

[2022 LiveLaw \(Kar\) 82](#)

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH
BEFORE THE HON'BLE MR. JUSTICE M.NAGAPRASANNA
CRIMINAL PETITION NO.100261/2022; 17 FEBRUARY 2022
VIJAYA v. SHEKHARAPPA & ANR.

Negotiable Instruments Act, 1881 - Section 143A - It is not mandatory for the Magistrate Courts to pass orders directing interim compensation, if the accused does not plead guilty. (Para 11)

Petitioner by V.M. Sheelavant, Advocate for Mrutyunjaya S. Hallikeri, Advocate

Respondents by B.V.Somapur, Advocate, for R.1; R.K.Kulkarni, Advocate, for R.2

ORDER

A strange transaction is brought before this Court in which the complainant claims to have lent to the accused a sum of rupees two crores by cash in two thousand rupees denomination and the cheque alleged to have issued by the accused is dishonoured. In respect of rupees two crores transaction in cash, the trial Court invoking Section 143-A of the Negotiable Instruments Act, 1881 ('the Act' for short) grants interim compensation of Rupees forty lakhs to be paid by the accused to the complainant. The consequence of this order is what drives the accused to this Court seeking the following prayer:

"WHEREFORE, it is most humbly prayed, this Hon'ble Court may kindly be pleased to:

1. Direct the Hon'ble Court of Principal District and Sessions Judge, Koppal to hear the criminal revision petition in Crl.R.P.No.48 of 2021 on the merits of the case and also on I.A.No.II of 2020 and pass orders at the earliest; until passing of such orders in Criminal Revision Petition No.48 of 2021 stay the operation of the order dated 01-06-2021 passed by the Hon'ble Court to Civil Judge and JMFC, Yelburga in C.C.No.67 of 2021 in the interest of justice and equity.
2. Quash the order dated 10-01-2022 passed by the Hon'ble Court of Civil Judge and JMFC, Yelburga in Crl.Misc.No.313 of 2021 in the interest of justice and equity.
3. Quash the public auction publication dated 25.01.2022 bearing No.KoNaSa:Aa.Ha:Kandaya Shakhe:2021-22 passed by the respondent No.2 in pursuance to the order dated 10-01-2022 passed by the Hon'ble Court of Civil Judge and JMFC, Yelburga in Crl.Misc.No.313 of 2021 in the interest of justice and equity.
4. Pass such other order or direction, that is deemed fit under the facts and circumstances of the case, in the interest of justice and equity."

2. Heard Shri V.M.Sheelavant, the learned counsel appearing for the petitioner and Shri B.V.Somapur, the learned counsel appearing for the respondent no.1 and Shri R.K.Kulkarni, the learned counsel appearing for the respondent no.2.

3. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:

a) The respondent and the petitioner claim to know each other for close to 20 years. It is the claim of the respondent/ complainant that owing to family necessities and for business purposes, the petitioner/accused appears to have approached the complainant on 12.12.2020 for availing a loan of rupees two crores in cash which was acceded. The same was termed by the complainant as a hand loan and the assurance according to the complainant was that the accused would return the money within one month on or before 11.1.2021. In discharge of her liability the accused appears to have issued a cheque dated 11.01.2021 for rupees two crores drawn on Syndicate Bank. At the time of issuing the cheque, it is the case of the complainant that the accused had assured that she has sufficient funds in the account and the cheque would be honoured. The cheque was presented but dishonoured as funds insufficient. On the ground that the accused had issued a bogus cheque which was returned for want of sufficient funds, the complainant caused a legal notice on 12.01.2021. On receipt of the legal notice, the petitioner replied stating that it was false to allege that she had availed rupees two crores hand loan that too in cash agreeing to pay back the same on or before 11.1.2021.

