

(2023) 06 CAL CK 0001
In the Calcutta High Court
Case No : Criminal Revision No. 557 Of 2020

Sandip Sarkar

APPELLANT

Vs

M/S. Mahindra & Mahindra Financial Service Limited & Anr.

RESPONDENT

Date of Decision : 15-06-2023

Acts Referred:

Negotiable Instrument Act, 1881 — Section 138, 143, 143A, 143A(1), 143A(4), 143A(5)

Code Of Criminal Procedure, 1973 — Section 164, 357, 364, 421

Citation : (2023) 06 CAL CK 0001

Hon'ble Judges : Shampa Dutt (Paul) , J

Bench : Single Bench

Advocate : Sanat Kumar Roy, Abhishek Banerjee, Manoranjan Mahata

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred against an impugned order passed by the Metropolitan Magistrate, 4th Court, Kolkata on 30.09.2019, in Case No. C-81565/18 under Section 143A of the Negotiable Instrument Act.

2. The petitioners' case is that the petitioner took loan to the tune of Rs.5,00,000/- (Rupees Five Lac only) from the opposite party for purchasing a Mahindra Varito Car bearing No. WB 12C/3442 at a price of Rs.7,24,000/- on making down payment of Rs.2,50,000/- including the registration charges. While taking such loan the petitioner had to enter into a hire purchase agreement with the opposite party for repaying the said loan amount including interest in 36 installments @ Rs.17,800/- per month. In terms of the said agreement, containing an arbitration clause, the petitioner was liable to pay Rs.5,00,000/- principal amount and interest of Rs.1,40,800/- totalling Rs.6,40,800/- in 36 monthly equal installments meaning thereby Rs.17,800/- x 36 = Rs.6,40,800/-

3. It is stated that in terms of the said agreement the petitioner already paid 16

installments @ 17,800/- i.e. Rs.2,84,800/- and the balance amount of Rs.3,56,000/- is payable to liquidate the entire dues under the agreement.

4. At the time of taking loan to the tune of Rs.5,00,000/- the opposite party took 16 blank signed undated blank cheques from the petitioner, drawn on State Bank of India, Udaynarayanpur Branch, bearing cheque nos. 032693 to 032700, against account no. 20133015268 and cheque no. 121813 to 121820 drawn on the same bank in order to keep such cheques as a security measures till the loan amount is paid off under the agreement. The said car remained hypothecated to the opposite party being the financier mentioned in the R/C Book of the vehicle.

5. It is alleged that the opposite party purportedly in violations of the terms of the agreement has presented one blank signed cheque to the bank by putting the date 27.07.2018 in cheque no. 032700 amounting to Rs.4,00,000/- (Rupees four lakhs) in order to take advantage under Section 138 of the Negotiable Instrument (N.I.) Act for encashment by abusing the process of law but the fact remains that the petitioner has not given such cheque for payment of the dues of Rs.4,00,000/- as claimed under the agreement towards installments of the vehicle.

6. It is submitted that in a proceeding initiated by the opposite party under Section 138 of the N.I. Act the petitioner has entered appearance and contested the case. During pendency of the said case the opposite party filed an application under Section 143A of the N.I. Act praying for interim compensation. The said application was taken up for hearing by the Learned Magistrate on 30.09.2019. On that date the petitioner had engaged Learned Advocate Mr. Subrata Bhattacharya to conduct the case on his behalf. The learned Advocate of the petitioner sought for short time to get an instruction from his client to do the case properly for the sake of justice. Despite making such application, the Learned Magistrate did not grant any time and proceeded to hear the case accordingly.

7. The Learned Magistrate then passed an order on 30.09.2019 on the application filed by the opposite party under Section 143A of the N.I. Act for payment of interim compensation without affording reasonable opportunity of hearing to the Learned Counsel of the petitioner. The Learned Magistrate by order dated 30.09.2019 has been pleased to pass direction after hearing the Learned Counsel of the opposite party/complainant and keeping in mind the spirit of Section 143A of the N.I. Act and the intention of the legislature behind implementation of the said section that it would be just and proper if the accused/petitioner is directed to pay an interim compensation of Rs.80,000/- to the opposite party within 60 days from the date of this order. It was also directed that if the accused is acquitted from the case then the complainant/opposite party will be liable to repay the amount of interim compensation to the accused/petitioner in terms of provisions of sub-section 4 of Section 143A of the N.I. Act.

