

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF JUNE, 2022



BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.632 OF 2022

BETWEEN:

MR V.KRISHNAMURTHY
S/O K.S.VENKATESAN
AGED ABOUT 68 YEARS,
PROPRIETOR OF
RAGHVENK INDUSTRIES
HAVING ITS HEAD OFFICE AT
2, SECOND STREET
CO-OPERATIVE COLONY
METTUPALYAM - 641 301.

ALSO AT:
NO.156, WEST SAMBANDAM ROAD
R.S.PURAM, COIMBATORE - 641 002.

ALSO AT:
NO.3, VILANKURICHI ROAD
GANAPATHY MANAGER
COIMBATORE - 641 006.

ALSO AT:
NO.117, 4TH STREET,
PONNAIYA RAJAPURAM
COIMBATORE - 641 001.

ALSO AT:
NO.24/A3, RASI FLATS

G FLOOR, WARNER'S ROAD
TIRUCHY – 620 001.

... PETITIONER

(BY SRI MARUTHI, ADVOCATE FOR
SRI JOSHNA HUDSON SAMUEL, ADVOCATE)

AND:

DIARY CLASSIC ICE CREAMS PVT. LTD.,
A PRIVATE LIMITED COMPANY
INCORPORATED UNDER THE COMPANIES ACT
AND HAVING ITS REGISTERED OFFICE AT
NO.55, 8TH MAIN,
J.C.INDUSTRIAL ESTATE,
YELACHENAHALLI
KANAKAPURA ROAD
BENGALURU – 560 062
REPRESENTED BY MYLUSWAMY.

... RESPONDENT

(BY SRI DINESH S.K., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED
12.10.2021 PASSED BY THE XXVIII A.C.M.M., AT BENGALURU IN
C.C.NO.15681/2021.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 21.04.2022, COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE
FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order
dated 12-10-2021 passed by the XXVIII Additional Chief
Metropolitan Magistrate, Bangalore in C.C.No.15681 of 2020, in

a proceeding instituted by the respondent/complainant for offences punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the Act' for short). The order challenged is an order granting 10% interim compensation in terms of Section 143A of the Act.

2. Heard Sri Maruthi, learned counsel appearing for the petitioner and Sri S.K.Dinesh, learned counsel appearing for the respondent.

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

The petitioner is a retailer and the respondent/complainant is a producer of Ice Cream. The petitioner and the respondent entered into an agreement in the year 2017 for distribution of Ice Cream and frozen dessert products manufactured by the respondent/complainant, in and around city of Coimbatore. Pursuant to the agreement, it is the case of the petitioner that the complainant had demanded the petitioner for issuance of blank cheques as security in lieu of

proposed supply to be made to the petitioner for the purpose of such distribution. Accordingly, the petitioner claims that he had handed over several blank cheques, one of which, was cheque bearing No.011226, as security to the respondent and not towards any liability which the petitioner owed to the complainant. The respondent/complainant had been supplying Ice Creams and frozen products more than the quantity of the order placed by the petitioner which was brought to the notice of the complainant and in the light of reduced demand it was indicated that the supply of the products be reduced and further the petitioner refused to accept the stock as it was a perishable commodity with a short shelf life. Despite refusal of the order, the complainant went on supplying the stock.

4. It appears that the petitioner represented to the complainant that payment would be made only after sales take place as potential for selling Ice Cream had come down and with the onset of COVID-19 entire business of the petitioner was in doldrums. It is the further case of the petitioner that despite the

talks between the petitioner and the respondent, the complainant misused blank cheque bearing No.011226 issued by the petitioner as security, by depositing the same with the banker. The cheque that was deposited was for an amount of Rs.5,56,71,208/- which came to be dishonoured on the ground of want of sufficient funds in the account of the petitioner. Pursuant to the dishonor of the cheque, the complainant takes up legal proceedings against the petitioner by registration of complaint invoking Section 200 of the Cr.P.C. for offences punishable under Section 138 of the Act.

5. The issue before this Court is not whether the cheque was issued for the purpose of security or otherwise. It is a matter of evidence that is pending adjudication before the competent criminal Court. In the said proceedings, the complainant files an application under Section 143A of the Act seeking interim compensation as permissible under the statute to the tune of 20% of the cheque amount. The learned Magistrate considering the application filed by the complainant

and objections filed thereto allows the application by granting interim compensation of 10% of the cheque amount to be paid within 60 days of the order. It is this order that drives the petitioner to this Court in the subject petition.

