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

Judgment reserved on: 26.11.2021
Date of decision: 20.12.2021

\+ CRL.M.C.2663/2021

M/S JSB CARGO AND FREIGHT FORWARDER PVT. LTD. & ORS ..... Petitioners

Through: Mr.Bharat Gupta and Mr.Gunjan Arora, Advocates.

Versus

STATE & ANR. ..... Respondents

Through: Ms.Aashaa Tiwari, APP for State
Mr.Ashok Mahipal,Advocate for R-2.

\+ CRL.M.C.2730/2021

M/S JSB CARGO AND FREIGHT FORWARDER PVT. LTD.AND ORS. ..... Petitioners

Through: Mr.Bharat Gupta and Mr.Gunjan Arora, Advocates.

Versus

STATE & ANR. ..... Respondents

Through: Mr.Mukesh Kumar, APP for State.
Mr.Ashok Mahipal,Advocate for R-2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The petitions bearing CRL.M.C. No.2663/2021 and

CRL.M.C.No.2730/2021 are being taken up together as they assail the consolidated order dated 21.09.2021 of the learned Metropolitan Magistrate (NI Act), Digital Court-01, PHC/New Delhi in CC No.CC NI Act 12-20 titled as "***SAVITA SURYAVANSHI Vs. M/S JSB CARGO AND FREIGHT FORWARDER PVT LTD***" and in CC No.CC NI Act 100-20 titled as ***"SUNEEL SURYAVANSHI Vs. M/S JSB CARGO AND FREIGHT FORWARDER PVT LTD***".

2. The petitioners herein i.e. M/S JSB CARGO AND FREIGHT FORWARDER PVT. LTD. i.e. the petitioner no.1 of whom Mr.Vipin Tondak and Mrs.Kunti Devi arrayed as the petitioner nos.2 & 3 thereof are stated to be the directors thereof as per the complaints i.e. CC NI Act 12-20 and CC NI Act 100-20 filed by the respondent before the learned Trial Court under Section 138 r/w Section 142 of the NI Act, 1881 were summoned as co-accused therein.

3. Both the said complaints relate to alleged dishonour of the cheques i.e. cheque bearing no.000430 in relation to CC NI Act 12-20 in which the complainant is Mrs. Savita Suryavanshi arrayed as respondent no.2 to CRL.M.C.2730/2021 of which the cheque amount was Rs.7692000/- and in relation to CC NI Act 100-20 in which the complainant is Mr.Suneel Suryavanshi arrayed as respondent no.2 to CRL.M.C.2663/2021 of which the cheque bearing no.000431 was for an amount of Rs.5340000/-.

4. Vide the said consolidated impugned order, the learned Trial Court on an application under Section 143A of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act, 1881)

filed by the complainants seeking the grant of interim compensation pursuant to the accused persons having pleaded not guilty to the notice under Section 251 of the Cr.P.C., 1973 on 29.01.2021 sought the grant of interim compensation from the accused and the learned Trial Court directed vide paragraphs 16 & 17 of the impugned order to the effect:-

> ***"16. In the event of acquittal of the accused persons in the present cases, the complainants shall be directed to repay the amount to the accused persons with interests at the prevailing bank rate, as provided in Section 143-A(4) of the NI Act.***
>
> ***17. The present applications moved by the complainants seeking interim compensation stand disposed as allowed. The accused persons are jointly and severally directed to pay a consolidated amount of Rs. 26,06,400/- in the above-captioned matters. In the event of any default on the part of accused to pay the amount, the complainant is at liberty to initiate appropriate proceedings as provided u/S 143-A(5) of the Negotiable Instruments Act, 1881."***

5. The complainants had contended that the petitioners and the complainant were related and that the accused person namely Mr.Vipin Tondak arrayed as the petitioner no.2 to both CRL.M.C.2663/2021 & CRL.M.C.2730/2021 had stated that he would like to settle the matter in mediation and that despite repeated attempts of the complainants before the Mediation Cell to settle the present matters with the accused persons, the accused persons did not attend the Mediation proceedings, on one pretext or the other and thus, the Mediation proceedings which were fixed thrice on 15.02.2021, 17.02.2021 as well as 19.02.2021 could not fructify, due to the dilatory tactics adopted by the accused. The complainants had also

urged that they were regularly paying bank instalments for the loan they took, to lend money to the accused persons but the accused persons had not refunded any amount to the complainants with it having also been submitted by the complainants that the accused persons had expressly acknowledged the existence of debts towards the complainants as well as the issuance of the cheques, which form the subject matter of the present complaints.

6. The complainants had further contended that the ingredients of Section 143A of the NI Act, 1881 were made out in the instant complaints and had prayed for the grant of interim compensation to the tune of Rs.26,06,400/- i.e. Rs. 10,68, 000 in complaint CC NI Act 100-20 and Rs.15,38,400/- in complaint CC NI Act 12-20 whilst placing reliance on the verdict of the Hon'ble High Court of Chhattisgarh in ***"Rajesh Soni Vs. Mukesh Verma" 2021 SCC OnLine Chh 1761***, CRMP. No.562-2021, a verdict dated 30.06. 2021.

