

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(I) CRM-M-14140-2023
Reserved on: 10.09.2024
Date of Pronouncement: 24.09.2024

RISHIPAL -PETITIONER

VERSUS

KULWINDER SINGH -RESPONDENT

(II) CRM-M-16597-2023

KARAMJIT KAUR -PETITIONER

VERSUS

ABHISHEK GARG -RESPONDENT

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present : Mr. Sunny K. Singla, Advocate
for the petitioner (in CRM-M-14140-2023).

Mr. Digvijay Nagpal, Advocate for
Mr. Vishal Mittal, Advocate
for the petitioner (in CRM-M-16597-2023).

Mr. K.P. Dhaliwal, Advocate
for the respondent (in CRM-M-14140-2023).

Mr. Maninderjit Singh Bedi, Addl. A.G. Punjab with
Mr. Maninder Singh, Sr. D.A.G., Punjab.

Mr. Hitesh Verma, Amicus Curiae.

SURESHWAR THAKUR, J.

1. The “*to be answered reference*”, as enclosed in the order passed by the learned Single Judge of this Court, upon CRM-M-14140-2023, becomes *ad verbatim* extracted hereinafter:-

“Whether, provision of Section 143 A of the Act is mandatory/directory and whether, the trial Judge needs to pass a

separate speaking order before awarding interim compensation thereunder?”

2. The facts relevant for the rendition of an answer to the above extracted reference, are that, in terms of the provisions embodied in Section 143-A of the Negotiable Instruments Act, 1881 (hereinafter referred to as the ‘N.I. Act’), provisions whereof become extracted hereinafter, the learned Magistrate concerned drew an order on 02.11.2022, upon CIS No. NACT/267/2021, thus directing the accused to pay 20% of the cheque amount as interim compensation to the complainant.

“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 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.

(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.”

3. The order (supra) becomes challenged by the aggrieved therefrom accused, through his instituting the CRM-M-14140-2023, which is yet subjudice before this Court. It appears that no final adjudication has been made upon the said petition, as an answer to the reference (supra) is awaited. The order (supra) becomes extracted hereinafter:-

“Arguments heard. On finding prima facie case, notice of accusation served upon the accused. Contents of notice read over and explained to the accused in simple Punjabi language to which the accused pleaded not guilty and claimed trial.

Accused has given no explanation whatsoever how his cheque in question came into the hands of complainant and merely stated that he does not plead guilty. Therefore, as per provisions of Section 143-A Negotiable Instruments Act, accused is directed to pay 20% of the cheque amount as interim compensation to the complainant within a period of 60 days from today.

Now to come upon 09.01.2023 for payment of interim compensation as well as evidence of complainant.”

4. It would be apt to record here that, the petition (supra) is tagged with CRM-M-16597-2023, on account of its encompassing an almost alike impugned order and also an alike issue. The order impugned therein also becomes extracted hereinafter:-

“Reply to application under Section 143-A filed. Copy supplied. Heard on the application Under Section 143-A of Negotiable Instruments Act filed by the complainant for interim compensation, which was contested by the accused by filing reply thereof. After hearing learned Counsel for the parties and having gone through the record, I found merits in the application as the allegations of the accused cannot be considered at this stage, as it requires evidence to

appreciate the same. Hence, without commenting anything on the merits of the case and keeping in view the provisions of section 143-A of Negotiable Instruments Act, the application is allowed. The accused is directed to pay interim compensation to the complainant within 60 days from today, failing which, the complainant shall be at liberty to seek attachment of the properties of accused, in accordance with law. Adjourned to 29.08.2022 for defense evidence of accused.”

5. A ready answer to the reference (supra) is provided by a judgment rendered by the Hon’ble Apex Court in case titled as **“Rakesh Ranjan Shrivastava V/s State of Jharkhand and another”, (2024) 4 Supreme Court Cases 419**. In the verdict (supra), the Hon’ble Apex Court has, in extenso, dwelt upon the issue relating to *“whether the provisions embodied in Section 143-A of the N.I. Act, do make a peremptory dicta upon the learned trial judge concerned to ask the accused to, during pendency of the trial in respect of an offence committed under Section 138 of the N.I. Act, pay interim compensation to the complainant, or, whether the said provisions are merely directory in nature”*.

