

Sushil Kumar Jain And Another vs State Of U.P. And Another on 1 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:69243

Court No. - 73

Case :- APPLICATION U/S 528 BNSS No. - 5701 of 2025 (leading application)

Applicant :- Sushil Kumar Jain And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Kabeer Tiwari

Counsel for Opposite Party :- G.A.,Manvendra Nath Singh

Connected with

Case :- APPLICATION U/S 528 BNSS No. - 5714 of 2025 (connected C1 application)

Applicant :- Sushil Kumar Jain And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Kabeer Tiwari

Counsel for Opposite Party :- G.A.,Manvendra Nath Singh

Connected with

Case :- APPLICATION U/S 528 BNSS No. - 5737 of 2025 (connected C2 application)

Applicant :- Sushil Kumar Jain And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Kabeer Tiwari

Counsel for Opposite Party :- G.A., Manvendra Nath Singh

Hon'ble Vikas Budhwar, J.

1. Heard Sri Kabeer Tiwari, learned counsel for the applicants in the leading connected C1 and connected C2 applications, Sri S.K. Singh, learned AGA for the State and Sri Manvendra Nath Singh, learned counsel for the opposite party no.2 in all the three applications.

2. A joint statement has been made by the learned counsel for the parties in all the applications that they do not propose to file any affidavit and the application be decided on the basis of the documents available on record. With the consent of the parties, the application is being decided at the fresh stage.

3. The case of the applicants in the leading application is that on 05.08.2023, the opposite party no.2 lodged a complaint against the applicants under Section 138 of the NI Act relating to dishonouring of three cheques of an amount of Rs.2,34,000/- each. A statutory demand notice is stated to have been issued by the opposite party no.2 to the applicants and thereafter, the complaint was lodged on 05.08.2023. On 26.02.2024, the trial court summoned the applicants under Section 138 of the NI Act. The applicants, thereafter, approached the court below for bail. Aggrieved against the summoning order, the applicants approached this Court while filing application u/s482 No.13942 of 2024 (Sushil Kumar Jain vs. State of U.P.) which came to be disposed of on 21.05.2024 granting liberty to the applicants to surrender and move an application for bail. Thereafter, the applicants were enlarged on bail with certain conditions which was subject matter of challenge at the instance of the applicants in application u/s482 No.22773 of 2024, which came to be disposed of on 11.09.2024, wherein also the order dated 20.06.2024 passed under Section 143-A of the N.I. Act for grant of interim compensation at the instance of the opposite party no.2 was challenged. The said application came to be disposed of on 11.09.2024 holding as under :

"9. The main submission is that Since the 143A N.I. application cannot be decided till the accused pleaded 'not guilty' in accordance with the provisions of Section 251 Cr.P.C, therefore, even if the applicant has agreed and has given no objection to the application under Section 143A of the N.I. Act, the same could not be decided. However, it is apparent that from the order dated 20.06.2024 the trial court has not decided the application under Section 143A of the N.I. Act, and no order has been passed on application under Section 143A of the N.I. Act and the same is still pending before the trial court. However, on his own undertaking the condition was imposed by the trial court.

10. Therefore, since an objection has been raised that 'no objection' was given by the counsel for the applicant without any authorization, therefore, the order dated 20.06.2024, passed in the Complaint Case No. 7311 of 2023 (Krishna Pratap Singh vs. Sushil Kumar Jain and Other) is hereby set-aside and the bail granted to the applicant is hereby cancelled and the applicant is directed to surrender before the trial court within one week and apply for bail in accordance with law. The trial court shall proceed in the matter as if the non-bailable warrants are still continuing against the applicant and it is further submitted that the now stage of 251 Cr.P.C. is already over, therefore, the trial court after deciding the bail applications shall also decide the application under Section 143A of the N.I. Act., of the complainant in accordance with law.

