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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 13th January, 2022

+ **W.P.(CRL) 68/2022 and CRL.M.A. 732/2022 (stay)**

SURYODHAN TYAGI PROPRIETER OF TYAGI TENT HOUSE
& ANR. Petitioner

Represented by: Mr.Ram Bhaduria, Advocate.

Versus

TIRENDER SHARMA Respondent

Represented by: Mr.Vivek Kumar, Advocate for the
respondent with respondent in person
(through VC).

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

JUDGMENT : (ORAL)

CRL.M.A. 733/2022 (for exemption)

CRL.M.A. 734/2022 (for exemption)

1. Exemption allowed subject to just exceptions.
2. Applications are disposed of.

W.P.(CRL) 68/2022 and CRL.M.A. 732/2022 (stay)

1. By this petition the petitioner seeks quashing of the complaint case No. 6050/2020 titled as '*Tirender Sharma Vs. Tyagi Tent House*' under Section 138 of the Negotiable Instruments Act (in short NI Act) pending before the learned Metropolitan Magistrate, South District, Saket Court as also quashing of the order dated 26th October, 2021 passed by the learned Metropolitan Magistrate under Section 143A of the NI Act directing the petitioner to pay 20% of the cheque amount within 60 days of the passing of

the order.

2. Learned counsel for the petitioner contends that there being no merit in the complaint and no legally enforceable liability being shown by the respondent in the complaint, the above-noted complaint is liable to be quashed. It is contended that the learned Metropolitan Magistrate erred in passing the order dated 26th October, 2021 under Section 143A NI Act directing him to pay compensation of 10% of the cheque amount i.e. ₹4 lakhs within 60 days. It is stated that vide the impugned order, the learned Metropolitan Magistrate failed to apply his judicial mind while exercising the discretion of granting interim compensation of 10% to the complainant. No reasons have been recorded in the impugned order as to why the petitioner was being directed to pay compensation under Section 143A (1) of the NI Act. The complainant in his evidence has clearly stated that he does not have the financial capacity, and is running a re-charge shop having an income of around ₹8000-10,000/-, he is not an income-tax assessee and hence has failed to prove his capacity to give loan to the petitioner. The respondent also got admission of his two children under the Economic Weaker Section quota in the nearby Kendriya Vidyalaya. Since the respondent is not in a position to prove legally enforceable debt, the complaint and the order dated 26th October, 2021 are liable to be quashed.

3. Learned counsel for the respondent contends that the respondent has in the complaint stated and in this regard affidavit has also been filed which would indicate that the respondent took loan from his mother to raise money for the petitioner and the non-return of the money has left the respondent in a difficult penury situation.

4. Respondent filed complaint case No. 6050/2020 against the petitioner

as proprietor of Tyagi Tent House. As per the respondent, he gave a friendly loan to the petitioner for a sum of ₹40 lakhs and in discharge of the said liability, the petitioner issued 12 post-dated cheques out of which the 8 cheques when presented were dishonoured for the reason “*funds insufficient*” Thus, the respondent gave a legal notice to the petitioner dated 3rd June, 2020 and despite service of legal notice since the petitioner failed to pay the amount of ₹40 lakhs, the complaint was filed before the Court of competent jurisdiction. It is stated that the petitioner had issued 11 cheques of ₹5 lakhs and one blank cheque and also executed GPA of his brother’s immovable property in favour of Pinki Sharma, W/o Tirender Sharma as security towards advance payment of some future business transaction.

5. Summons were issued in the said complaint filed by the respondent, whereafter on the petitioners entering appearance, the respondent filed an application under Section 143A NI Act dated 4th August, 2021 seeking awarding 20% interim compensation. The petitioner filed a response to the said application and vide the order dated 26th October, 2021 the learned Trial Court granted interim compensation to the tune of ₹4 lakhs i.e. 10% of the cheque amount.

6. Aggrieved by the order dated 26th October, 2021 the petitioner filed a revision petition before the learned ASJ which was dismissed as withdrawn vide the order dated 3rd December, 2021 and thereafter the petitioner has filed the present petition.

7. The two main pleas of the petitioner seeking quashing of the complaint are that the cheque amount was given as security amount and secondly the respondent himself has stated that he does not have sufficient resources to pay the sum of ₹40 lakhs. The petitioner having admitted his

signatures on the cheque and issuance of the post-dated cheques, a presumption is required to be drawn under Section 139 NI Act which the petitioner will have to rebut during the course of trial either through cross-examination of the complainant or by establishing its defence.

8. Merely because the complainant stated that he did not have the financial capacity despite the fact that he claims that he took loan from his mother, the complaint case No.6050/2020 under Section 138 of the NI Act warrants no interference. As regards the impugned order dated 26th October, 2021 passed by the learned MM directing the petitioner to pay interim compensation of ₹4 lakhs to the respondent, the learned Trial Court vide the impugned order noted that for an application under Section 143A NI Act, the first requirement is that the complaint should be tried as a summary/ summons trial case and that notice should have been framed on which the accused has pleaded not guilty. At this stage, the merits of the parties is not to be gone into.

9. Section 143A of the NI Act which came into force with effect from 1st September, 2018 reads as under:

“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)."*

10. The important conditions which are required to be complied before directing interim compensation are that the trial should be a summary trial or a summons case, notice/charge should be framed and the petitioner had pleaded not guilty. Thus, the requirements under Section 143A NI Act stands proved beyond reasonable doubt by the respondent.

11. In the decision reported as (2020) 2 SCC 514 Surinder Singh Deswal & Ors. Vs. Virender Gandhi & Anr. the Hon'ble Supreme Court held that Section 148 NI Act used the word "may" is generally to be construed as a rule as "shall" and not as an exception for which the Court has to assign special reasons for directing interim compensation.

12. As noted above, the twin conditions of the complaint being tried as a summary trial and secondly the charge/notice having been framed against

the petitioner to which he pleaded not guilty having complied with, this Court finds no infirmity in the impugned order dated 26th October, 2021. Further, as noted above, the petitioner filed a revision petition against the said order which was dismissed as withdrawn and hence the petitioner cannot now avail the remedy of filing a petition under Article 226 of the Constitution of India in respect of the said relief.

13. Petition and application are dismissed.

14. Judgment be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

JANUARY 13, 2022
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