6. The learned counsel appearing for the petitioner would vehemently argue and contend that the cheque that was issued in the name of the complainant was a blank cheque that was given as security, in furtherance of the agreement between the parties for distribution and sale of Ice Cream produced by the respondent/complainant, which has been misused by the complainant by entering an amount of Rs.5,56,71,208/- thereto. The order directing payment of 10% of the cheque amount as interim compensation by the learned Magistrate suffers from want of application of mind, as it does not consider the circumstances under which such a claim becomes due.

7. On the other hand, the learned counsel appearing for the respondent would vehemently refute the submission to contend that the outstanding debt of Rs.5,56,71,208/- is

admitted by the petitioner and in the teeth of such admission it cannot be said that the respondent was not entitled to such compensation as available under the statute. He would submit that the order impugned does not suffer from want of application of mind, as it is rendered exercising such discretion by granting only 10% as interim compensation.

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

9. In the light of the order impugned being an order of grant of interim compensation of 10% of the total cheque amount under Section 143A of the Act, I deem it appropriate to notice Section 143A of the Act and its purport.

10. Section 143A of the Act was introduced for a specific purpose. The objects and reasons for such amendment to Section 143 of the Act by insertion of Section 143A are germane to be noticed and they read as follows:

“STATEMENT OF OBJECTS AND REASONS

The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:—

(i) to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138 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. The interim compensation so payable shall be such sum not exceeding twenty per cent. of the amount of the cheque; and

(ii) to insert a new section 143 in the said Act so as to provide that in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial court.

4. The Bill seeks to achieve the above objectives.”

The purport for introduction of the amendment was that the Government had been receiving several representations from the public including trading community relating to pendency of cheque dishonor cases. This was because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. The injustice caused to the payee of a dishonoured cheque had to be considered. Therefore, the purpose for introduction of the amendment was delay in proceedings.

11. With the aforesaid objects and reasons, the Act was amended by the amending Act of 2018. It is by way of the said amendment, Section 143A came to be inserted. Therefore, it is germane to notice Section 143A of the Act and the same runs 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 date 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 1831) (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.”.”

This amendment has come into force with effect from 01.09.2018 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. In the event Court directs deposit of the

amount as interim compensation in terms of Section 143A the accused will have to comply with the said direction and the complainant in terms of the statute is entitled to withdraw the same. If the accused would not deposit the amount so directed by the Court in terms of Section 143A, it is recoverable by initiating proceedings under Section 421 of the Cr.P.C. Section 421 of the Cr.P.C. reads as follows:

421. Warrant for levy of fine.—(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of subsection (1) are

to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.”

In terms of Section 421 when proceedings are instituted again and if the fine amount is not paid the accused can be sent to custody. Therefore, the provision which is directory in the beginning snowballs into becoming mandatory and penal by the time the realization of the deposit amount is made.

12. On a conjoint reading of the objects and reasons, amendment made, and the purport of the provisions, what would unmistakably emerge is that the learned Magistrate is empowered to exercise his discretion in the grant of interim compensation which would in any given case range from 1% to 20%. Once the discretion by the learned Magistrate happens, the rigour of the statute sets in as the words in the statute depicts

that the Court may in a given case grant such compensation and once granted consequences follow. Therefore, the learned Magistrates are required to exercise discretion by recording reasons in writing which would demonstrate application of mind, as application of mind and reasons in an order are inseparable. Application of mind is discernible only when the order reflects adequate reasons being given for exercise of such discretion.

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

17. For the aforesaid reasons, the following:

ORDER

- (i) The Criminal Petition is allowed.
- (ii) The impugned order dated 12-10-2021 passed by the XXVIII Additional Chief Metropolitan Magistrate, Bangalore in C.C.No.15681 of 2020 stands quashed.
- (iii) The matter is remitted back to the learned Magistrate to pass appropriate orders, afresh, on the application filed by the complainant under Section 143A of the Act, bearing in mind the observations made in the course of this order.

I.A.No.1/2022 stands disposed, as a consequence.

This Court places its appreciation for the able assistance rendered by Mr.Angad.K., Law Clerk cum Research Assistant attached to this Court.

**Sd/-
JUDGE**

bkp
CT:MJ