



2024: DHC: 4607



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

Date of decision: 30.05.2024

+ CRL.M.C. 6064/2022

RAM BHAROSE

..... Petitioner

Through: Mr.Ankit Singh, Mr.Danish Ali,
Advs.

versus

VIKRAM DUTT

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 17376/2024

1. This application has been filed praying for an early hearing of the petition.
2. For the reasons stated in the application, the same is allowed.
3. The petition is taken up for hearing today itself.

CRL.M.C. 6064/2022

4. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the Order dated 13.09.2022 (hereinafter referred to as the 'Impugned Order') passed by the learned Metropolitan Magistrate-04, Shahdara District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Trial Court') in the Complaint Case No. 5351/2019, titled ***Sh.Rambharose v. Sh.Vikram Dutt***, that is, the complaint filed by the petitioner



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against the respondent under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'), thereby dismissing the application filed by the petitioner herein under Section 143A of NI Act.

Factual Matrix:

5. The petitioner herein has filed the abovementioned complaint against the respondent/accused, alleging that the respondent represented himself to be an official at Sena Bhawan, New Delhi, and offered the petitioner for running canteen on lease at the Sena Bhawan in partnership. It is alleged that the respondent further induced the petitioner by stating that his son and son-in-law would also be given employment there. It is alleged that in the month of April 2018, the respondent again offered employment for the daughter of the petitioner, her friends, and the friend of the petitioner's son-in-law. It is stated that on the above assurances, the respondent took a total sum of Rs.20 lacs from the petitioner. It is stated that thereafter, the respondent failed to get the lease/license and the abovementioned employment for the children and son-in-law of the petitioner. It is alleged that for the return of the money taken by the respondent for procuring the said employment, the respondent issued two cheques for an amount of Rs. 9.95 Lacs each in favour of the petitioner. It is stated that the petitioner deposited the said cheques, however, the same were dishonoured with the remarks 'Insufficient Funds', on 16.09.2019. Thereafter, the petitioner sent a legal demand notice dated 11.10.2019 to the respondent seeking the repayment of the said amount. As the respondent did not make the payment, the petitioner filed the



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abovementioned complaint before the learned Trial Court.

6. The learned Trial Court *vide* its Order dated 24.12.2019 had issued summons to the respondent in the subject complaint. The learned Trial Court framed Notice under Section 251 of the Cr.P.C. against the respondent on 29.03.2022.

7. Thereafter, the petitioner filed an application under Section 143A of the NI Act, seeking *interim* compensation, which came to be dismissed by the learned Trial Court by way of the Impugned Order.

8. The petitioner being aggrieved of the said Order has filed the present petition.

Submissions of the Learned Counsel for the Petitioner:

9. The learned counsel for the petitioner submits that the learned Trial Court has erred in holding that the petitioner has failed to make out a strong *prima facie* case against the accused/respondent. He submits that the respondent has not denied his signatures on the cheques in question. Therefore, in terms of Section 139 of the NI Act, there is a presumption that the cheques were issued in discharge of a debt and liability. This presumption itself is sufficient to make out a strong *prima facie* case against the respondent/accused.

10. He submits that the learned Trial Court has further erred in holding that allowing the application filed by the petitioner under Section 143A of the NI Act would give an undue advantage to the petitioner before the respondent has been given an opportunity to cross-examine the complainant's witness as well as providing his defence. He submits that this logic defies the very object and purpose of introducing Section 143A of the NI Act. He submits that the



respondent will get ample opportunity to lead his defence irrespective of the fact that the application of the petitioner is allowed/dismissed. He submits that, even otherwise, if the respondent succeeds in defending the complaint case, he would get the refund of the *interim* compensation amount along with interest.

11. He submits that the learned Trial Court had also erred in holding that there are no deliberate attempts by the accused till now to protract the trial. He submits that several times bailable warrants were issued against the respondent for securing his presence for adjudication of the complaint proceedings.

Analysis & Findings:

12. I have considered the submission made by the learned counsel for the petitioner and have pursued the contents of the complainant as also the Impugned Order and other proceedings before the learned Trial Court.

13. 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 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 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)

14. A reading of the above provision would show that the Court adjudicating upon a Complaint under Section 138 of the NI Act ‘may’ order the drawer of the cheque in question to pay any amount, not exceeding twenty per cent of the amount of the cheque, as *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 or in any other case, upon the framing of charges. It is no



longer *res integra* that the said power of the Court to direct the drawer to pay *interim* compensation under Section 143A of the NI Act, is a discretionary power, to be exercised judiciously after considering the facts and circumstances of each case and cannot be claimed as a right, mandating the Court to grant *interim* compensation to the complainant. Reference in this regard can be made to the recent judgment of the Supreme Court in ***Rakesh Ranjan Shrivastava v. State of Jharkhand & Anr.***, 2024 SCC OnLine SC 309, where the Court while considering the objects and reasons for the insertion of Section 143A of the NI Act, has held as under:

“Mandatory or directory

11. 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.