7. The accused persons i.e. the petitioners herein opposed the impugned application and had raised the following grounds:-

> *"(a) There is no legally enforceable liability of the accused persons as there is no default or breach of the alleged loan-cum-guarantee agreement dated 01.12.2019. Further, liability of the accused is also not attracted because the amount paid by the accused persons to the complainant is in excess of the amount received from the complainant, by way of loan.*
>
> *(b) The present complaints are not maintainable since the complainants are not licensed money lenders as per the Punjab Registration of Money Lenders Act, 1938 and therefore, the present complaints are barred by law.*

(c) The alleged payment of Rs. 45 lakhs, by the complainants to the accused persons, is inconsistent with the alleged loan-cum-guarantee agreement. Further, the complainants have also not been able to show how the cheque amounts in question have been arrived at.

(d) Debt or liability in the present case is not a legal debt or liability as the income-tax returns have not been attached. Further, the alleged loan-cum-guarantee agreement is a sham document, full of inconsistencies.

(e) The complainants have not approached the Court with clean hands and the Court on this account, is mandated to entertain the defence of the accused persons."

8. The accused persons i.e. the petitioners herein also placed reliance on the verdict of the Hon'ble High Court of Madras in ***"LGR Enterprises & Ors. v. P. Anbazhagan" 2019 (3) MLJ (Crl) 423***, a verdict dated 12.07.2019 as well as on the verdict of the Hon'ble Kalaburgi Bench of the High Court of Karanataka. in case titled as ***"Jahangir v. Sh. Farook Ahmed Razak", (Crl Pet No. 201213/20)*** a verdict dated 06.07.21.

9. Section 143A of the NI Act, 1881 provides to the effect:-

*"**S. 143 A: Power to direct interim compensation***

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 percent** 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 year within sixty days from the date of the order, or withing 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.

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

10. The learned Trial Court vide paragraph 8 of its impugned order observed to the effect:-

"8. It is important to understand the intent behind the introduction of the said provision to the Act. The object and purpose of bringing the NI Act (Amendment) Bill, 2018, reads as: " 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 delaying tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings." Therefore, the present provision has been introduced with a view to provide relief during the pendency of proceedings, so that genuine complainants are not left

waiting for years on account of undue delays and dilatory tactics of the accused."

11. *Inter alia* the learned Trial Court observed vide paragraphs 11 & 12 of its impugned order to the effect:-

"11. Further, a bare perusal of Section 143-A of the NI Act reveals that, at the stage of awarding interim compensation, the Court is not required to consider the strength of defence of the accused and the same is immaterial at this stage. Although, the arguments led on behalf of the accused may seem attractive at the first blush, the same cannot be gone into by the Court, at this stage, as it would amount to a mini trial.

12. The accused persons have argued that the Court can go into the contentions made by the accused persons in the present complaints, as the complaints are themselves fraught with illegality. This Court is in respectful disagreement of this assertion. It is to pertinent to reiterate that once the Court has taken cognizance of the complaint, and issued summons to the accused, the Court can only look into the grounds raised above, by the accused, at the conclusion of trial. Going by the submissions of the accused, if the Court were to go into the legality and maintainability of the complaint at this stage, it would amount to reviewing its own order, which is not legally permissible. Further, if the Court does look into the above contentions, at this stage, it would defeat the very purpose of the introduction of Section 143-A in the Act, which is to provide some relief and succour to the genuine complainants, who suffer the double-edged sword of loss of cheque money as well the costs of litigation. Therefore, the plea of defence raised by the accused as well as the various grounds raised by the accused persons, in reply to the present application, cannot be gone into, at this stage of the proceedings."

12. *Inter alia* the learned Trial Court observed to the effect that there is no authoritative pronouncement of the Hon'ble Supreme Court nor of this Court on the interpretation of Section 143A of the NI Act, 1881 and there are divergent views of the High Court of Madras and Chattisgarh High Court in relation to the nature of the provision i.e. Section 143 A of the NI Act, 1881 for whereas the verdict in ***Rajesh Soni*** (supra) holds the use of the word **"may"** in Section 143A of the NI Act, 1881 whereby the Court trying an offence under Section 138 of the NI Act, 1881 has been empowered by the words "may order" the drawer of the cheque to pay interim compensation to the complainant in a summary trial or in summons case where he pleads not guilty to the accusation made in the complaint and in any other case upon framing of charge which interim compensation under sub-Section (1) of Section 143A of the NI Act, 1881 is not to exceed 20% of the amount of the cheque to be ***directory*** in nature, the verdict in ***LGR Enterprises & Ors***. (supra) observes to the effect that the said provision is ***discretionary*** and the learned Trial Court observes vide paragraph 13 of its impugned order to the effect that in view of the light of the Objects and Reasons behind introduction of this provision, the provision seems to have a mandatory effect.

