

Lakhmi Chand vs Ombir Singh on 27 May, 2022

Author: Jasmeet Singh

Bench: Jasmeet Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 2578/2022
LAKHMI CHAND

Through:

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Mr Maroof Ahmad, Mohd.
and Mr Aman Mirza, Advs

versus

OMBIR SINGH

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH
ORDER

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27.05.2022

CRL.M.A. 10782/2022

Exemption allowed, subject to all just exceptions. The application stands disposed of.

1. This is a petition seeking setting aside/quashing of the impugned order dated 28.02.2022 passed in Criminal Revisional Petition being case No. CR/36/22 titled „Lakhmi Chand v. Ombir Singh passed by ASJ/Spl. Judge, NDPS/N. Delhi, Patiala House Courts, New Delhi, whereby the Criminal Revision Petition filed by the petitioner was dismissed and disposed of holding that there is no infirmity in the impugned order dated 14.12.2021 passed in CC No. 4955/2019 by learned Metropolitan Magistrate, (District : New Delhi), Patiala House Courts. New Delhi.

2. On 14.12.2021, the learned Metropolitan Magistrate had passed an order directing the petitioner to deposit 20% payment of the cheque amount in question i.e. Rs.3,30,000/- as interim compensation to the complainant within 60 days of the order. The said order of the learned Metropolitan Magistrate was taken up in Criminal Revisional Petition being CR/36/2022 and the Revision Court vide impugned order did not interfere in the impugned order.

3. Mr Ahmad, learned counsel appearing for the petitioner has relied upon the judgment of this Court in M/s JSB Cargo and Freight Forwarder Pvt. Ltd. & Ors. v. State & Anr. passed in Crl.M.C. No. 2663/2021 dated 20.12.2021 to urge that the power under Section 143A of the Negotiable Instruments Act is discretionary and not mandatory. He relies on para 54 of the judgment which reads as under:

"54. In view thereof, the impugned order dated 21.09.2021 of the learned Metropolitan Magistrate (NI Act), Digital Court-01, PHC/New Delhi in CC No.CC NI Act 12-20 titled as "SAVITA SURYAVANSHI Vs. M/S JSB CARGO AND FREIGHT FORWARDER PVT LTD" and in CC No.CC NI Act 100-20 titled as "SUNEEL SURYAVANSHI Vs. M/S JSB CARGO AND FREIGHT FORWARDER PVT LTD" is set aside with the matter being remanded back to the learned Trial Court to dispose of the application under Section 143A of the NI Act, 1881 filed by the complainants of the said complaint cases seeking interim compensation from the accused after invocation of Section 294 of the Cr.P.C., 1973 and considering the submissions that are made by the petitioner in response to the applications under Section 143A of the NI Act, 1881 and taking into account that vide this verdict it is categorically held to the effect that the provision of Section 143A of the NI Act, 1881 is directory in nature and not mandatory."

4. I have had the opportunity to also peruse the judgment of *Suryodhan Tyagi v. Tirender Sharma* 2022 SCC Online Del 164 (mentioned in the impugned order) wherein another Coordinate Bench of this Court on 13.01.2022 in W.P. (Crl) 68/22 refused to interfere in the order directing the accused therein to pay 20% of the cheque amount. The learned Single Judge relied on the judgment of Supreme Court in *Surinder Singh Deswal v. Virender Gandhi*, 2020 (2) SCC 514 to hold that phrase "may" used under 148 Negotiable Instruments Act is generally to be construed as "shall". The Court opined that the twin conditions before directing interim compensation that need to be complied are: i) that the complaint should be tried as summary trial and (ii) the charge/notice having been framed against the petitioner to which he pleads not guilty. However, in *Suryodhan Tyagi* (supra) the judgment of *M/s JSB Cargo* (supra) was not brought to the notice of the learned Single Judge.

5. The question whether the word "may" in 143A of Negotiable Instruments Act is discretionary or mandatory is not required to be adjudicated upon, in this petition for the simple reason that both the learned Metropolitan Magistrate and the Revision Court while exercising discretion has given reasons for requiring the petitioner to deposit 20% of the cheque amount. The learned Metropolitan Magistrate has held that the accused is evading service for a long time and only after repeated attempts, appeared before the Court.

6. The Revision Court has in fact gone further and dealt in detail with the aspect of the petitioner evading service and has held as under:

"In view of the mandate of this judgment, the conditions required for interim compensation are that the trial should be summary trial or summons case and notice / charge should have been framed against the accused. In this case, these formalities have already been concluded before the trial court and thereafter the application u/s 143A NI Act was decided. The summons were issued against the accused vide order dated 08.04.2019 however despite service, accused not appeared thereafter bailable warrants were issued then, NBWs were also issued. The proceedings u/s 82 Cr.PC were also initiated pursuant to which accused appeared and the notice u/s 251 Cr.PC was also framed. The conduct of the accused was also found to be of delaying the

proceedings. Furthermore, there is no averment in the present revision petition or at the time of framing the notice that accused has not received the notice. There is nothing on record that any defence is raised that accused has misused the blank cheques prior to the proceedings. In view of the mandate of above judgment, only uncontroverted defence could be considered at this stage which is found conspicuously absent at this stage hence, there is no infirmity in the impugned order dated 14.12.2021 passed by the trial court. Accordingly, the present revision petition is dismissed and disposed of."

7. I am of the view that both the learned Metropolitan Magistrate and the Revision Court have exercised their discretion and thereafter, directed the petitioner to deposit 20% of the cheque amount. This Court has not expressed any opinion that the phrase "may" used in 143A is discretionary or mandatory. For the said reasons, on merits, I find no reason to interfere with the reasonings of the learned ASJ/Spl. Judge, NDPS/N. Delhi, Patiala House Courts, New Delhi dated 28.02.2022 passed in Criminal Revisional Petition being case No. CR/36/22 titled „Lakhmi Chand v. Ombir Singh on the power to order interim compensation to the complainant.

8. Mr Ahmad, learned counsel appearing for the petitioner argues that direction to deposit 20% of the cheque amount is unduly harsh and considering the financial position and the defence of the petitioner, the discretion should have been exercised for deposit of 10% of the cheque amount.

9. Issue notice only on this limited aspect to the respondent, returnable on 08.08.2022.

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10. Issue notice.

11. For the reasons stated above, it is directed that the petitioner as of now shall pay 10 % of the cheque amount to the respondent within two weeks from today.

12. Subject to the payment of 10%, the directions to pay 20 % in the order of the learned Metropolitan Magistrate dated 14.12.2021 passed in CC No. 4955/2019 confirmed by the Revision Court in Criminal Revisional Petition being case No. CR/36/22 dated 28.02.2022 is hereby stayed, till the next date of hearing.

Dasti.

JASMEET SINGH, J MAY 27, 2022 sr [Click here to check corrigendum](#), if any