

Rakesh Ranjan Shrivastava vs The State Of Jharkhand on 15 March, 2024

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Bench: Abhay S. Oka

2024 INSC 205

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 741 OF 2024

RAKESH RANJAN SHRIVASTAVA

... APPELLANT

VERSUS

THE STATE OF JHARKHAND & ANR.

... RESPONDENTS

JUDGMENT

ABHAY S. OKA, J.

1. The issue involved in this criminal appeal is whether the provision of sub-section (1) of Section 143A of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'), which provides for the grant of interim compensation, is directory or mandatory. If it is held to be a directory provision, the question that arises is, what are factors to be considered while exercising powers under sub-section (1) of Section 143A of the N.I. Act.

FACTUAL ASPECTS The case of the 2nd respondent in the Complaint

2. The 2nd respondent (hereinafter referred as 'the respondent') is the complainant in a complaint under Section 138 of the N.I. Act. The complaint was filed in the Court of the Chief Judicial Magistrate at Bokaro. The case in the complaint is that the appellant and the respondent formed various companies on different terms and conditions regarding profit sharing. On 23rd September 2011, an appointment letter was issued by the appellant in his capacity as the Managing Director of the company M/s Thermotech Synergy Pvt. Ltd. and on behalf of a proprietary concern, M/s Tech Synergy, by which the post of Executive Director was offered by the appellant to the respondent on

consolidated salary of Rs. 1,00,000/- per month.

3. On 1st June 2012, the appellant formed a partnership with one Rahul Kumar Basu, in which the respondent was shown as an indirect partner. According to the respondent's case, M/s Tech Synergy was merged with another company - M/s Megatech Synergy Pvt. Ltd. It is alleged by the respondent that in August 2012, there was an agreement to pay him 50 per cent of the profit. One more partnership firm came into existence on 3rd June 2013, wherein the appellant, respondent, and Rahul Kumar were shown as partners. It is the case of the respondent that the appellant agreed to give a 50 per cent share in the profits of another company, Geotech Synergy Pvt. Ltd. It is alleged that the appellant did not pay the amounts due and payable to the respondent. Therefore, a legal notice was issued to the appellant by the respondent. According to the case of the respondent, the appellant was liable to pay the total amount of Rs. 4,38,80,000/- to the respondent, and in fact, a civil suit has been filed by the respondent in the Civil Court at Bokaro for recovery of the said amount. After that, on 13th July 2018, there was a meeting between parties at Ranchi when the appellant agreed to pay a sum of Rs. 4,25,00,000/- to the respondent, and two cheques in the sum of Rs. 2,20,00,000/- and 2,05,00,000/- dated 6th August 2018 and 19th September 2018 respectively were handed over to the appellant. As the first cheque in the sum of Rs. 2,20,00,000/- was dishonoured, a complaint was filed after the service of a statutory notice alleging the commission of an offence punishable under Section 138 of the N.I. Act on which the learned Magistrate took cognizance of the offence.

Application under Section 143A of the NI Act

4. Before the Court of the learned Magistrate, the respondent moved an application under Section 143A of the N.I. Act seeking a direction against the appellant/accused to pay 20 per cent of the cheque amount as compensation. By the order dated 7th March 2020, the learned Judicial Magistrate allowed the application and directed the appellant to pay an interim compensation of Rs. 10,00,000/- to the respondent within 60 days. The Sessions Court affirmed the order of the learned Magistrate in a revision application. The said orders were subjected to a challenge before the High Court. The learned Judge of Jharkhand High Court dismissed the petition by the impugned judgment. These orders are the subject matter of challenge in the present criminal appeal.

SUBMISSIONS

5. The learned counsel appearing for the appellant pointed out that sub-section (1) of Section 143A of the N.I. Act uses the word 'may'. Therefore, the provision is discretionary. He submitted that the Trial Court cannot pass an order to pay interim compensation mechanically. He submitted that the Court must apply its mind to the facts of the case before passing the drastic order of deposit. He submitted that the existence of a prima facie case is essential for exercising the power under Section 143A. Only after prima facie consideration of the merits of the complainant's case and defence of the accused, the Court must conclude whether a case is made out for the grant of interim compensation. After the Court comes to the conclusion that a case for grant of interim compensation has been made out, the Court has to apply its mind to the quantum of interim compensation. In every case, the Court cannot grant 20 per cent of the cheque amount as interim compensation.

6. The learned counsel appearing for the respondent submitted that considering the very object of Section 138 of the N.I. Act, sub-section (1) of Section 143A will have to be held as mandatory. He submitted that there is a presumption under Section 139 of the N.I. Act that unless a contrary is proved, the holder of a cheque received the cheque for the discharge, in whole or in part, of any debt or liability. He submitted that the question of rebutting the said presumption would arise only after the evidence is adduced. Therefore, the defence of the accused at the stage of considering an application under sub-section (1) of Section 143A is irrelevant. In every case, an order of payment of interim compensation must follow. He submitted that unless it is held that sub-section (1) of Section 143A is mandatory, the very object of the legislature of enacting this provision will be frustrated.

