

AND SESSIONS JUDGE, BENGALURU (CCH-68) IN MATTER BEARING CRL.A.NO.1150/2023.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.02.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

This petition is filed praying this court to set aside the order passed by the Trial Court dated 08.02.2024 on the file of 47<sup>th</sup> Additional City Civil and Sessions Judge, Bangalore (CCH-68) allowing the application filed under Section 148 (3) of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act' for short) to release a sum of Rs.62,00,000/- (20% of the fine amount) deposited with the Hon'ble Court in furtherance to order dated 20.12.2023.

2. The factual aspect of the case is that the petitioner was arrayed as accused in C.C.No.1865/2021 in the proceedings imitated under Section 138 of the Act for return of cheque for a sum of Rs.3,50,00,000/- and the Trial Court ordered to pay a sum of Rs.3,05,00,000/- to be paid to the respondent herein and the same is challenged in criminal appeal and an application is

filed under Section 389(1) of Code of Criminal Procedure, 1973. The court was pleased to allow the same and directed to deposit a sum of Rs.62,00,000/- (i.e., 20% of the fine amount), as a result, the same was deposited. The respondent preferred an application under Section 148(3) of the Act seeking indulgence of the First Appellate Court directing Trial Court to release the said amount and hence, the petitioner herein had filed objections to release the said amount. In spite of objections being filed, the same was allowed and hence, the present review petition is filed.

3. The office has raised the objections with regard to maintainability of revision petition contending that the order prayed for release of the amount and the same cannot be entertained and there is a bar under Section 397(2) and the same is not maintainable and CrI.A.NO.1150/2023 is still pending before the Sessions Court.

4. The learned counsel appearing for the revision petitioner in his argument vehemently contends that the revision petition is maintainable as it is an intermediate order and not an interlocutory order and contends that the revision petition is

maintainable since, the order is passed under Section 148(3) of the Act and this court held that the revision petition is maintainable as the order is passed under Section 143A of the Act. The learned counsel in support of his argument relied upon a judgment of the coordinate bench of this court passed in CrI.P.No.5944/2023 dated 28.07.2023, wherein the order dated 17.06.2023 is questioned, directing the petitioner to pay 10% of the cheque amount to the respondent within 60 days from the date of the order, wherein also the issue was raised with regard to the maintainability and this court extracted Section 143A of the Act and also Section 397(1) and (2) of Cr.P.C and held that an intermediate order would mean an order that emerges within a proceeding which culminates in closure of the said intermediate proceeding. The closure happens on account of the rights and liabilities of the parties being determined in the said proceeding; therefore, it is an intermediate order. If it is an intermediate order, the revision would undoubtedly be maintainable before the Court of Sessions. It is also held that the order passed under Section 143A of the Act is not interlocutory order but an intermediate order, as the application is filed, and

the application is closed, under the said provision, determining the rights and liabilities of parties qua the application and revision petition before the court of Sessions on the order passed by the learned Magistrate under Section 143A either allowing the application, or rejecting it, would be maintainable for the aggrieved party, be it the complainant or the accused to approach. In the case on hand, the impugned order is for the release of the amount, which is in deposit and deposit is also made before the Trial Court on the direction of the fact consequent upon entertaining the application filed under Section 389(1) of Cr.P.C and sentence is suspended subject to payment of 20% of the amount.

5. Having perused the order impugned, it is clear that on compliance of interim order passed by the court, the amount is deposited and also the order is clear that when the same is subject to the condition that if the appellant succeeds in the appeal, respondent / complainant shall return the said amount to the appellant /accused with interest at the bank rate as published by the Reserve Bank of India, prevalent at the

beginning of the relevant financial year, within 60 days from the date of order or within such further period not exceeding 30 days. Accordingly, the application filed under Section 148(3) of the Act is allowed and ordered to release the amount.

6. Now the question is only with regard to the maintainability of the revision is concerned. Having perused Section 148(3) of the Act and proviso, it is very clear that *power of the appellate court to direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal. Provided that if the appellant is acquitted, the court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, and the same is taken note of by the trial court while passing the order.* On the other hand, learned counsel appearing for the respondent would contend that the same is not a revisable order.

7. The learned counsel for the petitioner has also relied upon a decision in '**RIPEN KUMAR VS. DEPARTMENT OF CUSTOMS', EQUIVALENT CITATION 2011 CRI L.J.1288,**

wherein it is held that question of law raised with regard to whether an order, passed in exercise of revision power under Cr.P.C by a sessions Judge can be set aside by his successor at the instance of the same petitioner, when it was not challenged further and whether such an order, assuming it was passed not in revisional jurisdiction, attain finality. The said judgment is not applicable to the facts of the case on hand with regard to the maintainability is concerned. Insofar as the judgment relied upon by the learned counsel in '**AMAR NATH AND ORS., VS. STATE OF HARYANA AND ORS.**;', **CRL.A.NO.124/1977**, wherein also the question involved is with regard to exercising of power under section 397(2) of Cr.P.C. If any order summoning the appellant straight away was merely an interlocutory order, which could not be revised by the High Court under Section 397(1) and (2) of the CR.P.C. The order of the judicial magistrate summoning the appellants in the circumstances of the present case, particularly having regard to what had preceded was undoubtedly a matter of moment, the valuable right of the appellants had been taken away by the magistrate

while passing the order prima facie in sheer mechanical fashion without applying his mind.

8. Having considered the order passed by the coordinate bench of this court also, the order impugned is with regard to exercising the power under Section 143A of the Act i.e., for directing the accused to pay interim compensation and here is a case of releasing of the amount under Section 148A of the Act and not the order passed under Section 148 and a proviso is made to release of the amount deposited by the appellant to the complainant at any time, during the pendency of the appeal and further proviso is also very clear with a condition to repay the amount. When such being the case, the same cannot be termed as intermediate order as observed by the coordinate bench and it is only an interlocutory order passed on the application filed by the respondent invoking the proviso to Section 148(3) of the Act and the same does not amount to intermediate order and it amounts to interlocutory order and a direction was given to release the amount subject to further proviso as mentioned in Section 148(3) of the Act and the same

does not determine the closure of the case and determines only the amount in deposit has to be released subject to the further proviso to Section 148(3) of the Act and the statute has also given the authority. When such being the case, the revision petition is not maintainable and the same does not amount to an intermediate order. The very contention of the learned counsel for the petitioner that this court considered Section 143A of the Act and allowed the petition that the revision petition is maintainable and the same is under Section 148 of the Act as Section 143A and under Section 143A the very same court passed an order for interim compensation and under Section 148A of the Act, it is the appellate court. While granting stay direct the appellant to deposit the amount and accordingly, the amount is deposited under Section 148 of the Act. But here is a case of releasing of the amount, which is in deposit under Section 148(3) and the same does not amount to intermediate order and it is only an interlocutory order and hence, revision is not maintainable and the same can be challenged before the appropriate court by filing appropriate petition. In view of the discussions made above, I pass the following:



O R D E R

- (i) The revision petition is not maintainable and accordingly it is dismissed with liberty to the revision petitioner to file appropriate petition.

**Sd/-  
JUDGE**

**SS**