11. With the aforesaid observations the instant application is disposed of. "

4. As per the records, another application came to be preferred by the complainant under Section 143-A of the N.I. Act for grant of interim compensation which came to be objected by the applicants on 21.10.2024. The said application has been allowed by the Court of Chief Judicial Magistrate, Lalitpur in Complaint Case No.7311 of 2023 (Krishna Pratap Singh vs. Sushil Kumar Jain) on 17.12.2024.

5. As regards, the connected application is concerned, the same is also between the same parties as in the case of the leading application. However, here, the complaint is with regard to dishonour of a cheque of an amount of Rs.1 lac post issuance of the statutory notice the complaints would filed thereafter, the applicants herein approached this Court questioning the summoning order dated 26.02.2024 followed by filing of an application under Section 482 No.13939 of 2024 (Sushil Kumar Jain and others vs. State of UP) questioning the summoning order, wherein the applicants were directed to surrender and an order came to be passed on 20.06.2024 in Case No.12253 of 2023 under Section 143-A on an application for grant of interim compensation by the opposite party no.2, whereby interim compensation to the tune of 20 per cent was accorded and the applicants were enlarged on bail with certain conditions which led to filing of an application under Section 482 No.23438 of 2024, which came to be disposed of by this Court on 11.09.2024 with the same observations as was in the case in the leading application. Thereafter, the opposite party no.2 came to have preferred the application u/s143-A which was objected by the applicants on 21.10.2024 and the said application culminated into an order dated 17.12.2024 passed in Complaint Case No.12253 of 2023, whereby interim compensation to the tune of 20 per cent have been granted to the opposite party no.2.

6. With respect to the connected C2 application, the same is between the same parties, which are slight distinction that total amount of Rs.25 lacs bifurcated into five amounting to five lacs each is alleged to have been dishonoured followed by issuance of a statutory demand notice and the complaint under Section 138, summoning of the applicants on 26.02.2024 filing of an application under Section 482 No.13939 of 2024 decision whereof granting liberty to the applicants to obtain bail. Filing of an application under Section 143-A by the opposite party no.2, allowing of the same on 20.06.2024 and granting of bail to the applicants with certain conditions. Assailing the same in

application under Section 482 No.22760 of 2024, decision whereof dated 11.09.2024 on the same lines as in the leading and the connected C1 application filing of another application under Section 143-A of the NI Act, objection preferred by the applicants to the same on 21.10.2024 followed by order dated 17.12.2024 in Complaint Case No.6930 of 2023 (Krishna Pratap Singh vs. Sushil Kumar Jain) passed by Chief Judicial Magistrate, Lalitpur according interim compensation to the tune of 20 per cent under Section 143-A.

7. Questioning the order dated 17.12.2024, granting interim compensation under Section 143-A of the N.I. Act, the leading, connected C1 and connected C2 applications have been preferred by the applicants.

8. Learned counsel has submitted that the order dated 17.12.2024 passed by the court below allowing the applications under Section 143-A cannot be sustained even for a single moment. Elaborating the said submissions, it is submitted that the issue with regard to the manner under which the applications under Section 143-A of the NI Act is to be decided is no more res integra as the Hon'ble Apex Court in Rakesh Ranjan Srivastava vs. State of Jharkhand and others (2024) 4 SCC 419 had laid down certain broad parameters which were to be in all eventualities taken into consideration while taking the decision for according interim compensation or not. He submits that in the present case, the order impugned cannot be sustained for more than one reason. Firstly, the court below has taken note of and placed reliance and based its consideration upon Section 139 of the NI Act which could not have been done as the question of presumption is not to be a one of the criteria for grant or non-grant of interim compensation. Secondly, the financial distress of the applicant has not been taken into consideration which was specifically pleaded in the objection and the same required adjudication at least on a prima facie basis whether it is tenable or not but only the financial condition of the complainant has been seen. Thirdly, though the court below once comes to the conclusion that interim compensation is to be accorded then to the court is not expected to shrink its responsibility on the question of quantum as that is a factor which ought to have been considered which has been conveniently overlooked. He thus submits that the orders dated 17.12.2024 be set aside and the matter be remitted back to the court below to pass a fresh order.

