HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CRM(M) No. 145/2024.

Pronounced on: 27.02.2025

1. **Bilal Hassan Anim**
   S/O Ghulam Hassan Anim.
   R/O Shah Anwar Colony, Hyderpora, Srinagar.
2. **Sadaf Ali Wani,**
   S/O Mukhtiyar Ahmad Wani,
   R/O Sazgaripora, Hawal, Srinagar.

…Petitioner(s)

Through: Mr. Shariq Reyaz Jan, Adv.

Vs

Shafeeq Ahmad Mir,
S/O Ghulam Mohi-ud-Din Mir,
R/O Kadalbal, Pampore, District, Pulwama.

… Respondent(s)

Through: Mr. Danish Majid Dar, Adv.

CORAM: HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The respondent-complainant has filed the complaint before the Trial court under Section 138 r/w Section 142 of Negotiable Instruments Act (NI Act in short) for the three cheques purportedly issued by the petitioners/accused to the tune of Rs. hundred crore which were bounced when presented before the J and K bank, LD Hospital branch, by the complainant. The complainant has also filed an application for interim compensation under Section 143-A of the said Act before the learned Trial court.

2. The objections were filed to the complaint by the petitioners. The Trial Court after hearing both the parties vide order dated 04.08.2022 directed the petitioners/accused to pay 15% (15 Crore) as interim compensation in favour of the respondent-complainant within 60 days of passing of the order. The petitioners/accused aggrieved by the said

order dated 04.08.2022, preferred a revision petition before the Court of learned 1st Additional Sessions Judge, Srinagar. The said court while deciding the revision petition did not agree with the plea of revision-petitioner for setting aside the order. However, the revisional court slashed down the amount of compensation from 15% to 5% of the cheque amounts. Still aggrieved by the order passed by the revisional court, the petitioners have filed the revision petition under Section 482 Cr.P.C whereby they have challenged both the orders of trial court and revisional court.

3. The grounds on which the present petition has been filed are that the pleas taken in the complaint regarding cheques in question issued by the petitioners are not for the transactions as mentioned in the complaint. The reference is made by the petitioners to the agreements purportedly executed between the parties regarding the sale of different units to the petitioner-company by the respondent herein. Of course, the petitioners have taken the court through the said agreements in order to plead their cause. It is also submitted that the order passed by the Trial court and the revisional court are bad in law as the provisions of Insolvency and Bankruptcy Code (IBC), 2016 do not envisage the utilization of the assets of the company after the moratorium is declared.
4. The prayer made in the instant petition is for setting aside the impugned orders passed by both the courts.
5. The respondent has appeared through counsel and contested the petition.
6. The learned counsel appearing for the petitioners has reiterated the submissions made in the present petition. It is submitted on behalf of the petitioners that the cheques which are the subject matter of the

complaint were issued much prior to the period as mentioned in the cheques and which were presented before the concerned Bank for realization. The plea is raised qua the agreements entered into between the parties and the reference is also made of civil proceedings initiated by the complainant. It is further pleaded that both the courts have wrongly interpreted the provisions of N.I Act, and have ignored the defence put forth by the petitioners qua the cheques in questions. The cheques cannot be said to have been issued on account of legal debt. Last, but not the least, the provisions of IBC, 2016 have also been invoked by the petitioners in support of their arguments and submit that the provisions of the 'Code' do not envisage that the assets of the company can be utilized due to the pendency of the insolvency proceedings.

7. The learned counsel for the respondent has argued that the present petition cannot be entertained as the petitioners have failed in the Trial court as well as before the revisional court. This Court is not to enter into the factual aspects of the case which have been already dealt with by the courts below. However, it is contended that there is presumption that the cheques were issued for consideration which stand dishonoured by the bank. The defence pleaded by the petitioners before the trial court and the revisional court does not come in the way of the courts to grant the interim relief to the respondent and both courts below have rightly granted the relief. It is further submitted by the counsel for the respondent that the IBC, 2016 does not debar the criminal court to fasten the liability upon the party in the proceedings of the present nature.

8. Both the parties have filed written submissions in the case.

9. The petitioners having failed before the trial court and the revisional court qua the interim relief granted to the respondent regarding the amount. This Court is not required to dive deep into the facts, re-appreciate and infuse its own finding unless the finding given by the courts below holding the petitioners liable to pay the interim compensation is palpably perverse. This Court under Section 482 Cr. P.C, is not required to upset the findings of the courts below unless the court is of the opinion that the orders passed by the courts below are abuse of process of law. In order to secure the ends of justice also the court can interfere in the impugned orders.

10. This court is not to correct the orders passed by the trial court and the revisional court only for the reason that the findings given by both the courts could be given in way than other the one given by those courts. The court should be slow to interfere more so when the order passed is more of interim nature. This position of law is well settled and court need not refer to judgments on the point.

