IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2023

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.5944 OF 2023

BETWEEN:

SANJAY P. S.,

... PETITIONER

(BY SRI JAYSHAM JAYASIMHA RAO, ADVOCATE)

AND:

ABHISHEK M.,

... RESPONDENT

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 17.06.2023 PASSED BY THE LEARNED LXIV ADDITIONAL CITY CIVIL AND

SESSIONS JUDGE, BENGALURU (CCH-65) IN CRL.RP.NO.527/2022 DIRECTING THE PETITIONER TO PAY 10 PERCENT OF THE CHEQUE AMOUNT TO THE RESPONDENT WITHIN 60 DAYS FROM THE DATE OF THE ORDER, AT ANNEXURE-A.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.07.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 17-06-2023 passed by the LXIV Additional City Civil and Sessions Judge, Bengaluru in Criminal Revision Petition No.527 of 2022 directing the petitioner to pay 10% of cheque amount to the respondent within 60 days from the date of the order.

2. Heard Sri Jaysham Jayasimha Rao, learned counsel appearing for the petitioner.

3. Facts, in brief, germane are as follows:-

The petitioner is the accused and the respondent is the complainant. The two have a transaction. The transaction is of ₹ 37,50,000/- in total. The transaction leads to issuing of certain

cheques by the petitioner in favour of the complainant. The cheques when presented, were dishonoured, on the score that instruction to the bankers was 'stop payment'. The dishonouring of cheques leads to the complainant taking steps under the Negotiable Instruments Act, 1881 ('the Act' for short) by causing legal notice upon the petitioner. The reply to the notice was submitted by the petitioner. It is then the complainant invokes the jurisdiction of the criminal Court by filing a private complaint before the 4th Additional Chief Metropolitan Magistrate at Bengaluru in P.C.R.No.7249 of 2020 under Section 200 of the Cr.P.C. for offences punishable under Section 138 of the Act. The learned Magistrate takes cognizance upon the complaint and registers a criminal case in C.C.No.23021 of 2021 for offences punishable under Section 138 of the Act.

4. The issue in the *lis* does not concern merit of the claim of the parties before the concerned Court. During the pendency of proceedings, the complainant files an application under Section 143A of the Act seeking interim compensation of 20% of cheque amount. The petitioner objects to the said application by filing

statement of objections and contending that there is no reason indicated as to why the amount of 20% should be allowed in favour of the complainant. Upon hearing the parties, the learned Magistrate rejected the application filed by the complainant for grant of interim compensation as aforesaid. Upon rejection of the application, the complainant approaches the learned Sessions Judge by filing a criminal revision petition under Section 397 of the CrPC in Criminal Revision Petition No.527 of 2022. The learned Sessions Judge, by the order impugned, allows the revision petition and directs payment of 10% of the cheque amount to the complainant. The petitioner/accused is before this court calling in question the said order of the learned Sessions Judge by which 10% of the cheque amount is directed to be paid as interim compensation under Section 143A of the Act.

5. The learned counsel appearing for the petitioner would urge a solitary contention that the revision petition filed before the learned Sessions Judge is not maintainable. In a petition that is not maintainable, any order that is passed is a nullity in law. It is his submission that the remedy that was available to the complainant

was to knock at the doors of this Court and not the Court of Sessions, by invoking Section 397 of the Cr.P.C. The contention is that the order passed in a proceeding that is without jurisdiction should be obliterated. He would seek to place reliance upon the judgment of Three Judge Bench of the Apex Court in the case of ***MADHU LIMAYE v. STATE OF MAHARASHTRA***[1].

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

7. The afore-narrated facts, dates and the link in the chain of events are not in dispute, they would thus require no reiteration. The only issue that falls for consideration is, ***whether the revision petition before the Court of Sessions was maintainable against an order passed on an application filed under Section 143A of the Act?***

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[1]*(1977) 4 SCC 551.*

8. To consider the issue that has arisen in the case it is germane to notice Section 143A of the Act. Section 143A of the Act comes into effect from 01-09-2018 pursuant to an amending Act, Act 20 of 2018 dated 16-08-2018. Section 143A of the Act reads as follows:

> *"**143-A. 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)*

Section 143A depicts the power of the Magistrate to grant interim compensation. The conditions for such grant are depicted under sub-sections (1) and (2) of Section 143A of the Act. Sub-section (3) thereof mandates that interim compensation so granted must be paid within 60 days and if the amount is not paid, it may be recovered as if it were a fine under Section 421 of the Cr.P.C. The amount of fine imposed under Section 138 or compensation awarded under Section 357 of the Cr.P.C. shall be reduced by the amount paid or recovered as interim compensation under Section 143A. The unmistakable purport of the provision is that in terms of the provision there is genesis of an application and in terms of the very provision there is termination of the application. Therefore, once the application is filed and ordered it terminates those proceedings i.e., proceedings under Section 143A *qua* an application so filed under the said provision.