9. Sri Manvendra Nath Singh, while countering the submission of the learned counsel for the applicants has submitted that this is virtually the second time adjudication is being sought to be made in the proceedings under section 143 A of the NI Act. He further submits that the excuse so sought to be taken by the applicants about their financial distress is a lame excuse, which is commonly available as there is nothing on record to show that the case of the applicants comes under the exception and rightly the court below has not considered the same. He further submits that reference to Section 139 of the NI Act was though made in the order but the same was not made the basis for awarding the compensation and lastly he submits that the statute itself provides for 20% minimum compensation and the court below had accorded 20% minimum compensation. Thus, the order cannot be said to be bad.

10. Sri S.K. Singh, learned AGA has supported the orders and adopted the arguments of the counsel for the opposite party no.2.

11. I have heard the submissions so made across the bar and perused the record carefully.

12. Apparently, the Court at the instance of the applicants is confronted with an orders dated 17.12.2024, whereby the application under Section 143A of the NI Act preferred by the complainant has been allowed. It is noteworthy to mention that the Hon'ble Apex Court in the case of Rakesh Ranjan Srivastava had laid down certain broad parameters which needs to be noticed. The following was observed:

27. Subject to what is held earlier, the main conclusions can be summarised as follows:

27.1. The exercise of power under sub-section (1) of Section 143A is discretionary. The provision is directory and not mandatory. The word 'may' used in the provision cannot be construed as 'shall'.

27.2. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.

27.3. The broad parameters for exercising the discretion under Section 143A are as follows:

27.3.1. The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

27.3.2. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.

27.3.3. If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.

27.3.4. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. Crl. Appeal No. 741 of 2024 Page 18 of 18 consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc. 27.3.5. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.

13. Applying the principles of law as culled out in the abovenoted decision in the facts of the case, it is more than evident that though the Court has discussed the financial distress of the complainant but there is no word about the financial distress of the applicants/accused. It may be that the ground taken by the applicants/accused showing their financial distress may be flimsy or frivolous but the court below was required to accord satisfaction and reason in that regard, which is not appearing in

the order impugned. Likewise, a consideration ought to have been made upon the issue of the quantum of compensation if prima facie the court below was of the view that the compensation was to be accorded but the court finds that the said consideration is lacking. Moreover, as a matter of fact, as held by the Hon'ble Apex Court in Rakesh Ranjan Srivastava (supra), the applicability of Section 139 would have no role to play in the proceedings under Section 143A of the NI Act, thus, the same is not to be taken as a factor either to deny or to grant interim compensation. On a pointed query being raised to Sri Manvendra Singh, who appears for opposite party no.2 in all the applications, submits that since there appears to be certain infirmities in the order, the order dated 17.12.2024 is set aside the matters be remitted back to the court below to pass a fresh order.

14. Accordingly, keeping in view the mandate in case of Rakesh Ranjan Srivastava (supra) viz-a-viz, the orders subject matter of challenge herein, the orders dated 17.12.2024 passed in Complaint Case No.7311 of 2023, 12253 of 2023 and 6390 of 2023 of court below are set aside.

15. Matter is remitted back to the court below to pass fresh orders strictly in accordance with law.

16. For the expeditious disposal of the proceedings under Section 143-A, the parties shall furnish the certified copies of the orders passed today by 09.05.2025, the court below shall decide the same with most expedition.

17. Learned counsel for the applicants and the counsel for the opposite party no.2 submits that their clients being the applicants and opposite party no.2 shall not take any adjournment and that they shall extend their full cooperation for disposal of the application under Section 143A of the NI Act.

18. With the said observation, the application stands disposed of.

Order Date :- 1.5.2025 Priya (Vikas Budhwar, J.)