(2021) 06 CHH CK 0086

Chhattisgarh High Court

Case No: Criminal Miscellaneous Petition No. 562 Of 2021

Rajesh Soni		APPELLANT
	Vs	
Mukesh Verma		RESPONDENT

Date of Decision: June 30, 2021

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 357, 389, 421, 482
- Negotiable Instrument Act, 1881 - Section 138, 143A, 143A(v), 148

Citation: (2021) 06 CHH CK 0086

Hon'ble Judges: Narendra Kumar Vyas, J

Bench: Single Bench

Advocate: D.K. Gwalare

Final Decision: Dismissed

Judgement

1. The petitioner has filed present petition under Section 482 of Cr.P.C. challenging the order dated 24.12.2019 passed by Judicial Magistrate First

Class, Raipur (C.G.) in Complaint Case No. 1777/2019 wherein learned trial court has allowed the application filed by the complainant under Section

143A of the Negotiable Instrument Act, 1881 (for short Ã¢â‚¬Å“the Act, 1881Ã¢â‚¬) and has directed the petitioner to pay 20% of the cheque amount, as

well as order dated 06.03.2021 passed by 11th Additional Sessions Judge Raipur, District- Raipur (C.G.) by which the criminal revision filed by the

petitioner has been rejected.

2. The brief facts, as projected by the petitioner, are that complainant/ respondent has filed complaint against the petitioner under Section 138 of the

Act, 1881 on 09.01.2019 before Judicial Magistrate First Class, Raipur, District- Raipur (C.G.) mainly contending that the petitioner had given a

cheque dated 26.11.2018 amounting to Rs. 6,50,000/- to the complainant. The complainant has deposited the cheque on 28.11.2018 in the account

maintained by him in Central Bank of India, Branch- Chhattisgarh College, Raipur. The said cheque was dishonoured and returned due to insufficient

fund on 14.12.2018, therefore, the offence under Section 138 of the Act, 1881 has been committed by the petitioner.

3. The complainant has sent a legal notice to the petitioner on 17.12.2018 as petitioner has not paid the amount of cheque, therefore, the complainant

has filed a Complaint Case No. 1777/2019 before Judicial Magistrate First Class, Raipur, The learned Judicial Magistrate First Class taking cognizance

on the complaint, issued summon to the petitioner. On 04.05.2019, the complainant has filed an application under Section 143A of the Act, 1881

contending that the charges have already been framed wherein he has denied the charges levelled against him. Further contention of the complainant

is that as per the provisions of Section 143A of the Act, 1881, if charges have been framed against the accused, the interim compensation can be

ordered by the Court to the extent of 20% of the cheque amount, therefore, he prayed for grant of 20% of the amount as interim compensation.

4. The learned Judicial Magistrate First Class vide its order dated 24.12.2019 considering the amended provisions of Section 143A of the Act, 1881,

directed the accused to pay 20% of the cheque amount as compensation, failing which proceeding under sub-section (v) of Section 143A will be

initiated against petitioner, thereafter fixed the case for hearing on 20.01.2020.

5. Being aggrieved by the aforesaid order, the petitioner preferred Criminal Revision No. 102/2020 before the Sessions Judge, Raipur which was

transferred to the Court of 11th Additional Sessions Judge, Raipur, District- Raipur. The learned 11th Additional Sessions Judge vide its order dated

06.03.2021 dismissed the revision by recording a finding that there is no illegality and irregularity in the impugned order passed by the learned Judicial

Magistrate First Class, Raipur and same is inconformity with the amended provisions of Section 143A of the Act, 1881. Both these orders have been

challenged by the petitioner in the present petition.

6. Learned counsel for the petitioner would submit that as per amended provision of Section 143A of the Act, 1881, grant of interim compensation is

not mandatory and it is discretionary, therefore, it is not necessary in every case to grant 20% of cheque amount as interim compensation. He has

drawn attention of this Court towards amended provision of Section 143A of the Act, 1881, which is extracted below:-

Ã¢â‚¬Å“143A Ã¢â‚¬" 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 pad 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 find 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).Ã¢â‚¬‹

7. Learned counsel for the petitioner would rely upon the judgment of Madras High Court in L.G.R. Enterprises & another Vs. P. Anbazhagan AIR

Online 2019 Mad 801, and drew attention of this Court towards para 18 of the judgment, which reads as under:-