9. Section 397 of the Cr.P.C. reads as follows:

> *"**397. Calling for records to exercise of powers of revision**.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.*
>
> *Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.*
>
> ***(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.***
>
> *(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."*

(*Emphasis supplied*)

Section 397 empowers the Court of Sessions or even this Court to examine the record of any proceeding before any inferior Criminal Court against closure of any proceeding. Sub-section (2) of Section 397 mandates that the power of revision conferred under sub-

section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. Therefore, the issue would be whether the revision would be maintainable before the Court of Sessions against an order passed on an application filed under Section 143A of the Act. As observed hereinabove, Section 143A of the Act is a complete code by itself *qua* an application to be filed for interim compensation. The genesis and closure of the application happens under Section 143A of the Act itself. Therefore, it terminates the application. Therefore, it is not an interlocutory order, but an intermediate order.

10. 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. Therefore, the solitary submission that the learned counsel would seek to urge is unacceptable. So is the judgment that the learned counsel seeks to rely upon on the

ground that it is inapplicable to the facts of the case at hand. The Apex Court at paragraphs 10 and 11 in the case of ***MADHU LIMAYE*** (*supra*) holds as follows:

> ***"10.*** *As pointed out in Amar Nath case the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court", But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power.*

But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of autrefois acquit. ***Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.***

We think the law as stated above is not affected by Section 397(2) of the new Code. It still holds good in accordance with Section 482."

(Emphasis supplied)

No doubt, the Apex Court holds that interlocutory proceedings would not become maintainable before the Court of Sessions. The Apex Court was considering an act of the concerned Court taking cognizance of the offence. Taking cognizance of an offence is undoubtedly an interlocutory order, as it is. In aid of continuation of proceedings, an order of cognizance emerges. Therefore, the said judgment is distinguishable on facts and the issue obtaining in the case at hand, without much *ado*.

11. After the amendment to the Act, and coming into force of Section 143A of the Act, there are several judgments rendered by different High Courts. The High Court of Bombay in the case of ***HITENDRA v. SHANKAR***[2] on this very issue of grant of interim compensation under Section 143A of the Act and Section 397 of the Cr.P.C. has held as follows:

> ***"7.*** *At the outset it is to be noted that, the complaint was filed by the present petitioner in the year 2017 on the day when he had filed application Exhibit 52. It appears that, the evidence of witness No. 2 was in progress. The cross examination was partly conducted. Section 143-A (5) was inserted in the statute book with effect from 01-09-2018 by Amendment Act 20 of 2018. In G. J. Raja's*

[2] *2019 SCC OnLine Bom 5644*

case (Supra) it has been specifically held in para No. 24 of the case that,

> *"24. In the ultimate analysis, we hold Section 143-A to be prospective in operation and that the provisions of said Section 143-A can be applied or invoked only in cases where the offence under Section 138 of the Act was committed after the introduction of said Section 143-A in the statute book."*

8. *The money deposited in the said matter pursuant to the similar order of deposit of 20 % of the cheque amount ordered by the Court, the Apex Court directed that, it shall be returned to the appellant along with interest accrued. Thus, the said provision under which the complainant was seeking relief in Exhibit 52 was in fact not available to the complainant and, therefore, the learned Additional Sessions Judge, Parbhani was justified in allowing the revision petition on the basis of G.J. Raja's case (Supra).*

9. Now coming to the submissions that, the said revision which was entertained by the learned Additional Sessions Judge was interlocutory in nature i. e. the revision was barred under Section 397(2) of Code of Criminal Procedure is concerned*, it will be helpful to consider some decisions, firstly in Madhu Limaye v. the State of Maharashtra, reported in (1977) 4 SCC 551, wherein it has been observed that,*

