

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

Reserved on: 20.12.2022  
Pronounced on: 23.12.2022

CRM(M) No.50/2020

NAZIR AHMAD CHOPAN ... PETITIONER(S)

*Through: - Mr. I. Sofi, Advocate*

Vs.

ABDUL REHMAN CHOPAN ... RESPONDENT(S)

*Through: - Mr. Zaffer Mehdi, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order dated 30.12.2019 passed by learned Judicial Magistrate, 1<sup>st</sup> Class (Munsiff), Bandipora, whereby in an application for grant of interim compensation under Section 143-A of the Negotiable Instruments Act (hereinafter referred to as the NI Act), the learned Magistrate has granted interim compensation @20% of the cheque amount i.e., an amount of Rs.13.60 lacs in favour of the respondent(hereinafter referred to as the complainant) against the petitioner (hereinafter referred to as accused).

2) A perusal of the record shows that the complainant has filed a complaint under Section 138 of the NI Act against

the accused before the trial court. In the complaint it has been alleged that the accused has issued a cheque bearing No.787621 dated 02.08.2018 for an amount of Rs.68.00 lacs in favour of the complainant to discharge his liability which, according to the complainant, was to the tune of Rs.1,43,10,324/. The cheque was drawn on Jammu and Kashmir Bank Limited Branch, Handwara. The complainant when presented the cheque for encashment, the same was returned by the bank of the accused unpaid on the ground of insufficiency of funds regarding which memo dated 30.10.2018 was issued by the bank. It is further averred in the complaint that a legal notice of demand was issued by the complainant through his counsel that was served upon the accused on 28.11.2018. When the accused failed to liquidate his liability within the statutory period after the service of demand notice, the complaint came to be filed by the complainant before the trial Magistrate.

3) It appears that during the pendency of the complaint, the complainant filed an application under Section 143-A of the NI Act before the trial Magistrate on 27.04.2019. Prior to that, on 25.03.2019, the plea of the accused was recorded by the trial Magistrate and in his statement, he has denied having issued the cheque in question in favour of the complainant. The learned trial Magistrate, after hearing the

parties, passed the impugned order dated 30.12.2019, whereby the petitioner has been directed to pay an interim compensation @20% of the cheque amount i.e., Rs.13.60 lacs to the complainant. It is this order which is under challenge before this Court by way of instant petition.

3) Heard learned counsel for the parties and perused the record of the case.

4) It has been contended by learned counsel for the petitioner that the impugned order passed by the learned trial Magistrate is devoid of any reasons, inasmuch as in the impugned order the learned Magistrate has not spelled out as to why an amount @20% of the cheque amount has been awarded as interim compensation in favour of the complainant, particularly when the accused had denied the issuance of cheque in favour of the respondent/complainant.

5) On the other hand, the learned counsel for the respondent has submitted that the provisions contained in Section 143-A of the NI Act are mandatory in nature and, as such, the learned trial Magistrate was bound to pass an order of interim compensation in favour of the complainant. It has been further contended that the impugned order is revisable in nature and, as such, the instant petition under

Section 482 of the Cr. P. C is not maintainable. In support of his contention, the learned counsel has relied upon the judgments of the High Court of Chhattisgarh in the case of **Rajesh Soni vs. Mukesh Verma** (CRMP No.562 of 2021 dated 30.06.2021) and the judgment of Supreme Court in the case of **R. P. Kapur vs. State of Punjab** (AIR 1960 SC 862).

6) So far as the contention of the learned counsel for the petitioner that the instant petition under Section 482 of the Cr. P. C is not maintainable in view of availability of remedy of revision against the impugned order is concerned, the same does not carry much force for the reason that this Court is also vested with the revisional jurisdiction in respect of the orders passed by inferior criminal courts. Even if it is assumed that the impugned order passed by the learned trial Magistrate is revisable in nature, still then this Court would be well within its jurisdiction to exercise its revisional jurisdiction in order to test the legality and propriety of the said order because it possesses the concurrent revisional jurisdiction with the Court of Session in respect of the orders passed by the Magistrates.

7) That takes us to the rival contentions of the parties as regards the legality and propriety of the impugned order

passed by the learned trial Magistrate whereby interim compensation in favour of the complainant against the accused.

**8)** In order to test the merits of the contentions of the learned counsels, the provisions of Section 143-A of the NI Act are required to be noticed. The said provision has been inserted by the Act of 20 of 2018 in the principal Act with effect from 01.09.2018. It reads as under:

**"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 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) A bare perusal of the aforesaid provision makes it clear that a Court trying a complaint for offence under Section 138 of NI Act has discretion to order the drawer of the cheque to pay interim compensation to the complainant. This amount of compensation has not to exceed 20% of the amount of the cheque. Thus, grant of interim compensation is a discretionary power which has to be exercised by a Magistrate trying a complaint under Section 138 of NI Act and such order has to be based on reason and logic.

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.

11) It is not that just because the accused has put in his appearance before the Magistrate and has pleaded not guilty to the charges that the Magistrate has to pass an order of

interim compensation in a routine and mechanical manner. The word “may” appearing in Section 143-A of the Act gives discretion to the trial court to direct the accused to pay interim compensation to the complainant. As already noted, the exercise of discretion must always be supported by reasons failing which exercise of discretion will become arbitrary. Some of the reasons for granting interim compensation may be that the accused absconds and avoids to appear before the Court despite service or there is overwhelming material on record to show that the accused is liable to pay an enforceable debt or that the accused is guilty of protracting the proceedings by avoiding to cross-examine the witnesses or producing his evidence. There can be so many other reasons for a Magistrate to grant interim compensation in favour of the complainant but these reasons have to be recorded in the order so that the validity of the order is tested by the superior court if and when such an order is challenged.

12) Coming to the impugned order, a perusal thereof reveals that the learned Magistrate has, after narrating the rival contentions raised by the parties, observed that the object of Section 138 of the NI Act is to infuse credibility to negotiable instruments including cheques and to encourage and promote the use of negotiable instruments in financial

transactions. According to the learned Magistrate, once it is shown that the accused has drawn the cheque in question in favour of the complainant, presumption under Section 139 of the NI Act would come into play and the provision of interim compensation to the complainant in terms of Section 143-A of the Act has been made. It is also observed by the learned Magistrate that in order to further the credibility of the negotiable instruments, a breather in the shape of interim compensation in favour of the complainant has been provided for. On this ground, the learned Magistrate has granted interim compensation in favour of the accused.

13) There can be no quarrel with the proposition of law that dishonour of cheques has been made a penal offence with a view to promote the use of cheques in financial transactions.

There can also be no dispute with the proposition that once it is shown that the cheque has been drawn by the accused, presumption would arise in favour of holder of the cheque in terms of Section 139 of the NI Act.

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.

15) For the foregoing reasons, the petition is allowed and the impugned order dated 30.12.2019 is quashed with a direction to the learned Magistrate to pass a fresh order in the light of the observations made hereinbefore after hearing the parties.

16) A copy of the order be sent to the learned Magistrate for information and compliance.

(SANJAY DHAR)  
JUDGE

Srinagar,  
23.12.2022  
"Bhat Altaf, PS"

*Whether the order is speaking: Yes/No*  
*Whether the order is reportable: Yes/No*