

Order dt. 09.07.24.

Today is fixed for hearing of the petition dt. 02.07.24 filed by the accused person, W.O if any in the meantime.

Both the parties are present.

The accused is present.

Ld. Advocate for the accused submitted that the accused is suffering from acute financial stringency and as such she is not in a position to comply with the earlier order passed by this court on 02.12.23. He prayed for modification of the said order.

Against the submission of the Ld. Advocate for the accd, Ld. Advocate for the complainant raised vehement objection by stating that there are other two cases pending between self same parties, concerning analogous cause of action and in all these three cases analogous orders were passed by this court. Despite the order was passed by this court on 02.12.23 till date the accd has not paid a single penny to show her bonafide. Moreover, the conduct of the accd shows that she has not intention to comply the court's order as in order to show her good gesture she could have paid lumpsum at least in one case. He prayed for necessary order against her.

It appears that the matter relates to the year 2019 and just when the evidence was about to start, the complainant submitted the application U/s.143(2) of NI Act and since order directing the accused to pay 20% amount as interim compensation was passed by this court, due to non compliance on the part of the accused the matter could not be proceeded further.

The fact remains that the accused till date has not approached before any higher forum challenging the said order and now came before this court with a prayer for modification.

I have gone through the case record and the said order.

I have also gone through the provisions of law.

Although the substantive law comes U/s.138 NI Act, the procedural part is governed by teh provisions of CrPC, 1973 wherein the Magistrate has no inherent power to put simply, that once an order is passed by a Judicial Magistrate, the Code of 1973 does not permit him to recall its own order except under the circumstances arising U/s.362 of CrPC. The prayer for modification as prayed by the accd hits the very decisive part of the said order which is not covered by s.362 of CrPC.

In the above premises, I am not inclined to entertain the plea of the accused at this moment as it seems to be frivolous and as a pretext of dilatory tactics in order to deprive the other side to avail the fruit of justice.

In the above premises, the petition is hereby rejected without any order of cost.

The complainant is at liberty to put the accused for execution of the order dt. 02.12.23 by availing the proper course of law.

Ld. Advocate for the accused files another petition praying for confirmation of interim bail. The legal proposition whoever comes before the court praying for equity must come with clean hand. As I have already observed that the accd failed to show her bonafide as of now, I think the prayer for confirmation of interim bail should not be entertained.

Hence, prayer for confirmation of interim bail is also rejected.

Fixing 23.07.2024 for evidence of the complainant and appearance.

Dictated by,

