

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.524/2022

BETWEEN

PADMANABHA T G

... PETITIONER

[BY SRI. D.R. RAVISHANKAR, SENIOR ADVOCATE
A/W SRI. SARAVANA S., ADVOCATE]]

AND

M/S RADICAL WORKS PVT. LTD.,
BY ITS DIRECTOR AND
AUTHORISED SIGNATORY
SRI. SHARAN V MAKHIJA,

... RESPONDENT

[BY SRI. MURTHY D. NAIK, SENIOR ADVOCATE
A/W SRI. MAHENDRA G., ADVOCATE]]

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO A. QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.17424/2020 ON THE FILE OF THE XXVIII A.C.M.M., BENGALURU (COGNIZANCE TAKEN ON 23.09.2020) AND IT IS FURTHER HUMBLY PRAYED THAT THE CRL.P. MAY KINDLY BE ALLOWED BY DISMISSING THE PCR AND THE COMPLAINT FILED BY THE COMPLAINANT - RESPONDENT AND B. THAT THE RESPONDENT BE DIRECTED TO PAY THE COSTS OF THE PROCEEDINGS.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question the entire proceedings in C.C.No.174242/2020 as also the order dated 09.11.2021, directing the petitioner to pay 10% of the Cheque amount involved in the transaction.

2. Heard the learned Senior counsel, Sri D.R. Ravishankar, appearing for the petitioner and the learned Senior counsel, Sri. Murthy D. Naik appearing for the respondent.

3. Learned Senior counsel Sri D.R.Ravishankar appearing for the petitioner would submit that though he has challenged the entire proceedings, he would restrict his challenge insofar as the order dated 09.11.2021, by which the

learned Magistrate directs payment of 10% of the amount of the instrument – cheque in terms of Section 143-A of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the said Act' for short). Without prejudice or reserving liberty to urge all the contentions that are urged in support of the challenge to the entire proceedings before the learned Magistrate. Learned senior counsel would further contend that giving up the challenge should not become an impediment while calling in question the impugned proceedings at later point in time.

4. It is needless to observe that the petitioner has every right to urge every contentions before the trial Court, notwithstanding, it being given up before this Court in these proceedings and liberty as sought by the learned senior counsel to challenge the entire proceedings at a later time on any other circumstance, shall stand protected. Therefore, the only issue that falls for consideration is the order dated 09.11.2021 passed under Section 143-A of the Act.

5. The issue that led to the respondent registering the crime or the order of the learned Magistrate taking cognizance of the offence punishable under Section 138 of the Act, is not necessary to be gone into.

6. In C.C.No.17424/2020 between the present parties, the respondent - complainant files an application seeking interim compensation in terms of Section 143-A of the Negotiable Instrument (Amendment) Act, 2018. The learned Magistrate on consideration of the application and the objections, directs payment of 10% of the instrument amount. The order allowing the application, reads as follows:

"REASONS

7. **Point No.1:-** *The complainant has filed this complaint against the accused for the offence punishable u/sec.138 of N.I. Act. This court took cognizance and issued summons to accused to appear before this court. Accordingly, the accused appeared before this court and enlarged on bail and plea of the accused recorded on 19.08.2021. Disposal of case on merit may take consideration time*

8. *Sec.143(A) of N.I Act confirms Power to direct interim compensation to the complainant- Sub Sec (1) (a) (b) 2 to 6 and Sec.143(A) reads as follows:-*

(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."

9. Hon'ble Supreme Court in **Criminal Appeal No.1160/2019**

(Arising out of Special Leave petition

(Criminal) No.3342 of 2019)

G.J.Raja v/s Tejraj Surana

held that Sec.143 (A) of N.I Act to be prospective in operation the provisions of said Section 143 (A) can be applied or invoked only in cases where the offense U/s 138 of the act was committed after introduction of said section 143 (A). This complaint is filed in the year 2020 i.e., subsequent to amendment of N.I Act. (Act 20 of 2018).

10. The complainant stated in the complaint that he has filed a written information dated 17.06.2020 to the Police Inspector, High Grounds Police Station, Bangalore, against the accused herein and another person alleging commission of various offences in the course of discharge of his duty and more particularly the misappropriation and cheating to the tune of Rs.2,32,54,503/- (Two crore Thirty Two lakhs Fifty Four Thousand & Five hundred and Three only) has been alleged in the said complaint. Pursuant to the same FIR No.0039 of 2020 dated 17.06.2020 has been registered by the High Grounds Police Station for the offences under Sections 406, 468, 471, 477-A, r/w sec.34 of IPC, wherein the accused herein has been arraigned as accused No.1 and produced copy of FIR along with the complaint.

11. The learned counsel for the accused submitted that The CCB police have thoroughly investigated and have filed charge sheet against the accused and other four more accused which is pending consideration before the learned 4th ACMM at Bengaluru in CC.No.12667/2021 for the offences punishable under sections 406, 409, 420, 468, 471,

477(A) R/w 34 of IPC. Registration of FIR against this accused and other four more accused is not a ground to reject the application filed under sec.143(A) of N.I Act. The complainant have initiated this case under sec.138 of N.I Act. Subject matter of criminal case before the learned 4th ACMM at Bengaluru in CC No.12667/2021 is nothing to do with this case. Pending criminal case against the accused for the offences punishable under Indian Penal Code does not come in the way of conducting trial against the accused for the offences punishable under section 138 of N.I Act. It does not amount of double jeopardy as contended by the learned counsel for the accused. However, the complainant prays to direct the accused to pay the interim compensation of 20% of the value of the cheque in this complaint is not justified, but the accused bound to deposit interim compensation of 10% of the cheque amount under the facts and circumstances of the case. Accordingly, I answered point No.1 in the partly Affirmative."