CONSIDERATION OF SUBMISSIONS The object of Section 143A

7. Section 143A was brought on the statute book by Act No. 20 of 2018 with effect from 1st September 2018. Section 143A reads thus:

“143-A. Power to direct interim compensation.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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 cheque amount.

(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.” (emphasis added) 7.1. In the statement of objects and reasons, it was stated that unscrupulous drawers of the cheques prolong the proceedings of a complaint under Section 138 by filing appeals and obtaining a stay. Therefore, injustice is caused to the payee of a dishonoured cheque, who has to spend considerable time and resources in Court proceedings to realise the value of the cheque. It was further observed that such delays compromise the sanctity of the cheque transactions. Therefore, it was proposed to amend the N.I. Act to address the issue of undue delay in the final resolution of the cheque dishonour cases. It was also stated that the proposed amendments would strengthen the credibility of cheques and help trade and commerce.

8. We may note here that by the same Act No.20 of 2018, Section 148 was brought on the statute book, which provides that in an appeal preferred by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such a sum which shall be a minimum 20 per cent of the fine or compensation awarded by the Trial Court. The proviso to sub-section (1) of Section 148 clarifies that the amount payable under sub-section (1) of Section 148 is in addition to interim compensation paid by the appellant/accused under Section 143A. There are no separate objects and reasons set out for the addition of Section 148.

MANDATORY OR DIRECTORY

9. There is no doubt that the word “may” ordinarily does not mean “must”. Ordinarily, “may” will not be construed as “shall”. But this is not an inflexible rule. The use of the word “may” in certain legislations can be construed as “shall”, and the word “shall” can be construed as “may”. It all depends on the nature of the power conferred by the relevant provision of the statute and the effect of the exercise of the power. The legislative intent also plays a role in the interpretation of such provisions. Even the context in which the word “may” has been used is also relevant.

10. The power under sub-section (1) of Section 143A is to direct the payment of interim compensation in a summary trial or a summons case upon the recording of the plea of the accused that he was not guilty and, in other cases, upon framing of charge. As the maximum punishment under Section 138 of the N.I. Act is of imprisonment up to 2 years, in view of clause (w) read with clause (x) of Section 2 of the Code of Criminal Procedure, 1973 (for short, ‘the Cr.PC’), the cases under Section 138 of the N.I. Act are triable as summons cases. However, sub-section (1) of Section 143 provides that notwithstanding anything contained in the Cr.PC, the learned Magistrate shall try the complaint by adopting a summary procedure under Sections 262 to 265 of the Cr.PC. However, when at the commencement of the trial or during the course of a summary trial, it appears to the Court that a sentence of imprisonment for a term exceeding one year may have to be passed or for any other reason it is undesirable to try the case summarily, the case shall be tried in the manner provided by the Cr.PC. Therefore, the complaint under Section 138 becomes a summons case in such a contingency. We may note here that under Section 259 of the Cr.PC, subject to what is provided in the said Section, the learned Magistrate has the discretion to convert a summons case into a warrant

case. Only in a warrant case, there is a question of framing charge. Therefore, clause

(b) of sub-section (1) of Section 143A will apply only when the case is being tried as a warrant case. In the case of a summary or summons trial, the power under sub-section (1) of Section 143A can be exercised after the plea of the accused is recorded.

11. Under sub-section (5) of Section 143A, it is provided that the amount of interim compensation can be recovered as if it were a fine under Section 421 of the Cr.PC. Therefore, by a legal fiction, the interim compensation is treated as a fine for the purposes of its recovery. Section 421 of the Cr.PC deals with the recovery of the fine imposed by a criminal court while passing the sentence. Thus, recourse can be taken to Section 421 of the Cr.PC. for recovery of interim compensation, which reads thus:

“421. Warrant for levy of fine.—(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant. (3) Where the Court issues a warrant to the Collector under clause (b) of sub-

section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.”

12. Non-payment of interim compensation by the accused does not take away his right to defend the prosecution. The interim compensation amount can be recovered

from him treating it as fine. The interim compensation amount can be recovered by the Trial Court by issuing a warrant for attachment and sale of the movable property of the accused.

There is also a power vested with the Court to issue a warrant to the Collector of the District authorising him to realise the interim compensation amount as arrears of land revenue from the movable or immovable property, or both, belonging to the accused. For recovery of the interim compensation, the immovable or movable property of the accused can be sold by the Collector. Thus, non-payment of interim compensation fixed under Section 143A has drastic consequences. To recover the same, the accused may be deprived of his immovable and movable property. If acquitted, he may get back the money along with the interest as provided in sub-section (4) of Section 143A from the complainant. But, if his movable or immovable property has been sold for recovery of interim compensation, even if he is acquitted, he will not get back his property. Though, the N.I. Act does not prescribe any mode of recovery of the compensation amount from the complainant together with interest as provided in sub-section (4) of Section 143A, as sub-section (4) provides for refund of interim compensation by the complainant to the accused and as sub-section (5) provides for mode of recovery of the interim compensation, obviously for recovery of interim compensation from the complainant, the mode of recovery will be as provided in Section 421 of the CrPC. It may be a long-drawn process involved for the recovery of the amount from the complainant. If the complainant has no assets, the recovery will be impossible.