13. *Inter alia* the learned Trial Court observes to the effect that even if it is assumed that Section 143A of the NI Act, 1881 is discretionary in nature, the Court is still clothed with the powers to grant interim compensation to the complainant, after providing sufficient reasons and vide paragraph 14 of the impugned order, the learned Trial Court has observed to the effect:-

> ***"14. Arguendo, going by the submissions of the accused, if it is assumed that Section 143-A of NI Act is discretionary in nature, the Court is still clothed with the powers to grant interim compensation to the complainant, after providing sufficient reasons. In the present complaint, the Court finds it appropriate to exercise its discretion in favour of the complainants, for the reasons which will be discussed now. It is admitted by the parties that the complainants and accused no. 2 and 3 are relatives. Moreover, it is not uncommon that relatives lend money to another relatives in cases of genuine need and such lending / grant of loan, does not attract the vires of Punjab Money Lenders Registration Act, 1938. Moreover, it needs to be acknowledged that efforts were made by the complainant towards settling the above matters in Mediation on three occasions, but the same could not bear fruit, on account of the delay tactics of the accused persons. As per the mandate of Section 143(3) of the Negotiable Instruments Act, the Court shall attempt to dispose of the cases, within six months. However, in the present complaints, more than ten months have already elapsed, with no end in sight."***

14. It was *inter alia* observed vide paragraph 15 of the impugned order to the effect:-

> ***"15. On account of the aforementioned discussion, this Court is of the considered opinion that all the ingredients of Section 143A NI Act stand fulfilled qua the present case. There is no reason why the benefit of Section 143A NI Act should not be accorded to the complainants in the present case, especially when the legislature itself has laid down a beneficial provision aimed at protecting the interest of the complainants."***

15. The petitioners, vide the present petition *inter alia* contend to the effect that the impugned order is neither tenable in law nor on facts, that the learned Trial Court did not even consider that the

accused i.e. the petitioners could have put forth their documents i.e. the admitted documents which could have been considered and dealt with by the learned MM which would have negated even the admitted documents such as bank statements, email, whatsapp chats and that the learned Trial Court did not even think it fit to arithmetically calculate the amounts in terms of the alleged loan agreement to make out whether on the alleged date of the agreement i.e. 30.09.2020, the amounts filled in in the cheque were actually due or outstanding from the petitioners to the respondent no.2 nor did the learned Trial Court even consider that the respondent no.2 had concealed the factum of having received substantial money from the petitioner nos.1 & 2.

16. It has also been submitted on behalf of the petitioners that the learned Trial Court could have atleast called upon the respondent no.2 to respond to the documents filed by the petitioners or could have directed the respondent no.2 to file the bank statements showing the amount transferred to his bank account by the petitioner nos.1 & 2 and that the learned Trial Court wrongly assumed that in terms of Section 143A of the NI Act, 1881, the Metropolitan Magistrate is not required to entertain any query, concern, contention or submission of the accused and has to mandatorily direct the payment of 20% of the cheque amount without undertaking any other exercise even qua the aspect as to whether the complainant had played a fraud upon the Court or had concealed the fact of having received substantial money from the accused. The petitioners have further submitted that the learned Trial Court could have directed the respondent no.2 to file their bank statements and income tax returns to show the outstanding

amount due against the petitioners and that the learned Trial Court acted as a mute spectator assuming that on an application under Section 143A of the NI Act, 1881, the Magistrate was only required to direct payment of 20% interim compensation and nothing else.

17. *Inter alia* the petitioners contend that the learned Trial Court failed to consider that the words used in Section 143A of the NI Act, 1881 to the effect that the interim compensation under sub Section (1) shall not exceed 20% of the amount of the cheque, are not similar or identical to the words used in Section 148 of the NI Act, 1881 to the effect that 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 learned Trial Court in the case of an appeal by an accused and thus, thereby, it was apparent that the legislature in its wisdom had deliberately made the difference in the wordings that it **shall not exceed 20% as compared with it shall be a minimum of 20%** to vest the discretionary power with the Trial Court to consider whilst adjudicating upon an application under Section 143A of the NI Act, 1881 to firstly come to a finding based on reasons, justifying the grant of compensation and secondly, if the complainant was able to make out a case for the grant of compensation, then the percentage of the compensation to be decided which was not to exceed 20% of the cheque amount and that thus, it was for the Magistrate to give reasons both whilst deciding to grant compensation and secondly whilst deciding the quantum/percentage of the compensation.

18. *Inter alia* it was submitted on behalf of the petitioners that the learned Trial Court failed to consider that at the stage of Section 143A

of the NI Act, 1881 the accused is deemed to be innocent and there is no adverse finding against him as in the case of an appeal after conviction and that therefore, there has necessarily to be a difference in the grant of compensation at the appellate stage and at the initial stage which differentiation is visible by the use of a different language in the provisions by the legislature thereby giving a discretion to the Metropolitan Magistrate. *Inter alia* it was submitted on behalf of the petitioners that the word "may' used in Section 143A of the NI Act, 1881 vests discretion with the Metropolitan Magistrate and that the award of interim compensation and that to the tune of 20% was nowhere made mandatory in terms of Section 143A of the NI Act, 1881.