11. In the case in hand, the learned counsel for the petitioners has mainly raised the contention that the so called cheques issued by the petitioners were not meant for the purpose which has been provided in the complaint filed by the respondent-complainant. The cheques used by the respondent are not having legal value in view of the agreements and the other proceedings which are pending before the different forums. The presumption that the cheques have been issued in lieu of the debt is rebuttable and what is important is that the debt should be enforceable on the date when the cheque is presented before the Bank for realization. The petitioners have relied upon the judgment of Hon’ble Supreme *Court* ***reported in (2023)11SCC 578 and 2024 SCC online***

SC 309 *titled* ***"Rakesh Ranjan Shrivastava vs. State of Jharkhand and Anr."***

12. There can be no quarrel with what has been held by the Apex Court in the aforesaid judgments. No doubt, the complainant has to make out a *prima facie* case in his favour before the court is to grant interim compensation in his favour in the complaint filed under NI Act. The presumption can be rebutted during trial by the accused is also not in dispute. The trial court and the revisional court have taken into consideration the pleas which have been raised by the petitioners in the present petition and have held the complainant entitled to interim compensation in the complaint. The signatures on the cheques are not disputed by the petitioners/accused is one of the aspects taken by the courts while presuming debt liability of the accused.

13. No doubt the interim compensation as envisaged under Section 143-A NI Act is directory in nature and the court is not bound to grant the same, if in the facts and circumstances of the case, the court finds so. The court finds no reason to take a view different from the one taken by the courts below holding that the respondent-complainant is entitled to interim compensation.

14. The perusal of the impugned orders reveals that both the courts below have taken extensive exercise while passing the orders in favour of the complainant. No doubt the cheques involved in the complaint are to the tune of Rupees hundred Crore, however, this does not mean that this court in the present petition on that ground should thread-bare dissect the findings given by both the courts in the present petition.

15. Last but not the least, it is argued on behalf of the petitioners that due to the insolvency proceedings between the parties and provision of

section 14 IBC 2016, the courts under NI Act cannot direct the petitioners/accused to pay any compensation to the complainant. The other side has rebutted the contention of the petitioners and submits that the petitioners cannot wriggle themselves out on this specious plea. The court is not inclined to accept this argument of the petitioner.

16. The petitioners have referred to the judgments titled Virender Singh v. Laxmi Sarain And Other(ILR(2006)11Delhi 1183) and Of Madras High Court titled Jeyaramchandran V. Babu@A.M.Iqbal(crl. A.Nos.534&535 of 2013 decided on 20.3.2020, in support of their contention. On the other hand, respondent has relied upon the judgment of Apex Court IN AJAY KUMAR RADHEYSHAM GOENKA V. TOURISM FINANCE CORPORATION OF INDIA LTD.(Crl. A. no.170/2023 and 171/2023 decided on 15.3.2023) in support of his contention.

17. The IBC,2016 cannot come in the way of the complainant to pursue the remedy under NI Act. Section 14 of the Code is not an obstacle for the complainant to file the complaint under NI Act. The debtor cannot take refuge under the Code and frustrate the proceedings under NI Act in case he is to be held liable to pay the compensation/fine in the proceedings. The Apex court in Ajay Kumar case (supra) has noted that the proceedings under the two acts are quite different and would not intercede each other. The court has taken note of section 14 of the Code and held that nature of proceedings which have to be kept in abeyance do not include criminal proceedings which is the nature of proceedings under section 138 of the NI Act. This authority clinches the issue and squarely meets the argument of the petitioners. The petitioners are of

course at liberty to take all the pleas which are available to them during trial.

18. In the facts and circumstances of the case, the court finds no reason to hold that the respondent-complainant is not entitled to any interim compensation as held by both the courts below. The revisional court has reduced the interim compensation from 15% to 5% of the cheque amount. This court however, is of the view that the interim compensation is further required to be slashed down to 4%(four crore) of the cheques amount as that will be reasonable interim compensation in favour of the complainant. The reasonable interim compensation is required to be given as the same is not to be granted as punishment as the final determination in the matter is yet to take place.

19. It needs no reiteration that the party cannot just approach the higher forum in ordinary course when the party had already moved the revisional court against the order passed by the trial court and had failed in the revision petition. The scheme of Criminal Procedure Code does not envisage second revision petition against the order passed by the revisional court and does not grant licence to the party aggrieved of the order of revisional court to invoke Section 482 Cr. P. C before this court merely because the petitioner is not satisfied with the impugned order.

20. Accordingly, in view of the aforesaid, the petition is disposed of with the direction that the order of the revisional court stands modified to the extent that the respondent-complainant is entitled to interim compensation of 4% (four crore) instead of 5% of the cheques amount as held by the revisional court. Needless to say, in case the complaint is dismissed and petitioners/accused are acquitted, the interim

compensation will be liable to be paid back to the petitioners/accused. The trial court to proceed in the matter uninfluenced by the observations made by this court or of earlier orders passed in the interim application. The observations by this court are confined to present proceedings only.

(PUNEET GUPTA)
JUDGE

SRINAGAR
27.02.2025
Sakeena

Whether the Judgment is reportable: Yes/ No.