b) After the reply being given by the petitioner denying all the allegations made in the legal notice caused upon her, the complainant registers a complaint under Section 200 of the Cr.P.C. in P.C.R.No.6 of 2021 which is now pending consideration in C.C.No.67 of 2021. In the aforesaid C.C.No.67 of 2021, the complainant files an application under Section 143A of the Act for grant of interim compensation during the pendency of the said criminal case. To the said application, the petitioner files her objections and notwithstanding the objections, it is the claim of the complainant that an amount of 20% was directed to be paid as interim compensation within 60 days from the date of the order which was on 1.6.2021 failing which the complainant was at liberty to take action in terms of Sections 421 and 357 of the Cr.P.C. The petitioner initially did approach this Court calling in question both those orders but withdrew the petition on the score that the remedy of filing a criminal revision petition would be availed of and also made efforts to get the matter listed before the revisional Court. In the meantime the complainant exercising the liberty that was granted by the order impugned, initiated process in which order of attachment of the property of the petitioner was passed and a notice of public auction was also issued to auction the property on 25.01.2022. 4. The learned counsel appearing for the petitioner would vehemently argue and contend that the petitioner is yet to be held guilty and the trial is yet to commence. As an interim measure, 20% of the claim amount is directed to

be paid which amounts to Rs.40 lakhs and it is highly improbable that the complainant has dispersed the loan of rupees two crores that too in cash. It is a subject matter of trial. The petitioner is before this Court in the light of the impending auction of the property which is for the ground that the petitioner has not complied with the order dated 1.6.2021 directing payment of 20% of the claim amount.

5. On the other hand, the learned counsel appearing for the respondents would contend that presumption is operating against the petitioner in terms of provisions of the Act. Since the petitioner has issued the cheque, the liability is admitted and, therefore, the order directing 20% is in tune with law and would seek dismissal of the criminal petition.

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

7. The afore-narrated facts are not in dispute. The issue is not with regard to validity of the cheque or otherwise. The only issue that falls for my consideration is whether the Criminal Court hearing C.C.No.67 of 2021 could have passed the order directing payment of 20% without recording any reason for grant of such interim compensation.

8. The Act was amended by the Amendment Act of 2018. It is by way of this amendment Section 143A came to be inserted. The relevant text of the amendment concerning Section 143A of the Act reads as follows:

“1. Short title and commencement.— (1) This Act may be called the Negotiable Instruments (Amendment) Act, 2018. (2) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.

2. Insertion of new Section 143-A.— In the Negotiable Instruments Act, 1881 (26 of 1881) (hereinafter referred to as the principal Act), after Section 143, the following section shall be inserted, namely:—

“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 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 11974).

(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. This amendment has come into force with effect from 1.9.2018 on its publication in the official gazette. The purport of the amendment is that the Court may in certain circumstances award interim compensation which shall not exceed 20% of the amount of the cheque and such interim compensation can be permitted to be withdrawn in terms of the said amendment. It is invoking the afore-quoted provision of law an application was filed by the complainant seeking interim compensation of 20% of the amount involved. The petitioner files her objections in detail and the Court considering the application passes an order, relevant portion of which reads as follows:-

“7. Point No.1: The complainant before the court is drawee and accused is drawer of cheque in question, upon which the present case has been filed by the complainant against the accused for nonpayment of amount covered under cheque which was dishonoured for the reason of insufficient funds in the account of accused to honour the cheque.

xxx.xxx.xxx.xxx.

Therefore, on going through entire amended provision of Negotiable Instruments Amendment Act, 2018 makes it clear that, if the drawer not pleaded the guilt, then he shall pay the interim compensation at the rate of 20% of the cheque amount, hence the amended provision clearly applicable to the case on hand, because, the accused did not plead the guilt, hence before going for trial she has to pay the 20% of the cheque amount as interim compensation to the complainant. Hence, the objection raised by the accused counsel does not hold any water, accordingly I answer point No.1 in the affirmative.

8. Point No.2: For the above said reasons and discussion, I proceed to pass the following:

ORDER

Interim application filed by the complainant under Section 143(A) of Negotiable Instrument Amendment Act, 2018 is hereby allowed.

The accused is hereby directed to pay 20% of the cheque amount as interim compensation to the complainant within 60 days from the date of this order failing which the complainant is at liberty to take action as per Section 421 and 357 of the Cr.P.C.

For payment of interim compensation call on 30-06-2021.”