19. The petitioners have further submitted that the vesting of discretion in terms of Section 143A of the NI Act, 1881 with the learned Trial Court by the legislature is to see that no frivolous, meritless or undeserving complainants get unnecessarily enriched at the cost of the innocent victims. *Inter alia* the petitioners submit that the learned Trial Court failed to consider that there could be unscrupulous litigants who might make false statements by concealing and not stating that they have already received the money from the accused or they might present the cheque which has already been replaced by the accused with another cheque and in such circumstances, the accused at the stage of adjudication of the application under Section 143A of the NI Act, 1881 could therefore show the admitted and unimpeachable documents such as bank statements to prove the story of the complainant to be wrong which

could have been considered by the learned Trial Court and in such eventuality, no interim compensation ought to have been granted by the learned Trial Court to the complainant.

20. *Inter alia* the petitioners submit that the learned Trial Court failed to take into account the factum that proceedings under the NI Act, 1881 are not purely criminal proceedings and have a semblance of a civil nature to it, in as much as, the accused is required to disclose its defence before the start of the trial and interim compensation can also now be awarded and that thus, therefore it was incumbent on the Trial Court to find out whether the amounts were due to the complainant having regard to the averments of the complainant as also the averments in the documents relied upon on behalf of the accused. It was also submitted on behalf of the petitioners that the intent behind insertion of Section 143A of the NI Act, 1881 could never have been to the effect that all cases filed under the NI Act be treated alike, in as much as, each case is bound to differ and therefore, exercise of discretion by the Trial Court in necessary especially when such discretion has not been taken away by the legislature by inserting Section 143A of the NI Act, 1881 in any manner.

21. *Inter alia* the petitioners submitted that the learned Trial Court did not take into account that the grant of interim compensation was not mandatory and was in fact for proceedings where the trial would take time and in the instant case, the trial was also proceeding at a rapid pace. It was further submitted on behalf of the petitioners that the learned Trial Court was not correct in observing that at the stage of awarding interim compensation, the Court was not required to

consider the strength of the defence of the accused or that it was immaterial at this stage or that the arguments addressed on behalf of the accused could not be gone into by the Court and that considering the same would amount to a mini trial.

22. *Inter alia*, the petitioners submit that the learned Trial Court had wrongly observed that once the Court had taken cognizance, issued summons, the Court could only look into the grounds raised by the accused at the conclusion of the trial and that the Trial Court had wrongly observed that if the Court was to go into the legality/maintainability of the complaint at this stage, it would amount to review of its own order which was not legally permissible. *Inter alia*, the petitioners submitted that the learned Trial Court had wrongly observed that all the ingredients of Section 143A of the NI Act, 1881 were fulfilled in the present case and had wrongly observed that mediation could not be fruitful due to the dilatory tactics of the petitioners.

23. The petitioners further submit that the learned Trial Court did not give any reason on the merits of the case justifying the award of interim compensation to the complainant/respondent no.2 and that the impugned order was thus a non-speaking order and was liable to be set aside and that the learned Trial Court did not even deal with the response and contentions raised by the petitioners. The said submissions that the petitioners have made through the petition relate to the merits of the complaints and arithmetical calculations with it *inter alia* being submitted that whereas the complainant in CC No.CC NI Act 100-20 had alleged that a sum of Rs.1043110.17 was due till

30.09.2020 and in relation to CC No.CC NI Act 12-20 had contended that a sum of Rs.1738517.04 was due from the petitioners thereof and the total amount thus became payable by Vinod Tondak and Kunti Devi arrayed as petitioner nos.2 & 3 to both petitions worked out to Rs.2781627.21, in reality the amount paid by the petitioner nos.1 & 2 to the respondent and his wife after 01.12.2019 till 30.09.2020 was Rs.3770000 by way of bank transfers excluding cash paid to the respondent no.2 and details of the bank statements were submitted by the petitioners to the effect:-

"(a) From Bank Account of Petitioner no.1 Company to the Bank Account of Mr. Suneel Suryavanshi /Respondent no .2

S. No.	Date	Amount	Bank
1.	06.12.19	2,50,000/-	Canara
2.	17.01.20	1,00,000/-	Canara
3.	05.03.20	2,00,000/-	Canara
	Total	**5,50,000/-**	

(b) From Bank Account of Petitioner no. 1 Company to the Bank Account of Mrs. Savita Suryavanshi / Wife of Respondent no. 2

S.No.	Date	Amount	Bank
1.	04.01.20	1,00,000/-	Canara
2.	17.01.20	1,00,000/-	Canara
	Total	**2,00,000/-**	

(c) From Bank Account of Petitioner no. l Company to the Joint Bank Account of Mr. Suneel Suryavanshi / Respondent no .2 and Mrs. Savita Suryavanshi / wife of Respondent no .2