Ã¢â‚¬Å“18. A careful reading of the order passed by the Court below shows that the Court below has focussed more on the issue of the prospective /

retrospective operation of the amendment. The Court has not given any reason as to why it is directing the accused persons to pay an interim

compensation of 20% to the complainant. As held by this Court, the discretionary power that is vested with the trial Court in ordering for interim

compensation must be supported by reasons and unfortunately in this case, it is not supported by reasons. The attempt made by the learned counsel

for the respondent to read certain reasons into the order, cannot be done by this Court, since this Court is testing the application of mind of the Court

below while passing the impugned order by exercising its discretion and this Court cannot attempt to supplement it with the reasons argued by the

learned counsel for the respondent.Ã¢â‚¬‹

8. Learned counsel for the petitioner would further submit that since the legislature has used the word 'may', as such, it is discretionary and learned

trial court should have not granted 20% of cheque amount as interim compensation, therefore, orders passed by both the courts below, are not just and

proper, which are liable to be quashed by this Court.

9. Before adverting to the submission made by learned counsel for the petitioner, it is expedient to see that aims and object of amended provision of

Section 143A of the Act, 1881, which reads as under:-

Ã¢â‚¬Å“The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and

Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour

of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to

pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals

and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time

and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide

relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed

amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to

continue to extend financing to the productive sectors of the economy.Ã¢â‚¬â€‹

10. From perusal of the Act, 1881 as well as amended Section 143A of the Act, 1881, it is clear that the Act, 1881 has played a substantial role in the

Indian commercial landscape and has given rightful sanction against defaulters of the due process of trade who engage in disingenuous activities that

causes unlawful losses to rightful recipients through cheque dishonour. Thereafter, the legislature has amended Act, 1881, which came into force on

01.09.2018 with the aim to secure the interest of the complainant along with increasing the efficacy and expediency of proceedings under Section 138

of the Act, 1881. Section 143A of the Act, 1881 stipulates that under certain stages of proceedings under Section 138 of the Act, 1881, the Court may

order for the drawer to make payment upto 20% of the cheque amount during the pendency of the matter. The order under Section 143A of the Act,

1881 can be passed only in summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint, in any the case upon

framing of charge.

11. From perusal of Section 143A of the Act, 1881, it is quite evident that the act has been amended by granting interim measures ensuring that

interest of complainant is upheld in the interim period before the charges are proven against the drawer. The intent behind this provision is to provide

aid to the complainant during the pendency of proceedings under Section 138 of the Act, where he is already suffering double-edged sword of loss of

receivables by dishonor of the cheque and the subsequent legal costs in pursuing claim and offence. These amendments would reduce pendency in

courts because of the deterrent effect on the masses along ensuring certainty of process that was very much lacking in the past, especially enforced

at key stages of the proceedings under the Act. The changes brought forth by way of the 2018 amendment to the Negotiable Instruments Act, 1881

are substantial in nature and focus heavily on upholding the interests of the complainants in such proceedings.

12. From perusal of the amended provision of Section 143A of the Act, 1881, it is clear that the word 'may' used is beneficial for the complainant

because the complainant has already suffered for mass deed committed by the accused by not paying the amount, therefore, it is in the interest of the

complainant as well the accused if the 20% of the cheque amount is to be paid by the accused, he may be able to utilize the same for his own purpose,

whereas the accused will be in safer side as the amount is already deposited in pursuance of the order passed under Section 143A of the Act, 1881.

When the final judgment passed against him, he has to pay allowances on lower side. Section 143A of the Act, 1881 has been drafted in such a

manner that it secures the interest of the complainant as well as the accused, therefore, from perusal of aims and object of amended Section 143A of

the Act, 1881, it is quite clear that the word 'may' may be treated as 'shall' and it is not discretionary but of directory in nature.

13. The Hon'ble Supreme Court, while examining 'may' used 'shall' and have effect of directory in nature in case of Bachahan Devi & another Vs.

Nagar Nigam, Gorakhpur & another (2008) 12 SCC 372, which reads as under:-

Ã¢â,¬Å“18. It is well-settled that the use of word Ã¢â,¬Å“mayÃ¢â,¬ in a statutory provision would not by itself show that the provision is directory in nature. In

some cases, the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to

interpret the legal import of the word Ã¢â,¬Å“mayÃ¢â,¬, the court has to consider various factors, namely, the object and the scheme of the Act, the context

and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the

like. It is equally well-settled that where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to a

general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory

significance would defeat the very object of the Act, the word 'may' should be interpreted to convey a mandatory force. As a general rule, the word

Ã¢â,¬Å“mayÃ¢â,¬ is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word Ã¢â,¬Å“shallÃ¢â,¬, which ordinarily

is imperative as it imposes a duty. Cases however, are not wanting where the words Ã¢â,¬Å“mayÃ¢â,¬ Ã¢â,¬Å“shallÃ¢â,¬, and Ã¢â,¬Å“mustÃ¢â,¬ are used

interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be

looked into along with the pertinent circumstances.

