

Before Sureshwar Thakur, J.

DHARAMPAL AND ANOTHER—*Petitioners*

versus

OM PARKASH—*Respondent*

CRM-M No.49965 of 2021

December 10, 2021

Code of Criminal Procedure, 1973—Ss.357 and 421—Negotiable Instruments Act, 1881—S.138 and 143-A—Interim compensation—Discretion of the Magistrate—Held, provisions of Section 143A are not mandatory, but are directory in nature—Without well merited parameters and grounds, the Magistrate is precluded to exercise statutory discretion in a capricious and arbitrary manner.

Held that, the aforemade provisions are not mandatory in nature rather are directory in nature, given the occurrence therein of the word “may”, and, hence the discretion vested in the trial Magistrate is not to be exercised capriciously and arbitrarily.

(Para 5)

Mandhir Singh Virk, Advocate
for the petitioners.

Kirat Pal Dhaliwal, Advocate
for respondent.

SURESHWAR THAKUR, J. (oral)

(1) The accused-petitioners herein, are facing a notice of accusation for an offence constituted under Section 138 of the Negotiable Instruments Act. In the afore drawn complaint after the recording of preliminary evidence, by the learned Magistrate concerned, the accused were served with summons, and, thereafter, it is averred on affidavit appended with the petition, that they caused their regular appearances before the learned trial Magistrate concerned.

(2) Moreover, the complainant's evidence is yet to open, or, is to commence before the learned Magistrate concerned. However, during the pendency of complaint bearing No.NACT/87/2019, titled as 'Dr. Om Parkash versus Dharampal' dated 06.05.2019, the complainant instituted an application, under Section 143-A of the Negotiable Instruments Act, 1881, seeking a direction being made,

upon, the accused to pay interim compensation to him. The learned trial Judge made an affirmative order thereon, and, the order pronounced on 17.08.2021 has been challenged before this Court.

(3) Though a reading of the hereinafter extracted provisions of 143-A, of the Negotiable Instruments Act, unravels that though it vests a discretion in the learned trial Magistrate to, during the pendency of the apposite complaint, before him, to make a direction, upon the accused to pay interim compensation, to the complainant, in the quantum carried therein.

“143A – 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 summon case, where the drawer pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing charges.

(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 years, 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).”

(4) Moreover, even though, in case there is a verdict of dismissal pronounced by the learned Magistrate concerned, upon the complaint concerned, thereupon though there is a statutory mandate cast upon the Court concerned, to direct the complainant to repay the amount of interim compensation, to the accused, in the manner contemplated in Sub-Section 4 of Section 143-A, of the Negotiable Instruments Act, 1881.

(5) Be that as it may, the aforemade provisions are not mandatory in nature rather are directory in nature, given the occurrence therein of the word “may”, and, hence the discretion vested in the trial Magistrate is not to be exercised capriciously and arbitrarily. The exercise of discretion by the learned trial Magistrate, has to be done in a thoughtful and sagacious manner. The aposite order has to be grooved in sound, and, worthy reasoning, inasmuch as, the Court being constrained to, on account of deliberate delays, being made by the accused, in the further progresses being made qua the trial, of the complaint concerned, inasmuch as, despite opportunities being granted to him, to adduce his defence evidence rather his intentionally prolonging, the termination or conclusion of the complaint aposite, or/and, upon, his repeatedly seeking, on frivolous grounds, his exemptions from personal appearances. The afore parameters and grounds, may groove well merited reasons rather for the learned trial Magistrate concerned, to proceed to use his discretion, as vested in him under Section 143-A of the Negotiable Instruments Act. A reading of the impugned order does not disclose, that any of the afore parameters either become pleaded nor obviously they ever existed on the records of the learned trial Magistrate concerned nor are elaborated in the impugned order. Therefore the exercise of discretion, by the learned trial Magistrate, without the afore parameters, existing before him, cannot become construed to be well founded nor is well grooved in merit worthy reasons. Contrarily, when none of the parameters became either pleaded nor ever existed, thereupon, the learned trial Magistrate concerned, became precluded to exercise the statutory discretion, in a capricious and arbitrary manner, as, he has proceeded to do so.

(6) There is merit in the petition. The same is allowed, and, the impugned order is quashed, and, set aside.