



2023:KER:74131

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 17TH DAY OF NOVEMBER 2023 / 26TH KARTHIKA, 1945

CRL.MC NO. 8132 OF 2023

CRIME NO.0/0 OF ,

**AGAINST THE ORDER/JUDGMENT CMP 1107/2022 OF JUDICIAL FIRST
CLASS MAGIST. COURT, CHOTTANIKKARA(TEMPORARY)**

PETITIONER/S:

FAIZAL ABDUL SAMAD, AGED 65 YEARS

BY ADVS.
SREEKANTH S.NAIR
SANDEEP P JOHNSON

RESPONDENT/S:

- 1 A. N SASIDHARAN, AGED 64 YEARS

- 2 STATE OF KERALA
THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
BY ADVS.
K.JOSE KURIAKOSE
BLOSSOM MATHEW(K/001484/1998)

OTHER PRESENT:

SRI RENJITH TR, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 17.11.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

**CR****P. V. KUNHIKRISHNAN, J.****-----
Crl.M.C.No.8132 of 2023
-----****Dated this the 17th day of November, 2023****ORDER**

This Crl.M.C is filed challenging Annexure-A6 order, by which, the Judicial First Class Magistrate Court, Chottanikkara directed to pay an interim compensation under section 143A of the Negotiable Instruments Act, 1881 (for short, the NI Act).

2. The petitioner is the accused in S.T.No.3117/2019 on the file of the Judicial First Class Magistrate Court, Chottanikkara. A complaint was filed by the 1st respondent herein alleging offence punishable under section 138 of the Negotiable Instruments Act. Annexure-A4 is the complaint. The case of the complainant is that the petitioner/accused approached the complainant and agreed to purchase an apartment 9/440-GI in the 5th Floor of the AIRPORT SUITES BLOCK 111 of Nedumbassery Grama Panchayath and an



extent of right of 0.0376 undivided share in 5.66 Ares of land. The total consideration of the said property was fixed as Rs.37 lakhs is the contention and the accused had given an amount of Rs.9 lakhs as advance to the complainant in the further case. It is submitted that, as per the agreement entered into between the petitioner and the 1st respondent, the 1st respondent executed a registered sale deed in favour of the petitioner/accused on 18.04.2015. At the time of registration, it is admitted that the complainant received an amount of Rs.9 lakhs from the accused towards the total consideration of Rs.37 lakhs. Towards the balance sale consideration, the petitioner/accused issued three cheques bearing no.304745, 304746, 304747 for **Rs.10 lakhs, Rs. 10 lakhs** and **Rs. 8 lakhs** respectively, drawn on Federal Bank, North Paravur Branch. It is stated that an agreement is also executed in favour of the complainant on 18.04.2015 whereby the petitioner/accused agreed, admitted and undertook to arrange the amount covered by the said cheques by clearing the cheques within 11 months.

3. Subsequently, the petitioner/accused sought further



period of five months to pay the cheque amount and it is endorsed in the original agreement. After repeated requests of the complainant, the accused assured that he had arranged Rs.28 lakhs in his bank account to encash the cheques. Accordingly, the cheques were presented at the bank, but the cheques were dishonored due to insufficiency of funds. The statutory notices were issued by the complainant, but even then, the amount has not been paid. Hence, the complaint was filed as evident by Annexure A4. The learned magistrate after taking cognizance issued process to the accused and when the case was posted on 5/9/2022, the learned magistrate passed an order directing the petitioner to pay an interim compensation of 20% of Rs.28 lakh which is the total amount of three cheques in this case, within sixty days from that order. Aggrieved by the order granting interim compensation, this Crl.M.C is filed.

4. Heard the learned counsel for the petitioner, the learned Public Prosecutor and the counsel appearing for the 1st respondent. The short point raised by the petitioner is



that the learned magistrate has not considered the matter in detail before passing an order under Section 143A of the NI Act and the learned magistrate mechanically passed the order. Therefore, Annexure A6 order passed by the learned magistrate is unsustainable.

5. On the other hand, the counsel appearing for the 1st respondent supported the order passed by the learned magistrate. The learned counsel submitted that the learned magistrate is empowered to pass orders under Section 143A of the NI Act even without an application to that effect. According to the 1st respondent/complainant, no speaking order is necessary from the side of the learned magistrate while invoking the powers under Section 143A of the NI Act. This Court considered the contentions of the petitioner and the respondent. For the resolution of this question, it will be better to extract Section 143A of the NI Act:-

‘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 percent 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.

(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, shall be reduced by the amount paid or recovered as interim compensation under this section.'

6. From a bare perusal of the above Section, it is clear that the court trying an offence under section 138 of NI Act, may order the drawer of the cheque to pay 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; and in any other case, upon framing



of charge.