6. Moreover, therein the Hon’ble Apex Court also proceeded to consider the necessity of canalizing the powers conferred upon the learned trial Judge concerned, through the mandate (supra), enclosed in the N.I. Act. In the hereinafter extracted paragraphs borne in the verdict (supra), the Apex Court dealt with the signification of the statutory coinage “may”, besides dealt with, whether thereto a mandatory overtone is to be employed, and/or, whether it is merely directory in nature to the extent it only reserves a discretion upon the learned trial Judge concerned, whereby the said discretion requires the same becoming well canalized, so as to obviate the making of orders, which are ridden with gross non application of mind, besides also to ensure that, the appositely made orders are not entrenched with any vice of

arbitrariness.

“9. 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.

10. 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, 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 CrPC. 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.”

7. Moreover, in the hereinafter extracted paragraph borne in the verdict (supra), the Apex Court also declared that, the interim compensation adjudged through recourse being made to the provisions of Section 143-A of the N.I. Act, thus is recoverable as a fine, thus through recourse being made to the provisions of Section 421 of the Cr.P.C.

“11. Under sub-section (5) of Section 143A, it is provided that the amount of interim compensation can be recovered as if it were a fine under Section 421 of the Cr.PC. Therefore, by a legal fiction, the interim compensation is treated as a fine for the purposes of its recovery. Section 421 of the Cr.PC deals with the recovery of the fine imposed by a criminal court while passing the sentence. Thus, recourse can be taken to Section 421 of the Cr.PC. for recovery of interim compensation, which reads thus.....”

8. Since it was in the wake of the drastic measures to be employed by the learned trial Judge concerned, for ensuring recovery of the adjudged interim compensation, through recourse being made to the provisions carried in Section 143-A of the N.I. Act. Resultantly, therebys the said drastic steps when became concluded to be encumbering drastic consequences upon the movable or the immovable estate of the accused concerned. Therefore, the Apex Court concluded that, since upon a verdict of acquittal being made upon the accused, thereupon when he becomes entitled to seek restoration of the sums of adjudged interim compensation along with interest. Nonetheless, since for ensuring recovery of the determined sums of the interim compensation thus from the accused, the latter's movable and immovable property may suffer the ill consequence of the said property becoming sold, wherebys he becomes disabled to recover the said sold property. In sequel, the Apex Court concluded that the coinage “may” is not required to be assigned the signification of “shall”, as therebys it will hold all the ill drastic

consequences (supra). Resultantly, it was concluded that, if thus a tone of mandatoriness, is employed qua the coinage “may”, as exists in the above extracted provisions embodied in Section 143-A of the N.I. Act, thereby the apposite statutory provisions may become declared to be violative of Article 14 of the Constitution of India, besides may result in penalizing an accused even before his guilt is established.

9. Therefore, ultimately, in the hereinafter extracted paragraph borne in the verdict (supra), the Apex Court concluded that, for avoiding befallment of drastic consequences (supra) upon the accused, thus even before the conclusion of trial, as becomes entered against him, thereby the coinage “may” employed in the apposite statutory provision, thus is not permissible to be construed as “shall”. Moreover, the said provision was declared to be only directory and not mandatory.

“14. 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 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.”

10. Nonetheless, yet the Apex Court proceeded to, in the hereinafter extracted paragraphs of the verdict (supra), delineate the factors, which are required to be borne in mind by the learned trial Judge concerned, while proceeding to exercise the discretion vested in it, through the mandate existing in Section 143-A of the N.I. Act.

“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.

18. Hence, impugned orders are set aside, and the application made by the complainant in Complaint Petition No. 1103/2018 under Section 143A (1) of the N.I. Act is restored to the file of Judicial Magistrate First Class, Bokaro. The learned Judge will hear and decide the application for the grant of interim compensation afresh in the light of what is held in this judgment. The amount deposited by the appellant of Rs. 10,00,000/- shall be invested in a fixed deposit till the disposal of the said application. At the time of disposing of the application, the Trial Court will pass an appropriate order regarding refund and/or withdrawal and/or investment of the said amount.

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.”