8. Mr. Sanat Kumar Roy, learned Counsel for the petitioner has submitted that

the Learned Magistrate failed to appreciate while passing the order impugned dated 30.09.2019 that the opposite party/claimant took blank signed cheques from the petitioner on the understanding to keep it as a security measures until the dues under hire purchase agreement is paid off but in the instant case the opposite party purportedly used one of the signed blank cheques bearing no. 032700 by putting the date 27.07.2018 amounting to Rs.4,00,000/- for encashment towards payment of more than the dues under hire purchase agreement by resorting to the provisions of Section 138 of the N.I. Act thereby abusing the process of law.

9. It is submitted that the Learned Magistrate has passed the order impugned without affording reasonable opportunity of hearing to the petitioner.

10. Mr. Roy has relied upon the judgment of the Bombay High Court in M/s. Pioneer Drop System Pvt. Ltd. vs. M/s. Jain Irrigation Systems Ltd. reported in 2010 CRI. L. J. 2149. The said judgment is in respect of quashing of a proceeding under Section 138 N.I. Act and not applicable to this case, as the present revision is against an order under Section 143A of the N.I. Act.

11. The order under revision is under Section 143A of the N.I. Act directing the petitioner to pay interim compensation of Rs.80,000/-within 60 days.

12. The main contention of the petitioner is that the petitioner was not given a hearing by the court.

13. From the impugned order it appears that though the counsel for the petitioner was present, he declined to submit anything, probably as his prayer for further adjournment was not allowed by the Court.

14. The views of the Hon'ble Supreme Court in G.J. Raja vs. Tejraj Surana in Criminal Appeal No. 1160 of 2019, though on the point of Section 143 N.I. Act being prospective, is relevant to a certain extent in the present case. The Court held as follows:-

"9. A reading of Section 143A shows (i) interim compensation must not exceed 20% of the amount of the cheque; (ii) it must be paid within the time stipulated under Sub-Section (3); (iii) if the accused is acquitted, the complainant shall be directed to pay to the accused the amount of interim compensation within interest at the bank rate; (iv) the interim compensation payable under said Section can be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973 ('the Code', for short); and (v) if the accused were to be convicted, the amount of fine to be imposed under Section 138 of the Act or the amount of compensation to be awarded under Section 357 of the Code would stand reduced by the amount paid or recovered as interim compensation.

10. Since Sub-Section (5) of Section 143A stipulates that the interim compensation could be recovered as if it were a fine under Section 421 of the Code, said Section 421 also needs to be considered at this stage. Section 421 appears in Chapter XXXII of the Code which Chapter deals with 'Execution,

Suspension, Remission and Commutation of Sentences'. By very context and the language of the provisions contained in the Chapter, they apply in cases where the guilt of an accused is determined and he is convicted of an offence punishable with sentence and/or fine. Part-C of the Chapter deals with 'Levy of Fine' and Section 421 appearing in said Part-C is to the following effect :-

"421. Warrant for levy of fine. – (1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the District, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter.

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.

(2) The State Government may make rules regulating the manner in which warrant under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realize the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law :

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

11. According to Section 421 of the Code, fine could be recovered either by warrant of attachment or sale of movable property belonging to the offender or by issuance of warrant to the Collector authorizing him to realize the amount as arrears of land revenue from the movable or immovable property or both of the defaulter.

12. It is thus clear that in case an accused, against whom an order to pay interim compensation under Section 143A of the Act is passed, fails or is unable to pay the amount of interim compensation, the process under Section 421 can be taken resort to which may inter alia result in coercive action of recovery of the amount of interim compensation as if the amount represented the arrears of land revenue. The extent and rigor of the procedure prescribed for such recovery may

vary from State to State but invariably, such procedure may visit the person concerned with coercive methods.”

