

Complaint Case 1585 of 2021
Present: Amrita Banerjee (WB01337)
Judicial Magistrate 2nd Court, Asansol, Paschim Bardhaman

Order dated 10.07.2024:

Today is fixed for order in respect of the petition filed by the complainant under Section 143A, NI Act.

Complainant files hazira.

An adjournment petition has been filed on behalf of the accused on the ground stated therein.

Heard both sides on the previous occasion regarding the petition filed U/S/ 143A, NI Act.

Record is taken up for passing order.

It is found from the case record that the complainant filed the petition under Section 143A of NI Act on 02.07.2021 after record of plea and on that occasion the accused pleaded to be not guilty. By the petition dated 02.07.2024, the complainant contended that after receiving summons from the court, the accused surrendered before this court in this case and obtained bail and on subsequent occasion, he misused the liberty of bail and was absent on the date of hearing and for that reason, the court passed order of issuance of W/A against him and thereafter again he obtained bail and in this situation, the complainant prays interim compensation as per Section 143A, NI Act. It is further found that the accused countered the prayer of the complainant by filing a written objection and stated that after receiving summons, the accused surrendered before this court and the accused is diligently facing the trial. It is further stated by the accused that he is a businessman who stocks dry fruits and during the lock-down, he suffered huge financial loss as the stocked dry fruits got rotten and till date is facing financial stringency and he is not in a position to pay any compensation and is ready to face the trial.

For considering the prima facie merit of the case, this court have considered the pleading of the parties. In the complaint, it has been alleged that the complainant and the accused are well-acquainted with each other for the purpose of business and in the year 2020 to 2021, the accused took delivery of dry fruits of Rs. 2,95,000/- from the complainant and even after passing of a long time, the accused did not pay the price to the complainant and subsequently, the accused issued six cheques to the complainant regarding that due amount which was dishonoured and hence, the instant case was filed. On 02.07.2024, when the accused was examined as per Section 251, Cr.P.C., he pleaded not guilty.

During hearing, Ld. Counsel for the complainant submitted that the complainant has a business of dry fruits and during the year 2020-21, the accused took delivery of dry fruits on credit and subsequently, he issued cheques to the complainant and the same got bounced and for this reason, the complainant was compelled to file this case and even after appearing in this case, the accused misused the liberty of bail by not turning up on the day of plea. He further submitted that the complainant is entitled to interim compensation as the provision of S. 143A of Cr.P.C is indirectly a mandatory relief. He referred to one judgment of the Hon'ble Supreme Court in Bachchan Devi & Anr V. Nagar Nigam, Gorakhpur & Anr in which the use of the words 'may' and 'shall' in statutes had been discussed and also referred to a judgment of the Hon'ble

Continuation of order dated 10.07.2024

Supreme Court in G.J. Raja v. Tejraj Surana wherein it was observed that the provision of S. 143A, NI Act is prospective in operation and can be applied in cases where the offence under Section 138 NI Act was committed after introduction of Section 143A NI Act.

Ld. Counsel for the accused argues that the provision of S. 143A, NI Act is discretionary in nature and the accused is unable to pay any compensation as he is suffering financial stringency in his business of dry fruits. He relied upon a judgment of the Hon'ble Supreme Court in Rakesh Ranjan Srivastava v. The state of Jharkhand & Anr wherein some parameters have been laid to grant the relief under S. 143A, NI Act.

Considered the materials on record, submissions of Ld. Counsels of both the sides and the judgments referred by them meticulously. It is a settled position from the pleading of both sides that the accused is a businessman who deals with dry fruits and it is found that the complainant has been able to establish a prima facie case in his favour and the accused pleaded not guilty at the time of examination u/S. 251, Cr.P.C. The case record reveals that after receiving summons, the accused surrendered that obtained bail and on subsequent occasion i.e. 09.08.2023, he did not turn up on the day fixed for recording of plea and this court directed issuance of W/A against him. Though on 14.08.2023, the accused surrendered by filing a put up petition, such an act points towards the misuse of liberty of bail by the accused and lack of diligence on the part of the accused to face the trial. The court is not in a position to determine whether or not the accused is facing any financial distress/stringency at this moment as no supporting document is filed during the hearing and it is matter of fact, the general business situation of covid period has improved in these days as in last two years, the overall scenario has changed. It is a settled object of incorporating S. 143A, NI Act is to strengthen the mode of business transaction through cheque by mitigating the challenges faced due to pending cases and delay tactics employed by the drawers of dishonoured cheques. Therefore, considering the materials on record, this court is inclined to allow the prayer of the complainant.

Hence, it is

ORDERED

that the petition dated 02.07.2024 filed by the complainant under Section 143A of Negotiable Instruments Act is allowed on contest.

The accused namely Santosh Kumar Barnwal is directed to pay 20% of the cheque amounts to the accused as interim compensation within a period of 60 days from the date of passing of this order. It is further to be noted if the accused is acquitted at the time of final adjudication of this case, the complainant will be liable to repay the amount of interim compensation to the 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 sixty days from the date of order.

To **24.10.2024** for evidence

Dictated and Corrected by me,

Sd/-

**Judicial Magistrate 2nd Court,
Asansol, Paschim Bardhaman**

Sd/-

**Judicial Magistrate 2nd Court,
Asansol, Paschim Bardhaman**