10. The afore-extracted order passed by the Court does not bear reason as to why 20% of the amount is awarded as interim compensation. All that the Court records on going through the entire amended provision is, if the drawer of the cheque has not pleaded guilty, then he shall pay interim compensation at the rate of 20%. The petitioner in the case at hand did not plead guilty. Therefore, the Court grants interim compensation. There is no application of mind as to why the said compensation has to be awarded. Section 143A is completely misread that once the accused does not plead guilty, the complainant becomes automatically entitled to 20% of the cheque amount as interim compensation. Sub-section (1) of Section 143A reads that notwithstanding anything contained in the Cr.P.C. the Court trying an offence under Section 138 may order drawer to pay interim compensation to the complainant. If an order is passed for payment of interim compensation, it shall be paid within 60 days from the date of the order.

11. Therefore, the Legislature has cautiously worded sub-section (1) of Section 143A not to make it mandatory in all cases where clauses (a) and (b) of sub-section (1) would empower the learned Magistrate before whom proceedings are pending consideration to award interim compensation. It is the discretion conferred, as the word used is “may”. If the order is passed, then the payment is mandatory. Therefore, the learned Magistrate who is hearing the application for interim compensation should apply his mind, record his reasons in exercise of his discretion, as to why 20% of the cheque amount is to be granted, as interim compensation in any given case.

12. The other side of the coin of discretion available to the learned Magistrate is that the amount should not exceed 20%. Therefore, it is not that 20% has to be the interim compensation in every case. Here again the discretion is required to be exercised by the learned Magistrate as the interim compensation can vary from 1% to 20% but shall not exceed 20%. The language of Section 143A being couched with such discretion, the discretion if not exercised in a manner known to law, becomes an arbitrary action.

13. Application of mind in exercise of discretion is discernible only in an order that contains reasons, and reasons can be found only if they are recorded in writing, and

if reasons are recorded in writing, it is only then the order will be within the counters of law.

14. The consequence of non-payment of interim compensation so awarded is penal, as proceedings can be initiated by the complainant under Sections 357 and 421 of the Cr.P.C. which are recoverable as fine paid under Section 421 of the Cr.P.C. The impugned action now alleged is that in terms of the order passed by the competent Court, the proceedings for attachment of the property are initiated by the complainant and the property of the petitioner is put to auction. Therefore, the consequences of such order are grave where the petitioner whose liability is yet to be determined will have to face grave hardship in the event of non-payment. It is therefore imperative for the learned Magistrates to pass appropriate orders which bear application of mind and record reasons as to why interim compensation is to be awarded in a given case.

15. In the case at hand, there is not even a semblance of application of mind on the part of the learned Magistrate as the learned Magistrate misconstrues the provision that in the event the accused does not plead guilty he becomes liable to pay 20% as interim compensation. This is not the purport of the Act. But, that does not preclude the learned Magistrate to pass appropriate orders of grant of compensation in a given case. What is necessary is only application of mind and recording detailed reasons as to why such compensation is to be awarded in a given case. The learned Magistrate will have to apply his mind and pass appropriate orders basing on the averments in the claim inter alia, the case on hand is a classic one where the transaction has happened in cash that too for an amount of rupees two crores. It is the claim of the complainant that cash of rupees two crores was paid as a hand loan and a cheque was obtained from the accused.

16. For the aforesaid reasons, I pass the following:

ORDER

(i) Criminal Petition is allowed and the order dated 10.01.2022 of attachment of property in Criminal Miscellaneous No.313 of 2021 stands quashed. Public auction notification dated 25.01.2022 in furtherance of the order dated 10.01.2022 also stands quashed.

(ii) The Principal District and Sessions Judge, Koppal, shall hear Criminal Revision Petition No.48 of 2021 on its merit within an outer limit of four weeks' from the date of receipt of a copy of this order strictly bearing in mind the observations made in the course of this order and pass appropriate orders in accordance with law after affording adequate opportunity to the parties to the petition. Till such time, the order dated 1.6.2021 granting 20% of the amount involved as interim compensation shall remain stayed.

(iii) It is made clear that the trial in C.C.No.67 of 2021 is not stayed and the trial Court shall proceed with further proceedings in accordance with law.