19. Ã¢â,¬Å“17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under

consideration and its object, purpose and effect. The distinction reflected in the use of the word `shall' or 'may' depends on conferment of power.

Depending upon the context, 'may' does not always mean may. 'May' is a must for enabling compliance of provision but there are cases in which, for

various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes [his] duty to exercise [that power]. Where the

language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.Ã¢â‚¬â€‹

20. If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an obligation is created, the use of the word

Ã¢â‚¬Å“mayÃ¢â‚¬ will not prevent the court from giving it the effect of Compulsion or obligation. Where the statute was passed purely in public interest and

that rights of private citizens have been considerably modified and curtailed in the interests of the general development of an area or in the interests or

removal of slums and unsanitary areas. Though the power is conferred upon the statutory body by the use of the word Ã¢â‚¬Å“mayÃ¢â‚¬ that power must be

construed as a statutory duty. Conversely, the use of the term 'shall' may indicate the use in optional or permissive sense. Although in general sense

'may' is enabling or discretional and Ã¢â‚¬Å“shall is obligatory, the connotation is not inelastic and inviolate."" Where to interpret the word Ã¢â‚¬Å“mayÃ¢â‚¬ as

directory would render the very object of the Act as nugatory, the word Ã¢â‚¬Å“may must mean 'shall'.

21. The ultimate rule in construing auxiliary verbs like Ã¢â‚¬Å“may and Ã¢â‚¬Å“shallÃ¢â‚¬ is to discover the legislative intent; and the use of words `may' and

'shall' is not decisive of its discretion or mandates. The use of the words Ã¢â‚¬Å“mayÃ¢â‚¬ and `shall' may help the courts in ascertaining the legislative intent

without giving to either a controlling or a determinating effect. The courts have further to consider the subject matter, the purpose of the provisions,

the object intended to be secured by the statute which is of prime importance, as also the actual words employed.Ã¢â‚¬â€‹

14. The Supreme Court in Surinder Singh Deswal alias Colonel S.S. Deswal & others Vs. Virender Gandhi (2019) 11 SCC 341, has examined

provision of Section 148 of the Act, 1881 and held that it is mandatory provision. The relevant para of the judgment is reproduced below:-

Ã¢â‚¬Å“8. Now so far as the submission on behalf of the Appellants that even considering the language used in Section 148 of the N.I. Act as amended,

the appellate Court ""may"" order the Appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial

Court and the word used is not ""shall"" and therefore the discretion is vested with the first appellate court to direct the Appellant - Accused to deposit

such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the Appellants would be contrary

to the provisions of Section 148 of the N.I. Act as amended is concerned, considering the amended Section 148 of the N.I. Act as a whole to be read

with the Statement of Objects and Reasons of the amending Section 148 of the N.I. Act, though it is true that in amended Section 148 of the N.I. Act,

the word used is ""may"", it is generally to be construed as a ""rule"" or ""shall"" and not to direct to deposit by the appellate court is an exception for which

special reasons are to be assigned. Therefore amended Section 148 of the N.I. Act confers power upon the Appellate Court to pass an order pending

appeal to direct the Appellant-Accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed

by the original complainant or even on the application filed by the Appellant-Accused Under Section 389 of the Code of Criminal Procedure to

suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the N.I. Act, a minimum

of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60

days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause

shown by the Appellant. Therefore, if amended Section 148 of the N.I. Act is purposively interpreted in such a manner it would serve the Objects and

Reasons of not only amendment in Section 148 of the N.I. Act, but also Section 138 of the N.I. Act. Negotiable Instruments Act has been amended

from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonoured of cheques. So as to see that due to

delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an

injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the

value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, the Parliament has thought it fit to

amend Section 148 of the N.I. Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment

in Section 148 of the N.I. Act and also Section 138 of the N.I. Act.Ã¢â‚¬â€‹

15. The Hon'ble Supreme Court in G.J. Raja Vs. Tejraj Surana (2019) 19 SCC 469, has examined the amended Section 143A of the Act, 1881 and

held that it is prospective effect and not retrospective effect. The relevant para of the judgment is reproduced below:-

