

(2023-3)211 PLR 742 (SC)

SUPREME COURT OF INDIA

Present : Justice S. Ravindra Bhat and Justice Aravind Kumar.

PAWAN BHASIN – Petitioners

Versus

STATE OF U.P. & ANR. – Respondents

Criminal Appeal No. 1807 of 2023(Arising out of SLP (Crl.) No(s). 6878 of 2023).

(i) Negotiable Instruments Act, 1881, Sections 143A - Only where the accused “pleads not guilty” of the accusation made in the complaint that interim compensation under Section 143A (1) can be granted - Order passed by the Magistrate immediately after the accused answered the summons i.e. before the plea of “not guilty” was entered - Order set aside. [Para 6]

(ii) Negotiable Instruments Act, 1881, Sections 143A - Interim compensation - Can be claimed at “any stage”. [Para 9]

For the Petitioners :- Mr. Siddharth Dave, Sr. Advocate, Mr. Prabhat Kumar, Mr. Karan Dang, Mrs. Pallavi Sharma, Ms. Aakriti Priya, Mr. Siddharth Mittal, Advocates. For the Respondents :- Mr. Sarvesh Singh Baghel, Ms. Shubhali Pathak, Mr. Shantanu Singh, Mr. Devashish Bharuka, Mr. Vinit Trehan, Mr. Aditya Trehan, Advocates.

ORDER

(07.07.2023) – Leave granted.

2. The question which appellant urges is regarding tenability of the trial court’s order of 24.05.2022 whereby he was directed to deposit 10% of the amount of a dishonored cheque under section 143A of the Negotiable Instruments Act, 1881. The appellant argues that the order requiring such deposit was made by the Magistrate at a stage prior to when notice under Section 251 was sent to the accused petitioner.

3. The learned senior counsel Mr. Siddharth Dave relied upon the text of Section 143 A which reads as follows:

“Section 143A: Power to direct interim compensation.

143A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 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 complaint; and

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

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

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

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(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 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section."

4. It was argued in sum that the stage for making such an order would arise only when the accused is not guilty to the accusation in the complaint.

5. Mr. Devashish Bharuka, learned counsel appearing on behalf of the respondent supported the orders of the court below and further stated that the trial has proceeded to its final stage, as the complainant's evidence as well as the appellant's/accused statements have been recorded. In these circumstances, there would be no prejudice caused to the appellant.

6. As is evident from plain reading of Section 143A(1)(a), it is only where the accused "pleads not guilty" of the accusation made in the complaint that interim compensation under Section 143A (1) can be granted. In the present case, the Magistrate did not issue the order after the plea of the accused was entered, but before that i.e. after he answered the summons. The parties' counsels were present at an intermediate stage of proceedings, but before the plea of "not guilty" was entered.

7. In these circumstances, clearly there is an infraction of Section 143A(1).

8. The order dated 24.05.2022 made by the Chief Judicial Magistrate, Gautam Budh Nagar, U.P. in Complaint No. 50/2021 cannot therefore be sustained and is hereby quashed.

9. Since the trial has proceeded and is at an advanced stage, no further orders are made except to observe that it is open at this stage too for the complainant to seek appropriate relief, including under Section 143A, since it can be claimed at “any stage”.
10. The appeal is allowed to the above extent.
11. Pending applications, if any, are disposed of.