

C -157/2021

Prasenjit Maiti vs Dhrubojyoti Choudhury

Date: 11.1.24

Today is fixed for hearing of petition filled by the complainant u/s 143A of the N.I Act.

Petitioner files hazira.

Accused is absent without any petition.

Ld. Advocate for the accused has prayed for time.

Id. Advocate for the accused has prayed for pass over of the said record. The same is considered and allowed till 1.45 pm.

Later

None appear on repeated call. The record is taken up for hearing.

Heard the complainant. The accused is absent.

The record is taken up for passing order.

By filling the instant petition Ld advocate for the complainant/ petitioner submits that the instant case was filled on 17.3.21 before the Ld ACJM Barrackpore and thereafter the same was transferred to this Court. The accused has pleaded non guilty and hence the Complainant/ petitioner has prayed for interim Compensation of 20% to the tune of the cheque amount in favour of the Complainant.

Heard and considered.

After perusing the materials on record the court finds that the cheque was issued on 31.12.20. The instant case was filed on 17.3.21 and accused did not appear after receiving summon. Hence warrant was issued against the accused. Thereafter accused surrendered on 1.4.21 and examined on the same date u/s 251 CrPC. Since appearance of the accused till date the accused has not filed any non maintainability petition before the court. Moreover, the accused person has also not filed any written objection in respect of the petition under hearing. The accused person has also not filed any case of theft or forgery against the complainant after knowing that he has filed his alleged lost cheque before the bank.

As per sec.143A of NI Act, if the complainant fails to prove the matter then he will return the money to the accused person. Thus, at this stage, the court does not find any ground to reject the instant petition only on the ground on the verbal objection by the Id. Advocate for the accused.

Section 143A of N.I. Act provides that

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence u/s.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 complainant ; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty percent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub sec(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 show by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a find 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.

This amendment of NI Act came into force with effect from 1.9.18, the purport of the amendment is that the court may in certain circumstances, award interim compensation which shall not exceed 20% of the amount of the cheque. And such interim compensation can be permitted to be withdrawn in terms of the said amendment in the event of court directs deposit of the amount as interim compensation in terms of section 143A, it is recoverable by initiating proceedings under section 421 of the CrPC. One of the purpose of the amendment is because of delay tactics of the unscrupulous drawers of dishonour cheque. The injustice cost the payee of a dishonored cheque had to be considered. Thus, while exercising the discretionary power in dealing with an application u/s.143 A of the NI Act the conduct of the accused has to be considered.

The accused has not come before the court within due time and took several tactics in delaying the matter. As the case is very early stage of trial and the accused has delayed in several occasion, thus keeping in mind the objectives of introducing the section I am of the view that interim compensation of 20% should be awarded in favour of the complainant.

Hence it is

ORDERED

that the petition under hearing is allowed on contest.

The accused are hereby directed to deposit Rs.1,20,000/- i.e. 20% of the cheque amount before the court within 60 days from the date of this order failing of which the same shall be recovered as per sec.421 of CrPC.

It is further ordered that if after completion of trial the accused persons are acquitted then the complainant / petitioner shall be bound to repay the aforesaid amount with interest at the bank rate as published by Reserve Bank of India, prevalent at the beginning of the relevant financial year withing sixty days from the date of order of acquittal.

Thus the petition is hereby disposed off.

To 01.07.24 for evidence.

Payment must be made in the mean time, in default of which complainant is at liberty to take appropriate step.

D/C by me,

2nd JM, Barrackpore

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