Ã¢â‚¬Å“19. It must be stated that prior to the insertion of Section 143-A in the Act there was no provision on the statute book whereunder even before the

pronouncement of the guilt of an accused, or even before his conviction for the offence in question, he could be made to pay or deposit interim

compensation. The imposition and consequential recovery of fine or compensation either through the modality of Section 421 of the Code or Section

357 of the code could also arise only after the person was found guilty of an offence. That was the status of law which was sought to be changed by

the introduction of Section 143A in the Act. It now imposes a liability that even before the pronouncement of his guilt or order of conviction, the

accused may, with the aid of State machinery for recovery of the money as arrears of land revenue, be forced to pay interim compensation. The

person would, therefore, be subjected to a new disability or obligation. The situation is thus completely different from the one which arose for

consideration in ESI Corpn. v. Dwarka Nath Bhargwa, (1997) 7 SCC 131.

23. In the ultimate analysis, we hold Section 143A to be prospective in operation and that the provisions of said Section 143A can be applied or

invoked only in cases where the offence under Section 138 of the Act was committed after the introduction of said Section 143A in the statute book.

Consequently, the orders passed by the Trial Court as well as the High Court are required to be set aside. The money deposited by the Appellant,

pursuant to the interim direction passed by this Court, shall be returned to the Appellant along with interest accrued thereon within two weeks from the

date of this order.Ã¢â‚¬‹

16. Therefore, the word Ã¢â‚¬Å“mayÃ¢â‚¬ be treated as Ã¢â‚¬Å“shallÃ¢â‚¬ and is not discretionary, but of directory in nature, therefore, the learned Judicial

Magistrate First Class has rightly passed the interim compensation in favour of the complainant.

17. In L.G.R. Enterprises (Supras), the Hon'ble Madras High Court held as under:-

Ã¢â‚¬Å“8. Therefore, whenever the trial Court exercises its jurisdiction under Section 143A(1) of the Act, it shall record reasons as to why it directs the

accused person (drawer of the cheque) to pay the interim compensation to the complainant. The reasons may be varied. For instance, the accused

person would have absconded for a longtime and thereby would have protracted the proceedings or the accused person would have intentionally

evaded service for a long time and only after repeated attempts, appears before the Court, or the enforceable debt or liability in a case, is borne out by

overwhelming materials which the accused person could not on the face of it deny or where the accused person accepts the debt or liability partly or

where the accused person does not cross examine the witnesses and keeps on dragging with the proceedings by filing one petition after another or the

accused person absonds and by virtue of a non-bailable warrant he is secured and brought before the Court after a long time or he files a recall non-

bailable warrant petition after a long time and the Court while considering his petition for recalling the non-bailable warrant can invoke Section

143A(1) of the Act. This list is not exhaustive and it is more illustrative as to the various circumstances under which the trial Court will be justified in

exercising its jurisdiction under Section 143A(1) of the Act, by directing the accused person to pay the interim compensation of 20% to the

complainant.

9. The other reason why the order of the trial Court under Section 143A(1) of the Act, should contain reasons, is because it will always be subjected

to challenge before this Court. This Court while considering the petition will only look for the reasons given by the Court below while passing the order

under Section 143A(1) of the Act. An order that is subjected to appeal or revision, should always be supported by reasons. A discretionary order

without reasons is, on the face of it, illegal and it will be setaside on that ground alone.Ã¢â‚¬â€‹

18. The judgment cited by learned counsel for the petitioner also indicates that the Judicial Magistrate First Class has to pass a reasoned order for

determining quantum of compensation, which is payable to the victim looking to the facts and circumstances each case, but does not suggest any iota

that grant of compensation as per Section 143A of the Act, 1881 is of discretionary in nature.

19. From perusal of provisions of the Act, 1881 considering the aims behind object of the Act, 1881 and the law laid down by the Supreme Court, I am

of the considered view that the amendment in Section 143A of the Act, 1881 is mandatory in nature, therefore, the learned Judicial Magistrate First

Class has rightly passed the order of interim compensation in favour of the respondent and has not committed any irregularity or illegality in passing

such order. The learned 11th Additional Sessions Judge has also not committed any irregularity or illegality in rejecting the revision filed by the

petitioner, which warrants any interference by this Court.

20. In view of the above, this petition being devoid of merits, is liable to be and is hereby dismissed. No order as to costs.