Mr. Rakesh Roy
For the State	:	Mr. Aditi Shankar Chakraborty, APP Mr. Abhijit Sarkar
For the opposite party no. 2	:	Ms. Esha Acharya
Heard on	:	13.08.2025
Judgment on	:	13.08.2025

PARTHA SARATHI SEN, J.:

1. The supplementary affidavit as filed today on behalf of the revisionist is taken on record.
2. The legality, propriety and correctness of the orders dated 01.12.2023 and 08.01.2024 as passed by the learned Chief

Judicial Magistrate, Alipurduar in CR Case no. 379 of 2022 are the subject matters of the instant revisional application.

3. By the impugned order dated 01.12.2023 learned trial court in a proceeding under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'said Act' in short) directed the accused to deposit 20 per cent of the cheque amount on the day of further cross-examination of PW 1 in default the defence of the accused would be struck off.
4. By the subsequent impugned order dated 08.01.2024 the trial court rejected the petition for time as filed by the accused on the day of cross-examination/further cross-examination of PW 1 and fixed a date for argument.
5. The accused felt aggrieved and thus preferred the instant revisional application.
6. At the time of hearing, Mr. Shantanu, learned Advocate appearing on behalf of the revisionist/accused at the very outset draws attention of this Court to page no. 14 of the instant revisional application being a copy of the order dated 30.08.2022 as passed by the learned trial court in the said proceeding that is in CR 379 of 2022. It is submitted on behalf of the revisionist that from the said order dated 30.08.2022 it

would reveal that the learned trial court while allowing the prayer for bail imposed a condition upon the accused/petitioner to pay 20 per cent of the cheque amount.

7. At this juncture, attention of this Court is again drawn to Section 143A of the said Act. It is submitted on behalf of the revisionist/accused that the learned trial court is within its competence to pass a direction for payment of interim compensation not exceeding 20 per cent of the amount of cheque as involved in the said proceeding, however, that cannot be a condition for grant of bail.
8. Drawing attention to the supplementary affidavit as filed today it is further submitted on behalf of the accused/revisionist that in terms of the order dated 30.08.2022 the accused furnished bail bond of Rs. 2,000/- which would be evident from the pleadings as made in the supplementary affidavit as well as from the certified copies of the 'jamin nama' as have been annexed in the said supplementary affidavit.
9. It is submitted further that the learned trial court while passing the said two impugned orders have failed to visualize the true implication of Section 143A of the said Act and thus committed serious error of law in not allowing the

revisionist/accused herein to further cross-examine PW 1. It is thus submitted on behalf of the revisionist that it is a fit case for setting aside the orders dated 01.12.2023 and 08.01.2024 as passed by the learned trial court in CR 379 of 2022.

10. *Per contra*, Ms. Acharya, learned Advocate appearing on behalf of the opposite party no. 2/complainant contended that there was no illegality and/or irregularity in the aforementioned two orders impugned inasmuch as the direction for payment of 20 percent of cheque amount was passed by the learned trial court on the basis of an application as made by the complainant under Section 143A of the said Act.
11. It is further submitted by Ms. Acharya that since the accused before the learned trial court had not cross-examined PW 1 despite getting several opportunities learned trial court is very much justified in passing the said two impugned orders.
12. Mr. Sarkar, learned Advocate appearing on behalf of the State in his usual fairness submits before this Court that an appropriate order may be passed in accordance with law.
13. For effective adjudication of the instant *lis* this Court at the very outset proposes to look to the provision of Section 143A of the said Act which is as under:

“143A. Power to direct interim compensation.- (1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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 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 years, 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 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.”

14. On perusal of the mandate of Section 143A of the said Act it appears to this Court that admittedly a trial court is within its power to pass an order for payment of interim compensation to the extent of 20 percent of the amount of the cheque which is involved in a proceeding under the said Act.
15. This Court has meticulously gone through the certified copy of the orders as passed in the said proceeding being CR 379 of 2022 which have been annexed with the supplementary affidavit as filed today. On perusal of the orders as passed in the said proceeding, this Court finds no whisper regarding filing of an application by the opposite party no. 2/complainant under Section 143A.
16. In view of such, this Court has got no hesitation to hold that the opposite party no. 2/complainant has miserably failed to

substantiate before this Court that before the trial court any application under Section 143A of the said Act was filed.

17. On further careful perusal of the order dated 30.08.2022 it reveals that the learned trial court directed the accused to deposit 20 percent of the cheque amount as a condition of bail which in considered view of this Court is contrary to the provisions of the said Act and, therefore, the finding of the learned trial court in the order dated 01.12.2023 that the accused shall have to deposit the 20 percent of the cheque amount on or before the next date that is on 08.01.2024 cannot be sustained in the eye of law.

18. On such score, the subsequent order dated 08.01.2024 for closer of the cross-examination of PW 1 also cannot stand.

19. In view of the discussion made hereinabove, the impugned orders dated 01.12.2023 and 08.01.2024 as passed in CR 379 of 2022 by the learned Chief Judicial Magistrate, Alipurduar are hereby set aside.

20. The present revisionist who is the accused in CR 379 of 2022 is directed to appear in-person before the learned trial court on August 28, 2025 and August 29, 2025 for cross-examination of PW 1 and on that two dates the PW 1 of CR 379 of 2022 shall

have to be present in-person before the trial court for facing cross-examination.

21. It is made clear that in the event the present revisionist/accused fails to appear on the said two days fixed by this Court before the learned trial court, the learned trial court shall close the further cross-examination of PW 1.

22. It is further made clear that in the event after the said two dates the present accused/petitioner prays for time for further cross-examination of PW 1 learned trial court may allow such time to the present revisionist for further cross-examination of PW 1 subject to payment of cost of Rs. 3 lakh for each day.

23. Since the learned Advocate for the revisionist and learned Advocate for the opposite party no. 2 are present before this Court while passing this order, this Court sincerely expects that the learned Advocates for the contending parties will communicate the gist of this order to their respective clients for doing their needful and compliance.

24. Department is directed to communicate this order to the learned trial court forthwith.

25. Liberty is given to the learned Advocate-on-Record for the opposite party no. 2 to communicate the server copy of this order to the learned trial court.
26. Learned trial court is directed to act on the server copy of this order.
27. With the aforementioned observation, CRR 22 of 2024 is disposed of.
28. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(PARTHA SARATHI SEN, J.)