13. At this stage, we may note sub-section (1) of Section 148. Section 148 reads thus:-

“148. Power of Appellate Court to order payment pending appeal against conviction.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-

section (1) shall be deposited 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 appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, 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.” Sub-section (1) of Section 148 confers on the Appellate Court a power to direct the appellant/accused to deposit 20 per cent of the compensation amount. It operates at a different level as the power thereunder can be exercised only after the appellant/accused is convicted after a full trial.

14. In the case of Section 143A, the power can be exercised even before the accused is held guilty. Sub-section (1) of Section 143A provides for passing a drastic order for payment of interim compensation against the accused in a complaint under Section 138, even before any adjudication is made on the guilt of the accused. The power can be exercised at the threshold even before the evidence is recorded. If the word ‘may’ is interpreted as ‘shall’, it will have drastic consequences as in every complaint under Section 138, the accused will have to pay interim compensation up to 20 per cent of the cheque amount. Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice. If such an interpretation is made, the provision may expose itself to the vice of manifest arbitrariness. The provision can be held to be violative of Article 14 of the Constitution. In a sense, sub- section (1) of Section 143A provides for penalising an accused even before his guilt is established. Considering the drastic consequences of exercising the power under Section 143A and that also before the finding of the guilt is recorded in the trial, the word “may” used in the provision cannot be construed as “shall”. The provision will have to be held as a directory and not mandatory. Hence, we have no manner of doubt that the word “may” used in Section 143A, cannot be construed or interpreted as “shall”. Therefore, the power under sub-section (1) of Section 143A is discretionary.

15. Even sub-section (1) of Section 148 uses the word “may”.

In the case of Surinder Singh Deswal v. Virender Gandhi 1, this Court, after considering the provisions of Section 148, held that the word “may” used therein will have to be generally construed as “rule” or “shall”. It was further observed that when the Appellate Court decides not to direct the deposit by the accused, it must record the reasons. After considering the said decision in the case of Surinder Singh Deswal¹, this Court, in the case of Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited & Ors.², in paragraph 6, held thus:

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the appellate court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.” (Emphasis added) 15.1. As held earlier, Section 143A can be invoked before the conviction of the accused, and therefore, the word “may” used therein can never be construed as “shall”. The tests applicable for the exercise of jurisdiction under sub-section (1) of Section (2019) 11 SCC 341 (2023) 10 SCC 446 148 can never apply to the exercise of

jurisdiction under sub-

section (1) of Section 143A of the N.I. Act.

FACTORS TO BE CONSIDERED WHILE EXERCISING DISCRETION

16. When the court deals with an application under Section 143A of the N.I. Act, 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 under sub-section (1) of Section 143A. The presumption under Section 139 of the N.I. Act, by itself, is no ground to direct the payment of interim compensation. The reason is that the presumption is rebuttable. The question of applying the presumption will arise at the trial. Only if the complainant makes out a prima facie case, a direction can be issued to pay interim compensation. At this stage, the fact that the accused is in financial distress can also be a consideration. Even if the Court concludes that a case is made out for grant of interim compensation, the Court will have to apply its mind to the quantum of interim compensation to be granted. Even at this stage, the Court will have to consider various factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant and the paying capacity of the accused. If the defence of the accused is found to be prima facie a plausible defence, the Court may exercise discretion in refusing to grant interim compensation. We may note that the factors required to be considered, which we have set out above, are not exhaustive. There could be several other factors in the facts of a given case, such as, the pendency of a civil suit, etc. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all the relevant factors.

17. In the present case, the Trial Court has mechanically passed an order of deposit of Rs.10,00,000/- without considering the issue of prima facie case and other relevant factors. It is true that the sum of Rs.10,00,000/- represents less than 5 per cent of the cheque amount, but the direction has been issued to pay the amount without application of mind. Even the High Court has not applied its mind. We, therefore, propose to direct the Trial Court to consider the application for grant of interim compensation afresh. In the meanwhile, the amount of Rs. 10,00,000/- deposited by the appellant will continue to remain deposited with the Trial Court.

18. Hence, impugned orders are set aside, and the application made by the complainant in Complaint Petition No. 1103/2018 under Section 143A (1) of the N.I. Act is restored to the file of Judicial Magistrate First Class, Bokaro. The learned Judge will hear and decide the application for the grant of interim compensation afresh in the light of what is held in this judgment. The amount deposited by the appellant of Rs. 10,00,000/- shall be invested in a fixed deposit till the disposal of the said application. At the time of disposing of the application, the Trial Court will pass an appropriate order regarding refund and/or withdrawal and/or investment of the said amount.

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

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

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

i. 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.

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

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

iv. 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. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc. v. 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.

20. The Appeal is partly allowed on the above terms.

.....J. (Abhay S. Oka)J. (Ujjal Bhuyan) New Delhi;

March 15, 2024