S.No.	Date	Amount	Bank
1.	28.09.20	2,00,000/-	Deutsche
2.	28.09.20	2,00,000/-	Deutsche
3.	28.09.20	9,50,000/-	Deutsche
4.	28.09.20	8,00,000/-	Deutsche

5.	28.09.20	2,00,000/-	Deutsche
	Total	**23,50,000/-**	Deutsche

(d) From Bank Account of Petitioner no. 2 (Mr. Vipin Tondak) to the Bank Account of Mr. Suneel Suryavanshi / Respondent no .2

S.No.	Date	Amount	Bank
1.	06.12.19	2,50,000/-	HDFC
2.	05.03.20	2,00,000/-	HDFC
3.	24.03.20	1,50,000/-	HDFC
	Total	**6,00,000/-**	

(e) From Bank Account of Petitioner no. l Company to the Bank Account of M /s Share Corp Investment Pvt. Ltd., Company of Mr.Suneel Suryavanshi / Respondent no.2 and Mrs. Savita Suryavanshi / wife of Respondent no. 2

S.No.	Date	Amount	Bank
1.	28.09.20	70,000/-	Deutsche
	Total	**70,000/-**	

24. The petitioners submitted further that there was no legal liability of the petitioners towards the respondent no.2, in as much as, the amount paid by them was in excess of the amount received from the respondent no.2 and his wife. The petitioners also submitted that the learned Trial Court could have called for a rejoinder from the complainant in response to the contentions and facts raised by the petitioners. The petitioners further submitted that in terms of the bank statements that have been put forth by the petitioners, an excess payment of Rs.773540 has been paid by the petitioners to the respondent No.2 and thus, the respondent no.2 was not entitled to any compensation whatsoever.

25. The petitioners also submitted that the learned Trial Court failed to consider that in terms of Section 3 of the Punjab Registration of Money Lenders Act, 1938, lending money with interest is prohibited if the money lender is not registered and does not have a licence and in as much as, the terms of the alleged agreement relied upon on behalf of the respondent no.2 indicate that he is in the business of money lending, the said alleged transactions fall within the ambit of the bar of the Punjab Registration of Money Lenders Act, 1938 and that the loan was not a friendly loan as given to the petitioners but was allegedly a commercial loan.

26. *Inter alia,* the petitioners submitted that the learned Trial Court had not considered that the respondent no.2 had only made an allegation of a sum of Rs.5340000 being the outstanding amount as on 30.09.2020 but did not bifurcate the amount of the interest-cum-principal amount and thus, the calculation even in relation to the interest amount made by the respondent no.2 was incorrect. The petitioners further submitted that the learned Trial Court failed to consider that the issuance of the directions for payment of interim compensation is within the discretion of the Court and has to be exercised in an objective manner.

27. The petitioners further placed reliance on the verdict of the Hon'ble High Court of Madras in ***LGR Enterprises & Ors.*** (supra) to submit to the effect that the provision of Section 143A of the NI Act, 1881 itself indicates that the discretion is vested with the Trial Court and that it is not necessary that in all cases the Trial Court must necessarily direct the complainant to pay interim compensation and

that such a direction should be given only on a case to case basis by taking into consideration the facts of each case since making the provision mandatory, would have directly affected the fundamental right of an accused person to defend himself in a criminal case.

28. The submissions raised on behalf of the petitioner have been vehemently opposed on behalf of the respondent no.2 submitting to the effect that there is no infirmity whatsoever in the impugned order of the learned Trial Court and that no discretion whatsoever is vested in the Trial Court in view of the provisions of Section 143A of the NI Act, 1881 and that thus, the interim compensation awarded to the extent of 20% of the cheque amount has rightly been awarded by the learned Trial Court.

29. During the course of submissions, it was *inter alia* also submitted on behalf of the respondents that the averments made in the complaint by the respondent no.2 itself brought forth the veracity of the complainant's version as set forth through the complaint.

30. The respondents also placed reliance on the observations of the Hon'ble High Court of Chattisgarh in ***Rajesh Soni*** (supra) to contend to the effect that the provisions of Section 143A of the NI Act, 1881 are mandatory.

31. Submissions were also made on behalf of the State.

32. It is essential to advert to the observations of the Hon'ble High Court of Chattisgarh in ***Rajesh Soni*** (supra) wherein, it was observed vide paragraphs 9 to 19 to the effect:-

> ***"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:—

"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."

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 v. Nagar Nigam, Gorakhpur, which reads as under:—*

"18. It is well-settled that the use of word "may" 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 "may", 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 "may" is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word "shall", which ordinarily is imperative as it imposes a duty. Cases however, are not wanting where the words "may" "shall", and "must" 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. "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."

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 "may" 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 "may" 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 "shall is obligatory, the connotation is not inelastic and inviolate." Where to interpret the word "may" as directory would render the very object of the Act as nugatory, the word "may must mean 'shall'.

21. The ultimate rule in construing auxiliary verbs like "may and "shall" 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 "may" 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."

