

Complaint Case no. 394 of 2022

Order dated 30.12.2024

Today is fixed for hearing of petition under Section 205 of Cr.P.C., hearing of petition under section 143A of N.I. Act and hearing of petition under section 305 of Cr.P.C

The complainant namely Susanta Kumar Sadhukhan and accused namely Jaijit Ganguly and accused company Surji Agro Foods Pvt. Ltd are present before this Court by filing hazira.

The petitions are taken up for passing order.

This Court has already heard from both sides in respect of the instant petitions.

Now, the petition **under section 205 of Cr.P.C** is taken up for passing order.

Perused the instant petition which is supported by affidavit.

On such perusal, this Court finds that by filing the instant petition, the accused person namely Jaijit Ganguly has stated that he is the director of Surji Agro Food Pvt. Ltd and for most of the time, he had to stay outside Kolkata and so, it is very difficult for him to attend before this Court on each and every date. Thus, he has prayed for representing him as well as the accused company by his Ld. Advocate Arpita Biswas and Ld. Advocate Sayanti Sau.

Ld. Counsel for the complainant raises stringent objection in regard to the application u/s 205 of Cr.P.C and states that the petition u/s 205 cannot be allowed on this ground and that there is a question of identification also. In reply to such question of identification, Ld. Counsel for the accused person has submitted that the accused person will not challenge his identity and the same has also been mentioned in the instant petition.

Considered.

In my opinion, in the instant scenario the essential ingredients are fulfilled and I find no other reason but to consider and allow the prayer of the accused.

Thus, the prayer for representing the accused u/s 205 Cr.P.C. is **allowed** in respect of the accused namely Jaijit Ganguly and accused company Surji Agro Foods Pvt. Ltd. vide their Ld. Advocates Arpita Biswas and Sayanti Sau u/s 205 Cr.P.C with a condition that the accused persons shall not challenge their identity in this case and shall appear before this Ld Court on the dates fixed for as and when called upon to appear by this Court.

Another, petition **under section 143A N.I. Act** is taken up for passing order.

Ld. Advocate for the accused and complainant are present.

The accused has filed WO against the petition of the complainant under section 143A of N.I. Act.

Heard the submissions of both the parties.

The complainant by way of filing a petition u/s 143A of Negotiable Instrument Act 1881 as well as through his Ld. Advocate has submitted that the accused had pleaded not guilty of the accusations u/s 138 of Negotiable Instrument Act 1881 in respect of three cheque being nos. 180168, 180169 and 180170 amounting Rs.3,00,000/- and the Ld. Advocate has prayed for 20% of the cheques amount as interim compensation as laid down in the Act.

Ld. Advocate for the defence has submitted that in order to truthfulness of the allegation made by the complainant, evidence is required to be taken by the Ld. Court and it is purely matter of trial for conclusive prove. He also submits that being a senior citizen, he is suffering from illness and also burdened with bank three existing bank loans.

Heard both sides.

Considered.

Perused the entire record.

It transpires that this Court has primarily satisfied itself about the sufficient materials for proceeding against the accused person. The accused person has entered appearance. After hearing both the parties to this case this court has found that a prima facie offence under section 138 of Negotiable Instrument Act 1881 was made out against the accused Rabindra Nath Das and she has pleaded not guilty. Save and except saying not guilty of the offence no positive case was/is made out by the accused till now. During hearing, Ld. Advocate for the accused has also not denied the issuance of the cheque to the complainant by the accused. Therefore, I finds no impediment to pass an order for interim compensation in favour of the complainant.

Hence, it is

ORDERED

that the petition under section 143A of Negotiable Instrument Act 1881 filed by the complainant is considered and allowed.

The accused, the drawer of the impugned cheques is hereby directed to pay 10% of the impugned cheques amount i,e Rs. 3,00,000/- x 10%= Rs. 30,000/- to the complainant as interim compensation within 60 days from the date of the order and in default the complainant is at liberty to execute the same as per provision of section 143A (5) of the N.I Act 1881.

Be it mentioned that in case of the acquittal of the accused from this case the above specified amount with interest as per prevalent bank rate at the beginning of financial year within 60 days from the date of the order or within such time period as specified by the Court be repaid to the accused by the complainant.

It is also pertinent to mention here that if any amount of fine be imposed in future upon the accused persons, shall be reduced by the amount paid or recovered as interim compensation under this Act.

Another petition **under section 305 of Cr. P.C** is taken up for passing order.

One Gautam Sarkar filed this petition and undertakes to represent the accused company, Surji Agro Foods Pvt. as well as the accused person. However, there is no cogent and authenticated document in support of his contention. As such, this petition under section 305 of Cr. P.C is rejected.

To 24.02.2025 for payment and evidence.

D/C by me

Judicial Magistrate, 3rd Court, Howrah

J.M. 3rd Court, Howrah