The primary reason rendered by the learned Magistrate is that the disposal of the case would take considerable time and

therefore, an amount of 10% of the instrument is to be awarded and rest of the reasoning in the order is concerning the accused with regard to double jeopardy. It is this order that is called in question by the petitioner in the subject petition.

7. The learned senior counsel appearing for the petitioner would submit that reasons so recorded for grant of 10% would fall foul of the judgment rendered by this Court in Crl.P.No.632/2022, disposed on 01.06.2022 and would submit that the learned Magistrate has to reconsider the application in the light of the order passed by this Court in the aforesaid Crl.P.No.632/2022 interpreting Section 143-A of the Act.

8. On the other hand, the learned Senior counsel, Sri. Murthy D. Naik appearing for the respondent would seek to justify the order by taking this Court through the order sheet, where the conduct of the accused is the reason for grant of the said compensation.

9. I have given my anxious consideration to the respective submissions made by the learned counsel and perused the material on record.

10. It is germane to notice the order passed by this Court interpreting grant of compensation under 143A of the Act. The relevant paragraphs of CrI.P.No.632/2022 disposed on 01.06.2022, read as follows:

"13. Application of mind and passing of a reasoned order of grant of compensation becomes necessary in the light of penal consequences that ensue on 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.

14. On the bedrock of the afore-narrated analysis, the impugned order requires to be noticed. The impugned order no doubt runs into several pages. Reasons recorded in the order begin at paragraph-7; paragraph-8 reiterates facts; paragraph-9 extracts judgment of a learned single Judge of Madras High Court; paragraphs-10 and 11 extract provision of law i.e., Section 143A; paragraph-12 refers to the Apex Court judgment and paragraph-13 is where the reasoning is found and it reads as follows:

“13. The complainant has filed this complaint on 5.02.2020 cheque alleged to have been issued by the accused to pay outstanding balance towards the value of goods supplied by the complainant. Disposal of the case on merit may taken considerable time. Under the facts the circumstances of the case. If the accused is directed to deposit 10% of the cheque amount of the liability of the bounced cheque, the ends of justice

would serve. Accordingly, I answer point No.1 in the partly affirmative.”

The reason rendered by the learned Magistrate (supra) is that the complainant has filed the complaint on 5-02-2020. Disposal of the case on merits may take considerable time. Under the facts and circumstances, the accused should be directed to deposit 10% of the liability/ amount involved in the cheque within 60 days. This is all the reasoning that the learned Magistrate renders to grant such compensation.

15. 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.

16. The order of the learned Magistrate impugned herein does not bear any such reason as is indicated hereinabove. The amount involved in the transaction is Rs.5,56,71,208/- and 10% of the said amount would mean Rs.55 lakhs. Therefore, it was necessary for the learned Magistrates to apply his mind, record such reasons which would demonstrate application of mind and then allow the application for grant of compensation in terms of the Act. In the absence of the aforesaid, I deem it appropriate to exercise my discretion under Section 482 of the Cr.P.C., set aside the order impugned and remit the matter back to the hands of the learned Magistrate to

pass appropriate orders on the application, bearing in mind the observations made in the course of the order.”

This Court in the aforesaid order has clearly held that the conduct of the accused would be the driving force for granting an interim compensation under Section 143A of the Amendment Act and such reasons should be recorded in the order, then such an order will become an order bearing application of mind. If the order passed by the learned Magistrate is considered in the light of the order passed by this Court, it would undoubtedly fall foul of Section 143A of the Amendment Act and the order as afore-extracted, as the only reason rendered in the impugned order is that the disposal of the case would take considerable time. There is not even a mention of the conduct of the accused as a reason for granting of compensation.

11. In the light of the facts afore-quoted and the judgment so rendered, the learned Magistrate is required to reconsider the application filed by the complainant under 143A of the

Amendment Act and pass appropriate orders in accordance with law.

12. For the aforesaid reasons, the following:

ORDER

- i. The Criminal Petition is allowed.
- ii. The order dated 09.11.2021 stands quashed.
- iii. The matter is remitted back to the hands of the learned Magistrate to pass appropriate orders in accordance with law bearing in mind the observations made in the afore-extracted order.
- iv. The said exercise shall be concluded by the learned Magistrate within 3 weeks from the date of receipt of a copy of this order, if not earlier.

All contentions remain open *qua* the application filed under Section 143-A of the said Act of both the parties.

Since the learned Senior counsel, Sri. Murthy D. Naik appearing for the respondent, at this juncture, would submit that the proceedings before the trial Court had been adjourned for a longer date in the light of the interim order granted by this Court, now in view of the disposal of the petition, it would be open for the respondent to file necessary application seeking advancement of the case.

**Sd/-
JUDGE**

SJK