14. *The Supreme Court in Surinder Singh Deswal alias Colonel S.S. Deswal v. Virender Gandhi , 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:*

—

"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."

15. *The Hon'ble Supreme Court in G.J. Raja v. Tejraj Surana , 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:—*

"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."

16. *Therefore, the word "may" be treated as "shall" 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:—*

"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 nonbailable 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 set aside on that ground alone."

***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 11 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."*

33. Vide the observations in ***LGR Enterprises & Ors.*** (supra) relied upon on behalf of the petitioners, it was observed to the effect:-

"5. *The next question that arises for consideration is the manner in which this provision is to be put into operation in the pending proceedings. It will be relevant to extract Section 143A(1) as follows:*

"143A.(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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."

6. *A reading of the above provision makes it clear that the Court trying an offence under Section 138 of the Negotiable Instruments Act "**may**" (emphasis supplied) order the drawer of the cheque to pay interim compensation to the complainant. The provision itself shows that the discretion is vested with the Trial Court to direct interim compensation to be paid by the complainant. It is not necessary that in all cases, the trial Court must necessarily direct the complainant to pay interim compensation and such a direction should be given only on a case to case basis, by taking into consideration the facts of each case. The*

*legislature has intentionally not used the word "**shall**", since it would have prevented the accused persons, even in genuine cases, from defending themselves without paying 20% as interim compensation amount to the complainant. This would have directly affected the fundamental right of an accused person to defend himself in a criminal case. This is the reason why the legislature had thoughfully used the word "**may**" under Section 143A(1) of the Negotiable Instruments Act. Therefore, it is not possible to read the word "**shall**" into the word "**may**" which is used in the provision.*

***7.** In view of the above finding, the word "**may**", gives the discretion to the Trial Court to direct the accused to pay interim compensation to the complainant. The exercise of discretion must always be supported by reasons, failing which the exercise of discretion will become arbitrary.*

***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 set aside on that ground alone.*

10. *Keeping in mind the above discussion on the scope and purport of an order passed under Section 143A(1) of the Act, this Court will now deal with the case on hand.*

11. *The petitioners in the above petitions are the husband and wife and the respondent/complainant is common in both the cases. The petitioners are said to have drawn a cheque in favour of the respondent towards a legally enforceable debt and the same was dishonoured. It led to the filing of a complaint before the court below for an offence under Section 138 of the Negotiable Instruments Act. Both the cases were at the stage of cross examination of P.W.I. At that point of time, the respondent has proceed to file a petition under Section 143A(1) of the Act, to direct the accused persons to deposit 20% of the cheque amount as interim compensation. The Court below after an elaborate discussion has held that the provision will have a retrospective operation and therefore will apply even to the pending proceedings. The Court, therefore, proceeded to direct the petitioners to pay interim compensation to the respondent within a stipulated time.*

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17. *This Court has carefully considered the submissions made on either side and the materials available on record. This Court has already derived the scope and purport of Section 143A of the Negotiable Instruments Act, supra. It has to be now applied to the facts of the present case.*

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.*

19. *This Court took the effort of discussing the effect and purport of Section 143A of the Negotiable Instruments Act, only to ensure that some guidelines are given to the Subordinate Courts, which deals with complaints under Section 138 of the Negotiable Instruments Act, on a regular basis to deal with such petitions effectively and in accordance with law.*

20. *In view of the above discussion, the order passed by the Court below in Crl.M.P.No. 710 of 2019 and Crl.M.P. No. 885 of 2019 dated 11.04.2019 is hereby set aside. In the result, the Criminal Original Petitions are allowed. There shall be a direction to the Court below to complete the proceedings in C.C. No. 161 of 2018 and C.C. No. 142 of 2018, within a period of three months from the date of receipt of a copy of this order. The Registry is directed to*

circulate a copy of this order to all the Subordinate Courts through the Judicial Academy. Consequently, connected miscellaneous petitions are closed."

34. The observations in ***LGR Enterprises & Ors.*** (supra) were referred to in paragraphs 18 & 19 of the verdict of the Hon'ble High Court of Bombay in ***"Nurallah Kamruddi Veljee V. Farid Veljee" 2019 SCC OnLine Bom 1537*** with observations in paragraph 18 & 19 of the said verdict making reference to observations in paragraph 6 of ***LGR Enterprises & Ors.*** (supra) to the effect:-

*"**18.** The learned Counsel for the petitioner has also placed reliance on the judgment of Madras High Court in the case of LGR Enterprises v. P. Anbazhagan in **Cr.O.P. No. 15438 of 2019**. The ratio laid down by the Single Judge of the Madras High Court would not be applicable to the case in hand since the case before the Madras High Court was in respect of Section 143A of the Act which empowers the Court to direct interim compensation while trying an offence under Section 138 of the Act. Para 6 of the judgment reads thus:-*