7. As per Section 143A(2) of the NI Act, the interim compensation under sub-section (1) shall not exceed twenty percent of the amount of the cheque. A combined reading of Section 143A(1) and Section 143A(2) of NI Act would show that, the Court may order interim compensation, varying from 1% of the cheque amount, up to 20 % of the cheque amount. Whether in such situation, the court can pass orders in all cases to pay 20% of the cheque amount without giving a reason for the same is the point to be decided.

8. As per Section 143A(2) of NI Act, the interim compensation under sub section (1) shall not exceed twenty percent of the amount of the cheque. That means the interim compensation can vary from 1% to 20% of the cheque amount. If a court of law decided to order the maximum limit prescribed in Section 143A(2) of NI Act, as far as the interim compensation is concerned, it is the duty of the court to give reasons for the same. Similarly if the learned magistrate is giving interim compensation of 1% of



the cheque amount or 2% or 3% of the cheque amount as the case may be, the reason should be mentioned. A discretion is given to the learned magistrate to determine the amount that is to be ordered as interim compensation. When discretion is given to a court of law, it should be judiciously decided. In such circumstances, a speaking order is necessary especially in a case where the maximum 20% of the interim compensation is ordered by the learned magistrate as prescribed under Section 143A of the NI Act. Similarly, if the interim compensation ordered is below 20% of the cheque amount, then also a reason should be mentioned. Therefore, without giving reason for fixing 20% of the cheque amount as interim compensation, which is the maximum limit prescribed under Section 143A(2) of NI Act, that order cannot be treated as an order made after applying the mind and exercising the discretionary jurisdiction. Therefore, I am of the considered opinion that while fixing the quantum of interim compensation, it is the duty of the court to pass a speaking order. I am aware of the judgment of this Court in **Jisha v. State of Kerala and**



Another [2019(5) KHC 729] in which this Court observed that there is no need for an application to be filed by the complainant under Section 143A of the NI Act for grant of interim compensation. This court also observed that the Court shall suo motu exercise the power and that there is no scope for filing an objection, if the complainant files an application under Section 143A of the NI Act seeking payment of interim compensation. It will be better to extract the relevant portion of **Jisha's** case.

“7. It is indicative on a reading of S.143A which has been newly introduced into the N.I Act that the Court trying an offence under S.138 shall suo motu exercise the power. There is no need for an application to be filed by the complainant in that regard. Likewise, the section also does not provide for an opportunity, for the accused to be heard. Nowhere under S.143A NI Act, it is provided that prior to passing of an order directing payment of interim compensation, the accused needs to be granted an opportunity of being heard. Eventhough the word 'may' is in use in the provision, it will have the impact of 'shall' since prosecutions launched under S.142 cannot be identified as scrupulous or unscrupulous ones at the preliminary stage when complaint is filed. Interim compensation contemplated under S.143A N.I. Act is something meant to be imposed on all accused irrespective of the amount involved in the prosecution filed under S.142 N.I Act. Therefore, the argument of the learned counsel that the objection filed by him to the application under S.143A N.I. Act was not considered by the Court is of not that much relevance.”



9. Thus in **Jisha's** case, this Court also observed that even though, the word 'may' is used in Section 143A(1) of NI Act, it will have the impact of 'shall' since prosecution launched under Section 142 cannot be identified as scrupulous or unscrupulous ones at the preliminary stage when the complaint is filed. It was also observed that the interim compensation contemplated under Section 143A of the Negotiable Instruments Act is something meant to be imposed on all accused irrespective of the amount involved in the prosecution filed under Section 142 of the NI Act. I am in perfect agreement with the above dictum laid down by this Court. But while fixing the interim compensation, which may be upto 20% of the cheque amount as per Section 143A(2) of the NI Act., it is the duty of the learned Magistrate to give reason for fixing 20% of the cheque amount or some amount lesser than 20% of the cheque amount. Therefore, I am of the considered opinion that the Magistrate shall give reason while fixing interim compensation under Section 143A of the NI Act. The



Karnataka High Court considered this point in detail. It will be better to extract the relevant paragraph of the judgment dated 06.07.2021 in Criminal Petition No.201213 of 2020 of the High Court of Karnataka, Kalaburagi Bench [Jahangir S/o. Lalsab Nadaf v. Sri.Farooq Ahmed Abdul Razak].

