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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 788/2024**

PUNEET RAI

..... Petitioner

Through: Mr Siddharth Aggarwal, Sr. Advocate
with Mr Arun Vohra, Mr Vikhyat
Oberoi, Ms Jagriti Pandey, Ms
Onmichan R., Mr Ayush Srivastava
and Mr Kamal Nayan Tiwari,
Advocates.

versus

KUNAL KASHYAP

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER
01.02.2024

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CRL.M.A. 3166/2024

1. Allowed, subject to all just excretions.

CRL.M.C. 788/2024 & CRL.M.A. 3165/2024

2. The present petition has been filed against the impugned order dated 07.12.2023 passed by the learned ASJ-04 & Special Judge (NDPS), South East District, Saket Courts, Delhi in Criminal Revision Petition No.565/2023 titled as 'Kunal Kashyap vs. Puneet Rai', whereby the learned Revisional court awarded interim compensation to the complainant/respondent in terms of Section 143A of the NI Act to the extent of 20% of the cheque amount.

3. Learned senior counsel for the petitioner submits that the respondent's



application seeking interim compensation under Section 143A of NI Act was dismissed by the learned Metropolitan Magistrate.

4. Inviting attention to the impugned judgment, he submits that the learned Revisional Court, apart from considering the merits, has allowed the said application on two counts viz., (i) the petitioner had sought exemption on three occasions which has delayed the trial proceedings; and (ii) the petitioner/accused deliberately argued on the aspect of discharge though law on the said aspect is settled that under Section 138 NI Act accused cannot be discharged.

5. Learned senior counsel submits that insofar as the exemption is concerned it is only on one occasion that the trial got deferred due to the non presence of the petitioner/accused whereas on the second occasion when the exemption was sought, the matter was fixed for pronouncement of order and the order was infact pronounced by the learned MM which did not lead to any delay. Likewise, on third occasion, the matter was at the stage of cross-examination of the complainant's witness and the learned counsel for the petitioner/accused did cross-examine the complainant's witness, therefore, there was no delay in trial even on the third occasion.

6. He submits that insofar as the aspect of discharge under Section 138 NI Act is concerned, the reference was pending before the Division Bench of this Court and the judgment came to be pronounced on 20.04.2022 whereas the arguments were addressed before the learned Metropolitan Magistrate on the aspect of discharge one month prior to the said date, therefore, there was no occasion for the learned Revisional Court to observe that the law is settled on the issue that there cannot be a discharge under Section 138 of NI Act.



7. In view of the above, issue notice to the respondent through all permissible modes, returnable on 26.04.2024.
8. Having regard to the submissions made by the learned senior counsel, which *prima facie* appears to have substance, the operation of the impugned order is stayed till the next date.

VIKAS MAHAJAN, J

FEBRUARY 1, 2024
MK