*"6. A reading of the above provision makes it clear that the Court trying an offence under Section 138 of the Negotiable Instruments Act "**may**" (Emphasis supplied) order the drawer of the cheque to pay interim compensation to the complainant. **The provision itself shows that the discretion is vested with the Trial Court to direct interim compensation to be paid by the complainant. It is not necessary that in all cases, the trial Court must necessarily direct the complainant to pay interim compensation and such a direction should be given only on a case to case basis, by taking into consideration the facts of each case. The legislature had intentionally not used the word "shall", since it would have prevented the accused persons, even in genuine cases, from defending themselves without paying 20% as***

interim compensation amount to the complainant. This would have directly affected the fundamental right of an accused person to defend himself in a criminal case. This is the reason why the legislature had thoughtfully used the word "may" under Section 143A(1) of the Negotiable Instruments Act. Therefore, it is not possible to read the word "shall" into the word "may" which is used in the provision."

19. It has been observed by the Madras High Court that as per Section 143A of the Act, discretion is vested with the Trial Court to direct interim compensation to be paid to the complainant which would be given only on a case to case basis by taking into consideration the facts of each case. It is observed that the legislature has intentionally not used the word "shall" since it would have prevented the accused persons, even in genuine cases, from defending themselves without paying 25% as interim compensation amount to the complainant. It is not the case in hand. The petitioner herein has been convicted and while in appeal, the learned Additional Sessions Judge in view of the judgment laid down by the Supreme Court in case of Surinder Singh Deswal (supra) rightly exercised her jurisdiction in directing payment of compensation as above. The ratio, therefore, can be distinguished accordingly.*",*

which judgment thus, clearly distinguishes the provisions of Section 143A of the NI Act, 1881 and the provisions of Section 148 thereof.

35. As regards the import of Section 148 of the NI Act, 1881 and it being directory or mandatory, the matter is no longer *res integra* in view of the verdict of the Hon'ble Supreme Court in ***"Surender Singh Deswal @ Col. S.S. Deswal V. Virender Gandhi"*** in Criminal Appeal Nos.917-944 of 2019, whereby the Hon'ble Supreme Court has observed vide paragraph 9 thereof to the effect:-

"9. 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 Cr.P.C. 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 Sec 138 of the N.I. Act."

36. The verdict in ***Nurallah Kamruddi Veljee*** (supra) thus, observed vide paragraph 14 thereof to the effect:-

*"14. The Hon'ble Supreme Court has also observed that the word "**may"** appearing in Section 148 of the Act as amended 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."*

37. The verdict of the High Court of Karnataka Kalaburagi Bench in ***"Jahangir Vs. Farooq Ahmed Abdul Razak"*** in Criminal Petition no.201213/2020 dated 06.07.2021 observed vide paragraph 9 to the effect:-

"9. Section 143A (1) is not a mandatory provisions and it says that Court may order the drawer of the cheque to pay

the interim compensation as per conditions stipulated there under. So it is evident that the power under Section 143A is vested with the learned Magistrate to be exercised judiciously after recording the plea and it is not mandator/ but the learned magistrate is required to exercise his judicious discretion under Section 143 A of the Act. But in the present case, the impugned order disclose that the learned Magistrate has not even applied his mind and in a mechanical way as per the mandatory provisions of Section 143 A he has directed the accused to deposit 20% of the cheque amount. The provisions of Section 143 A are not mandatory but the discretion was given to the magistrate to be exercised judiciously. In the instant case though application was filed prior to the accusation it should be heard only after the accusation but after giving proper opportunity. Admittedly the accused/ petitioner herein has submitted his objections to the said applicants and the learned Magistrate has not passed any speaking order and in a mechanical way he directed the accused /petitioner herein to deposit 20% of the cheque amount. The entire approach of the learned magistrate is against the settled principles of natural justice and he did not even passed a summary speaking order giving reasons for passing such an order. The order itself disclose that he carried on impression that Section 143 (A) of the Act is a mandatory provision of law but ignored the fact that the word used in the Section is 'may' and not 'shall' which gives a discretion to the Court to be exercised in a judicious way. Hence, the entire approach of the learned magistrate is against the settled principles and the impugned order calls for interference.

Accordingly, I proceed to pass the following:

ORDER

The petition is allowed.

The impugned order passed by the learned I Addl. Civil Judge and JMFC-I at Vijayapura in C.C.No.3049/ 2019 dated 18.11.2020 is quashed.

Matter is remitted back to the learned magistrate with a direction to pass a judicious order on the application submitted by the complainant/ respondent herein under Section 143A of the NI Act after giving a reasonable opportunity to both the parties.

In view of disposal of the main petition, l.A.No.1/2020 does not survive for consideration and accordingly, the same is disposed off."

