

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26<sup>TH</sup> DAY OF MAY, 2022

BEFORE

THE HON'BLE MR.JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION NO.3555 OF 2022

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BETWEEN:

SRI. HIMANSHU GUPTA

... PETITIONER

(BY SMT. VIDYASHREE K.S., ADVOCATE FOR  
SRI. K.B. SHIVA KUMAR, ADVOCATE)

AND:

V. NARAYANA REDDY

... RESPONDENT

(THE RESPONDENT IS SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION  
482 OF Cr.P.C PRAYING TO QUASH THE IMPUGNED ORDER  
DATED 07.10.2021 PASSED BY THE XII ADDITIONAL

CHIEF METROPOLITAN MAGISTRATE BENGALURU IN C.C.NO.2024/2020 DIRECTING THE PETITIONER TO DEPOSIT 20 PERCENT OF THE CHEQUE AMOUNT U/S.143A OF N.I ACT AND ETC.

THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner is before this Court calling in question the order dated 07.10.2021 passed in CC No.2024/2020 directing the petitioner to deposit 20% of cheque amount under Section 143-A of the Negotiable Instruments Act, 1881 ( 'N.I Act' for short), as amended in the year 2018.

2. Heard the learned counsel appearing for the petitioner.

3. The respondent though served, remains unrepresented.

4. The petitioner and the respondent had certain transactions and certain cheques issued by the petitioner in favor of the respondent/complainant appears to have been dishonoured which leads to registration of the crime

invoking Section 200 of the Cr.P.C. for an offence punishable under Section 138 of the N.I. Act.

5. The present case is not with regard to the merit of the claim of the complainant. In the proceedings i.e., in C.C.No.2024/2020, the Court *suo motu* passes an order on 07.10.2021 directing payment of 20% of the amount involved in the transaction without notifying the accused or giving him an opportunity to file his objections. It is this order that drives the petitioner-accused to this Court.

6. The learned counsel for the petitioner would submit that the complainant himself did not prefer an application seeking any amount to be paid in terms of Section 143A of the Act and had no opportunity to even rebut the order in the light of no application being filed. The Court *suo motu* takes upon itself and passes the said order. To consider the submission made by the learned counsel for the petitioner, it is germane to notice Section 143A of the Act and it reads as follows:

*"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.”.

(Emphasis supplied)

7. A perusal at Section 143A of the Act (*supra*) would result in acceptance of the submission of the learned counsel for the petitioner only partially. Section 143A of the Act does not in every circumstance mandate filing of an application. The Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant and the interim compensation shall not exceed 20% of the amount of the instrument/cheque. Till this stage, it is the discretion of the Court, as the statute depicts that the Court may award interim compensation. But once the Court awards, its non-payment results in penal consequences. Sub-section (5) of Section 143A mandates that if the interim compensation is not paid, it may be recovered as if it were a fine 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 sub-section (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 of the Cr.P.C., a fine can be recovered in a manner as depicted hereinabove. Therefore, non-payment of compensation ensues dire consequences. The scheme of the provision being thus, though no application is filed, the Court may grant interim compensation, but it shall not be without hearing the accused, as, if the Courts would pass orders *suo motu* without calling upon the respondent to respond on such *suo motu* action, such action would be in blatant violation of principles of natural justice. It is trite law that any order both judicial and administrative if entail penal or civil consequences, it cannot be passed without at the outset complying with principles of natural justice.

8. The impugned order being a judicial order which is likely to result a proceeding being instituted under Section 421 of the Cr.P.C., in the event the accused would fail complying with the order of deposit of 20% of the amount of the instrument, it ought not to have been passed without hearing the accused. Though the provision does not indicate any hearing to that effect, in the light of the

order having penal consequences, principles of natural justice will have to be read into the provision.

9. In the light of what is aforesaid, on the solitary ground that there was no application filed by the complainant and no hearing afforded to the accused, the order impugned is rendered unsustainable. Wherefore, the following:

ORDER

- (i) The Criminal Petition is **allowed**.
- (ii) The order dated 07.10.2021 passed by the XII Additional Chief Metropolitan Magistrate, Bengaluru in CC No.2024/2020, stands quashed.
- (iii) It is open to the concerned Court to take further proceedings, in accordance with law.

**Sd/-  
JUDGE**

KGR\*