12. The power under sub-section (1) of Section 143-A 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 NI 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, 1973 (for short “CrPC”), the cases under Section 138 of the NI Act are triable as



summons cases. However, sub-section (1) of Section 143 provides that notwithstanding anything contained in CrPC, the learned Magistrate shall try the complaint by adopting a summary procedure under Sections 262 to 265CrPC. 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 CrPC. Therefore, the complaint under Section 138 becomes a summons case in such a contingency. We may note here that under Section 259CrPC, 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 143-A 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 143-A can be exercised after the plea of the accused is recorded.

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14. *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.*

15. *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 143-A 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 143-A 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.

16. Though, the NI 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 143-A, as sub-section (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 421CrPC. 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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18. In the case of Section 143-A, the power can be exercised even before the accused is held guilty. Sub-section (1) of Section 143-A 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 interim compensation up to 20% 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, sub-section (1) of Section 143-A provides for penalising an accused even before his guilt is established.

19. Considering the drastic consequences of exercising the power under Section 143-A 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 directory and not mandatory. Hence, we have no manner of doubt that the word “may” used in Section 143-A, cannot be construed or interpreted as “shall”. Therefore, the power under sub-section (1) of Section 143-A is discretionary.

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21. As held earlier, Section 143-A 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 sub-section (1) of Section 143-A of the NI Act.

Factors to be considered while exercising discretion

22. When the court deals with an application under Section 143-A of the NI 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 143-A. The presumption under Section 139 of the NI 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.

23. 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.

24. 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 143-A, the Court must record brief reasons indicating consideration of all the relevant factors.”

(Emphasis supplied)

15. A reading of the above would show that the Supreme Court has 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.

16. In the present case, the petitioner alleges that he has given an amount totalling to Rs.20 lacs to the respondent for the purpose of



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securing a lease/license for a canteen at Sena Bhawan by the respondent and securing employment of the petitioner's children, son-in-law, friend of his daughter, and a friend of his son-in-law at the said canteen. The respondent is stated to be working as an official at Sena Bhawan. Therefore, *prima facie*, the consideration of the above payment does not appear to be lawful.

17. That apart, there is no proof of such payment filed with the complaint. There is also no written agreement. All that the petitioner has to show are the cheques.

18. On the other hand, in answer to the Notice, the respondent has stated that the said cheques were signed in blank as the son of the petitioner/complainant had approached him twice for an amount of Rs. 20,000/- each in November 2018 and to pay the said amount, he had handed over the said cheques in blank to the son of the petitioner/complainant. In view of the lack of any document, apart from the cheques in question, in the hand of the petitioner/complainant showing the liability owed by the respondent/accused, and in view of the above defence of the respondent/accused, it cannot be said that the petitioner has been able to make out such a strong *prima facie* case in his favour so as to direct the respondent to deposit the *interim* compensation.

19. The learned counsel for the petitioner has placed heavy reliance on the presumption under Section 139 of the NI Act, to submit that *interim* compensation should have been granted by the learned Trial Court in favour of the petitioner. I do not find any merit in the said submission made by the learned counsel for the petitioner. In **Rakesh**



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Ranjan Shrivastava (supra), the Supreme Court has clarified that the presumption under Section 139 of the NI Act, by itself, is not a ground to direct the payment of *interim* compensation; presumption being rebuttable, the question of applying the same will arise only in the Trial.

20. I also do not find any merit in the submission made by the learned counsel for the petitioner that the respondent has been deliberately protracting the adjudication of the Trial because bailable warrants were issued against the respondent to secure his presence before the learned Trial Court. From the record, it appears that the initial proceedings in the complaint case before the learned Trial Court were going on during the period of the Covid-19 pandemic. It is further apparent that the bailable warrants issued *vide* Order dated 18.11.2020 by the learned Trial Court were cancelled on the same day. It is also apparent that the bailable warrants issued by the learned Trial Court *vide* Order dated 04.03.2021, were returned unexecuted as is recorded in the Order dated 16.04.2021, and the respondent appeared through VC along with his counsel on the same day. Thereafter the Court had adjourned the matter numerous times due to the pandemic. Even the complainant had to be issued a notice on 14.09.2020 to be present before the learned Trial Court, which was also in the Covid-19 pandemic period. Thereafter, both the parties have been appearing on almost all the dates of hearing before the learned Trial Court. Even otherwise, the respondent in his reply has stated that the said default in appearance during Covid-19 pandemic has been due to his medical ailments in relation to the pandemic and otherwise. In my view, the



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said grounds are sufficient to explain the alleged delay and default of appearance on behalf of the respondent before the learned Trial Court.

21. In any event, power under Section 143A of the NI Act being discretionary in nature, the order can be interfered with by this Court only if it is found to be perverse or so unreasonable so as to conclude that discretion could not have been exercised in the said manner. This Court is not sitting as a Court of Appeal against the Order passed by the learned Trial Court in exercise of its powers under Section 143A of the NI Act.

22. I must also note, that the petitioner, in its application, being Crl.M.A. 17376/2024, has also asserted that his evidence is almost complete and the trial is likely to conclude soon. This also influences this Court not to interfere with the impugned order at this stage of the trial.

23. In view of the above, I do not find any merit in the challenge of the petitioner to the Impugned Order.

24. The petition is, accordingly, dismissed.

25. There shall be no orders as to costs.

NAVIN CHAWLA, J

MAY 30, 2024/Arya/AS

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