> *"(2) The order of the Sessions Court in the present case is, however, not an interlocutory order pure and simple. The test laid down in S. Kuppuswami Rao v. The King (1947 FCR 180 : AIR 1949 FC 1) was that if the objection of the accused succeeded the proceeding could have ended but not vica-versa and that the order can be said to be a final order only if in either event the action will be determined. On this test an order taking cognizance of an offence by a court whether it was done illegally or without jurisdiction will not be a final order and*

hence would be an interlocutory order. The High Court in such a case can certainly exercise its inherent power but it is wrong to held that the test in Kuppuswami Rao's case, that what is not a final order must always be an interlocutory order, is neither warranted nor justified. It is not the intention of the Legislature when it retains the revisional powers of the High Court that only those orders would be revisable which are passed on the final determination of the action but which are not appealable under the Code. The Legislature on the one hand has kept intact the revisional power of the High Court and on the other put a bar on the exercise of that power in relation to an interlocutory order. The real intention of the Legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". ***There may be an order passed during the course of the proceeding which may not be final but yet it may not be an interlocutory order pure and simple. By a rule of harmonious construction of sub-sections (1) and (2) of Section 397 it must be held that the bar in sub-section (2) is not meant to be attracted to such kinds of intermediate orders. It is neither advisable nor possible to make a catalogue of orders to demonstrate which kinds of orders would be interlocutory and which would be final and then prepare an exhaustive list of those types of orders which would fall between the two."***

10. *The same view was thereafter upheld in V.C. Shukla v. State Through C.B.I., reported in 1980 Supp SCC 92. What emerges from the decision in V.C. Shukla's case is,*

> *"If an order is not a final order, it would be an interlocutory order. An interlocutory order merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but is not a final decision or judgment on the matter in issue. So that in ordinary sense of the term, an*

interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not, however, conclude the trial at all. One of the tests is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue. A final order finally disposes of the rights of the parties."

11. In order that an order would be "interlocutory order", it will have to be seen as to whether the rights of a person are affected.

12. Here in this case, the learned Magistrate applied that provision of law which was not at all applicable to the case in hand before him, therefore, definitely it had affected the right of the accused. Consequently it cannot be said that, the order which was passed by the learned Magistrate was purely "interlocutory order" as contemplated under Section 397(2) of Code of Criminal Procedure. The learned Additional Sessions Judge was justified in setting aside the said order by exercising his power under Section 397(1) of Code of Criminal Procedure. There is no merit in the present writ petition much less to invoke the constitutional powers of this Court under Article 226 and 227, hence the writ petition is hereby dismissed. Rule is discharged."

(Emphasis supplied)

Later, the High Court of Telangana in the case of ***K.GANESH v. PULI SHIVA KUMAR GOUD***[3] has held as follows:

"…. …. ….

[3]*MANU/TL/0161/2023*

7. The provisions of Section 143-A, as enacted by the Parliament in Negotiable Instruments (Amendment) Act (Act No.20 of 2018) and notified in the Gazette of India, Extraordinary, Part II, Section I, No.32, dated 02.08.2018, read as under:

> *"143A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheques 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 subsection (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 cheques.*
>
> *(4) If the drawer of the cheques 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.*

> *(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, shall be reduced by the amount paid or recovered as interim compensation under this section."*

8. The aforesaid amendment was made by the Parliament for speedy disposal of the cases relating to the offences of dishonor of cheques. As there are delay tactics of unscrupulous drawers of dishonored cheques due to easy filing of appeals and obtaining stay of proceedings, Section 143-A has been incorporated, to direct the accused to deposit 20% of the cheque amount.