“9. Section 143A(1) is not a mandatory provisions and it says that Court may order the drawer of the cheque to pay the interim compensation as per conditions stipulated there under. So it is evident that the power under Section 143A is vested with the learned Magistrate to be exercised judiciously after recording the plea and it is not mandatory but the learned magistrate is required to exercise his judicious discretion under Section 143A of the Act. But in the present case, the impugned order disclose that the learned Magistrate has not even applied his mind and in a mechanical way as per the mandatory provisions of Section 143A he has directed the accused to deposit 20% of the cheque amount. The provisions of Section 143A are not mandatory but the discretion was given to the magistrate to be exercised judiciously. In the instant case though application was filed prior to the accusation it should be heard only after the accusation but after giving proper opportunity. Admittedly the accused/petitioner herein has submitted his objections to the said applicants and the learned Magistrate has not passed any speaking order and in a mechanical way he directed the accused/petitioner herein to deposit 20% of the cheque amount. The entire approach of the learned magistrate is against the settled principles of natural justice and he did not even passed a summary speaking order giving reasons for passing such an order.....”

10. The High Court of Jammu & Kashmir and Ladakh



also considered the same issue. It will be beneficial to extract the paragraphs 10 and 14 in CRM (M) No.50 of 2020 of the High Court of Jammu & Kashmir and Ladakh [Nazir Ahmad Chopan v. Abdul Rehman Chopan].

“10) Although no guidelines for grant of interim compensation have been laid down in Section 143-A of the NI Act, yet it is a settled law that whenever a discretionary power is to be exercised by a Court, the same has to be exercised on well-recognized principles supported by reasons. The court has to spell out the reasons for grant of interim compensation in favour of the complainant and it has also to justify in its order with reasons the quantum of interim compensation that is being awarded by him as the said quantum can vary from 1% to 20% of the cheque amount.

XXXXXXXX

14) The question that has not been dealt with and answered by the learned Magistrate is as to why the complainant has been awarded interim compensation @20% of the cheque amount and not anything less than that. As already noted, a Magistrate is empowered to grant interim compensation in favour of a complainant ranging from 1% to 20% of the cheque amount. In the instant case, the trial Magistrate has granted interim compensation in the maximum range without assigning any reason. The order impugned is devoid of any reasons and no discussion is made in the impugned order as to why interim compensation is being awarded. The learned Magistrate has not dealt with the aspect of the matter relating to denial of execution of the cheque by the accused in his statement recorded under Section 251 of the Cr. P. C. Therefore, the said order is not sustainable in law.”



11. I am in full agreement with the decision of the High Court of Karnataka and High Court of Jammu & Kashmir and Ladakh, about the reason to be recorded while ordering compensation under Section 143A of NI Act. Therefore, I am of the considered opinion that while fixing the interim compensation under Section 143A of NI Act, the Magistrate shall pass a speaking order about the reason why such an amount is fixed as interim compensation. In this case a perusal of Annexure A6 order would show that it is not a speaking order. It will be better to extract Annexure A6 order here:

“Complainant absent represented. Accused present no representation. NOC from earlier counsel filed. The accused is directed to pay an interim compensation of 20% of Rs.28,00,000/- which is the total amount of 3 cheques in this case within 60 days from the date of this order.”

12. The learned Magistrate directed to pay an interim compensation of 20% of Rs.28 lakhs which is the total amount of three cheques. No reason is mentioned for fixing the maximum amount of 20% of the cheque amount as interim compensation. In such circumstances, I am of the



considered opinion that the impugned order is to be set aside and the matter is to be reconsidered by the learned Magistrate.

Therefore, this Crl.M.C is disposed of in the following manner:

1. Annexure A6 order is set aside.
2. The Judicial First Class Magistrate Court, Chottanikkara is directed to reconsider CMP No.1107 of 2022 in ST No.3117 of 2019, in the light of the principle laid down by this court, as expeditiously as possible.

sd/-
P. V. KUNHIKRISHNAN
JUDGE

Sbna/das/ska



APPENDIX OF CRL.MC 8132/2023

PETITIONER ANNEXURES

- Annexure A1 TRUE COPY OF LEGAL NOTICES DATED 15.05.2019 ISSUED BY 1ST RESPONDENT THROUGH HIS COUNSEL TO THE PETITIONER.
- Annexure A2 TRUE COPY OF THE REPLAY NOTICE DATED 27.05.2019 ISSUED BY PETITIONER THROUGH HIS COUNSEL TO THE 1ST RESPONDENT.
- Annexure A3 TRUE COPY OF RELEVANT PAGES OF STATEMENT OF ACCOUNT FOR THE PERIOD 17.04.2015 TO 29.09.2023 OF PETITIONER'S FEDERAL BANK
- Annexure A4 TRUE COPY OF COMPLAINT DATED 28.06.2019 FILED BY 1ST RESPONDENT NUMBERED AS S. T NO. 3117/2019 BEFORE THE JFCM COURT, CHOTTANIKKARA.
- Annexure A5 TRUE COPY OF PETITION, C. M. P NO. 1107/2022 IN S. T NO. 3117/2019 FILED BY THE 1ST RESPONDENT BEFORE THE JFCM COURT, CHOTTANIKKARA.