15. The Supreme Court in Noor Mohammad vs. Khurram Pasha in Special Leave Petition (Criminal) No. 2872 of 2022 which reads as follows:-

“11. Before we examine the matter in issue, we may extract the relevant provision namely Section 143A of the Act, which is to the following effect :-

“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 a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(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), shall be reduced by the amount paid or recovered as interim compensation under this section.”

12. After empowering the Court to pass an order directing the accused to pay interim compensation under Sub-Section (1) of Section 143A, Sub Section (2) then mandates that such interim compensation should not exceed 20 per cent of the amount of the cheque. The period within which the interim compensation must be paid is stipulated in Sub-Section (3), while Sub-Section (4) deals with situations where the drawer of the cheque is acquitted. Said Sub-Section (4) contemplates repayment of interim compensation along with interest as

stipulated. Sub-Section 5 of the said Section 143A then states "the interim compensation payable under this Section can be recovered as if it were a fine". The expression interim compensation is one which is "payable under this Section" and would thus take within its sweep the interim compensation directed to be paid under Sub-Section (1) of said Section 143A.

13. The remedy for failure to pay interim compensation as directed by the Court is thus provided for by the Legislature. The method and modality of recovery of interim compensation is clearly delineated by the Legislature. It is well known principle that if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable. While relaying on the decision of the Privy Council in *Nazir Ahmad vs. King Emperir*, a Bench of three Judges of this Court made the following observations in *State of Utter Pradesh vs. Singhara Singh & Ors.*

"7. In *Nazir Ahmed case*, 63 Ind App 372; (AIR 1936 PC 253(2)) the Judicial Committee observed that the principle applied in *Taylor v. Taylor* [(1875) 1 Ch D 426, 431] to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Section 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that "it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves".

8. The rule adopted in *Taylor v. Taylor* (1875) 1 Ch D 426, 431] is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of its made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The Section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him."

In *J.N. Ganatra vs. Morvi Municipality*, exercise of power of dismissal having not

been done in conformity of the Act, the same was set aside.

It was stated :-

"4. We have heard the learned counsel for the parties. We are of the view that the High Court fell into patent error in reaching the conclusion that the dismissal of the appellant from service, in utter violation of Rule 35 of the Rules, was an "act done in pursuance or execution or intended execution of this Act..." It is no doubt correct that the General Board of the Municipality had the power under the Act to dismiss the appellant but the said power could only be exercised in the manner indicated by Rule 35 of the Rules. Admittedly, the power of dismissal has not been exercised the way it was required to be done under the Act. It is settled proposition of law that a power under a statute has to be exercised in accordance with the provisions of the statute and in no other manner. In view of the categorical finding given by the High Court to the effect that the order of dismissal was on the face of it illegal and void, we have no hesitation in holding that the dismissal of the appellant was not an act done in pursuance or execution or intended execution of the Act. The order of dismissal being patently and grossly in violation of the plain provisions of the Rules. It cannot be treated to have been passed under the Act."

In *Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala*, a Constitution Bench of this Court stated the normal rule of construction in such cases as under :-

"27. Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other Income Tax Authorities for proper administration of the Act. The Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245-D cannot have the administrative power of issuing directions to other Income Tax Authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119."

14. The concerned provision nowhere contemplates that an accused who has failed to deposit interim compensation could be fastened with any other disability including denial of right to cross-examine the witness examined on behalf of the complainant. Any such order foreclosing the right would not be within the powers conferred upon the Court and would, as a matter of fact, go well beyond the permissible exercise of power."

16. Thus, in view of the present position of law as laid down, the order under

revision being in accordance with law and causing no prejudice to the petitioner/accused, requires no interference by this court.

17. The revisional application being CRR 557 of 2020 is accordingly dismissed.

18. The order dated 30.09.2019 passed by the Metropolitan Magistrate, 4th Court, Kolkata, in Case No. C-81565/18 under Section 143A of the Negotiable Instrument Act, is hereby affirmed.

19. No order as to costs.

20. All connected applications, if any, stands disposed of.

21. Interim order, if any, stands vacated.

22. Copy of this judgment be sent to the Trial Court for compliance.

23. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.