9. Though it is contended by the learned counsel for respondent that the revision case itself is not maintainable as it is filed challenging an interlocutory order, there is slight distinction between the 'interlocutory' orders and 'intermediate' orders, as has been held in the judgment of this Court in Crl.R.C.(SR).No.3198 of 2022, dated 27.04.2022. Paras 14, 15 and 16 of the said judgment read as under:

> *"14. Therefore, from the decisions of the Supreme Court, for the purpose of Section 397 of the Cr.P.C., orders may be classified as interlocutory orders, intermediate orders and final orders.*
>
> *15. To further clarify, an interlocutory order is the one which is interim and temporary in nature. It is the opposite of a final order. In other words, an interlocutory order will not result in culmination or termination of final proceedings. Interlocutory orders are merely ancillary orders which are decided at the interim stage and such orders aid in deciding the final rights and liabilities of the parties.*
>
> *16. An order passed in an interlocutory application during the intermediate stage of the proceedings might decide the rights and liabilities of parties. Such an order though interlocutory has to be termed as an 'intermediate order'. An interlocutory application can be decided either ways. If it is decided in one way it might be an interlocutory order, but if*

> *the same is decided the other way it might result in culmination of proceedings. Therefore, interlocutory applications where the orders might result in culmination of proceedings shall be treated as intermediate orders against which a revision application under Section 397(2) of the Cr.P.C. is maintainable [See Girish Kumar Suneja v. CBI (2017) 14 SCC 809].”*
>
> *As per the aforesaid observations of this Court, the impugned order is an intermediate order, but not interlocutory order. Therefore, revision is maintainable against the said order.*
>
> *10. On perusal of the impugned docket order, it is evident that no reasons have been assigned by the trial Court while directing the accused to deposit 20% of the cheque amount. A judicial order of the Court shall be a reasoned order. But the order under challenge does not contain any reasons or of judicial application of mind, and therefore, it is liable to be set aside.”*

After the aforesaid judgments, the High Court of Chhattisgarh holds a similar view in ***LAXMIKANT RATHORE v. RAKESH JADWANI***[4] as follows:

> *“**5.** Section 143A which provides for power to direct interim compensation was inserted in the Negotiable Instruments Act, 1881 w.e.f. 01/09/2018 by the Amendment Act 20 of 2018 with an object to provide interim compensation to the extent of 20 per cent of the amount of cheque during the pendency of the complaint and that provision has been held to be prospective in nature and confined to cases where offences were committed after the introduction of Section 143A w.e.f.*

[4] *2021 SCC OnLine Chh 435*

01/09/2018 by the Supreme Court in the matter of G.J. Raja v. Tejraj Surana[1].

6. *Similar is the proposition held by the Bombay High Court in the matter of Babanraoji Shinde Sugar and allied Industries Ltd. v. State of Maharashtra[2]. As such, the power and jurisdiction under Section 143-A of the Act of 1881 can be exercised by the trial Magistrate/Judicial Magistrate 1st Class w.e.f. 01/09/2018 for grant of interim compensation in a complaint filed and pending under Section 138 of the NI Act, 1881 following the judgment of the Supreme Court in the matter of G.J. Raja (supra).*

7. Reverting to the facts of the instant case in light of the aforesaid judgments (supra), it is quite vivid that the trial Magistrate rejected respondent No. 1/complainant's application for grant of interim compensation under Section 143A of the Act of 1881 on the ground that the petitioner/accused is not responsible for delay in completion of the trial, however, the revisional Court has noticed that the trial Magistrate has the power and jurisdiction to grant interim compensation under Section 143A of the Act of 1881 as the cheque in question was dishonored on 24/12/2018 and the complaint was filed on 24/05/2019, therefore Section 143A of the Act of 1881 is applicable, and remitted the matter to the trial Magistrate to consider respondent No. 1/complainant's application for grant of interim compensation under Section 143-A of the Act of 1881, which is strictly in accordance with law and the petitioner/accused is at liberty to make all such submissions before the trial Magistrate while consideration of the said application under Section 143-A of the Act of 1881. Similarly, the argument made by learned counsel for the petitioner/accused that revision preferred by respondent No. 1/complainant was not maintainable in view of Section 397 of CrPC is also rejected as it is an important and valuable right of respondent No.

1/complainant to get interim compensation in terms of Section 143-A of the Act of 1881."

(Emphasis supplied)

All these judgments considered the purport of an application under Section 143A of the Act and its closure and would hold that revision before the Court of Sessions under Section 397 of the Cr.P.C. would be maintainable as an order on the application filed under Section 143A of the Act is not an interlocutory order but an intermediate order. Therefore, I answer the issue that has arisen for consideration holding that an order passed on an application filed 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.

12. In the light of the solitary contention advanced by the learned counsel for the petitioner and it being answered against the petitioner, the petition lacking in merit stands rejected.

Sd/-
JUDGE

bkp
CT:ss