11. Therefore, after the Apex Court, in the verdict (supra), declaring that the signification to be imparted to the coinage “may” existing in the supra extracted statutory provisions, is that, the same bears only a discretionary connotation rather than a mandatory connotation, thus the Apex Court also set forth the considerations to be borne in mind, in the discretion vested in the supra extracted provision becoming exercised vis-a-vis the complainant.

12. The said broad parameters, though have been stated to be not exhaustive, but yet while the learned trial Judge concerned, thus considers to make an order upon an application cast under Section 143-A of the N.I. Act, therebys he is required to be employing to the said application, a profound and objective consideration to the hereafter factors:- (a) the financial distress besetting the accused; (b) a sombre application of mind being required to be made qua the quantum of interim compensation to be granted, as the sum of interim compensation becomes pegged to be not above 20%, whereupons, the

sum of interim compensation may become amenable to be awarded in a sum even less than 20%. Therefore, after a profound contemplation of mind being made vis-a-vis the *prima facie* financial distress besetting the accused, vis-a-vis, the said being set off through either 20% of interim compensation becoming awarded to him or lesser than the said percentum of interim compensation becoming awarded, that subsequently the learned trial Judge is required to be passing a justifiably able and legally sound order(s).

13. Moreover, even at the stage of passing an objective order, after a deep application of mind being made to the factor(s) supra, the learned trial Judge is also required to be considering various other factors relating to:- (i) the nature of the transaction; (ii) the relationship, if any, between the accused and the complainant, and (iii) the financial capacity of the accused to pay the said sum. Moreover, the learned trial Judge is also required to be *prima facie* stating in the said order, whether the accused has a *prima facie* plausible defence, wherebys, the learned trial Judge concerned may proceed to exercise discretion against the complainant.

14. Since the above stated parameters to be borne in mind by the learned trial Judge concerned are not exhaustive, thereupon, to the considered mind of this Court, the stage at which the application is filed, is also a predominant factor. If the said application is filed at the initial stage and the learned trial Judge concerned, bearing in mind the fact that, given the numerical strength of the complainant's witnesses, thereby the trial is likely to conclude in the shortest possible time, therebys the learned trial Judge concerned may proceed to expeditiously conclude the trial, wherebys justice would be done to both the complainant and the accused. Resultantly, therebys

the befallment of the ill drastic consequences upon the estate of the accused, thus would become precluded. As such, it is the bounden duty cast upon the learned trial Judge concerned to expeditiously conclude the trial, and, in case the apposite delay is attributable to the complainant, thus in his/her adducing evidence, in respect of the notice of accusation, thereupon the said may be a relevant factor for declining the relief to the complainant upon the apposite application.

15. Predominantly, even if an expeditious trial is made upon the complaint by the learned trial Judge concerned, besides even if assumingly the learned trial Judge concerned also considers that the complainant is unnecessarily delaying the conclusion of trial, through his/her asking for adjournments rather on grounds, which are but flimsy and pretextual, thereupons the effect of the said factor(s) is to be weighed along with the factors (supra), thus for a well reasoned and deeply contemplated order becoming passed on the apposite application(s).

16. In summa, the statutory provision (supra) is declared to be directory in nature. Moreover, since this Court has also set forth the above guidelines governing the exercising of discretion by the learned trial Judge(s) concerned, therefore, the same may be considered to be borne in mind by the Roster Bench(es) concerned upon its/theirs making a decision upon the order(s) impugned in the present petitions.

17. The reference is answered accordingly.

18. Before parting, it is necessary to dwell upon the factum that, despite special courts becoming created for trial of cases under the N.I. Act, yet given the increased pendency of cases of the above genre, before the

special courts concerned, thus thereby there is delay in the makings of expeditious trials qua cases instituted under the N.I. Act. The said delay may ultimately become capitalized by the complainant(s) to seek an order in terms of Section 143-A of the N.I. Act. Since the factor of delay is also one of the factors to be considered by the learned trial Judge(s) concerned while passing decision(s) upon application(s) cast under Section 143-A of the N.I. Act, therebys there may be a necessity of additions being made to the already existing strength of special courts, as become created for trial of cases under the N.I. Act. Consequently, the verdict of this Court be placed before Hon'ble the Chief Justice for such action, as deemed fit.

19. This Court also records its profound appreciation to the insightful assistance purveyed by all the learned counsels concerned.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

24.09.2024
devinder

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No