38. The observations of the High Court of Bombay in ***"Ajay Vinodchandra Shah vs. The State Of Maharashtra And Anr." 2019 (4) Mah.L.J.705*** in paragraphs 13 & 15 are to the effect:-

"13. On comparison of the language used in Sections 143A and 148, one finds a difference. U/s 143A, the accused is yet to face a trial. Under subsection (2) thereof, the interim compensation under sub-section (1) shall not exceed twenty percent of the amount of the cheque. However, under Section 148, it is stated that the Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine." These clauses in these two sections reflect the intention of the Legislature that a person at the stage of trial is always considered innocent till he is found guilty and, therefore, the ceiling of 20% compensation is mentioned. However, in the appeal, when the first Court holds the accused guilty and thus, once he is convicted, then, the appellate Court is given the power to pass order directing the accused to deposit the amount which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. It is further stated in Section 148 that the amount payable under this subsection shall be in addition to any interim compensation paid by the appellant under Section 143A.

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15. It is useful to compare the two sections i.e., 143-A and 148 of the Negotiable Instruments Act in a tabular format to get a quick grasp. The grant of interim relief is a common thread running through both the sections. However, they are not identical. The terms and

clauses used by the Legislature while drafting these two sections, provide internal aid to understand the sections.

Sr. No.	***Section 143-A of the N.I. Act***	***Section 148 of the N.I. Act***
1.	*The order of payment of interim compensation.*	*The order of depositing the sum out of fine or compensation.*
2.	*Upper limit is maximum 20% of the cheque amount.*	*Lower limit is minimum 20% of the amount of fine or compensation.*
3.	*The order is of payment made directly to the complainant.*	*The Court may direct to release the amount which is deposited to the complainant.*
4.	*If the order of payment is made, the accused shall pay within a period of 60 days and for special reason, further 30 days hence within 90 days.*	*Same provision is made. Maximum 60 days and for special reason, further 30 days for depositing the amount.*
5.	*(i) In summary trials at the stage of plea if not pleaded guilty.*	*The order directing to deposit the money can be passed any time during the appeal.*
(ii)	*upon framing of charge in any other case.*	
6.	*Sub-section (4) of 143-A states about recovery of the money with interest from the complainant in case of acquittal of the accused within a period of 60 days or maximum 90 days.*	*In proviso of section 148, similar provision is made for the recovery of money with interest from the complainant in case of acquittal of the accused within a period of 60 days or maximum 90 days.*
7.	*Sub-section (5) of section 143-A, the provisions of recovery of interim compensation should be as if a fine under section 421 of the Cr.P.C.*	*No such provision is mentioned but to be governed by the provisions of Code of Criminal Procedure.*

bring forth the apparent difference under Section 143A and 148 of the NI Act, 1881.

Undoubtedly, vide paragraph 21 and 22 of ***Surinder Singh Deswal alias Colonel S.S.Deswal & Ors. Vs Virender Gandhi & Anr.*** *(2020) 2 SCC 514*, it was observed to the effect:-

> *"21.Insofar as the judgment of the Bombay High Court in **Ajay Vinodchandra Shah (supra)** which has been relied by the learned counsel for the appellant, it is sufficient to observe that the High Court did not have benefit of judgment of this Court dated 29.05.2019 in **Surinder Singh Deswal's case**. The judgment of the Bombay High Court was delivered on 14.03.2019 whereas judgment of this Court in appellants' case is dated 29.05.2019. In view of the law laid down by this Court in **Surinder Singh Deswal's case** decided on 29.05.2019, the judgment of Bombay High Court in **Ajay Vinodchandra Shah's case** cannot be said to be a good law **insofar as consequences of non-compliance of condition of suspension of sentence is concerned.***
> *22. It is further to note that even Bombay High Court while modifying the direction to deposit 25% of the amount of total compensation directed the accused to deposit 20% of the amount of compensation within 90 days."*

Thus, it is only the observations in paragraph 25 of ***Ajay Vinodchandra Shah Vs State of Maharasthra & Anr***. *(supra)* which read to the effect:-

> *"25. Thus, the condition imposed at the time of pending appeal of the payment of the amount of compensation should not curtail the liberty of the appellant/accused. Such condition if not fulfilled, then, amount is recoverable finally, if the conviction is maintained. The amount can be recoverable with interest. If conviction is confirmed, the order of a higher rate of interest or commercial rate of interest, may be passed; or in default maximum sentence may be imposed. Moreover, the fine or compensation is*

made recoverable as per the provision of section 421 of Code of Criminal Procedure.",

which have been set aside as not being good law in so far as the consequences of the non-payment of the amount under Section 148 of the NI Act is concerned. That in so far as Ajay Vinodchandra Shah (supra) states the distinction between Section 143A and Section 148 of the NI Act, ***it cannot be ignored nor can it be overlooked that the observations therein in relation to the distinction between Section 143A and Section 148 of the NI Act were not set aside by the Hon'ble Supreme Court***.

39. That Section 143A of the NI Act, 1881 is brought into play during trial is apparent through the provisions of Section 143 A of the NI Act, 1881 itself, when it states that the Court "trying" an offence under Section 138 of the NI Act, 1881 may order the drawer of the cheque to pay interim compensation to the complainant in summary trial or in a summons case where he pleads not guilty to the accusation made in the complaint and in any other case upon framing of charge with directions in terms of Section 143A(2) of the NI Act, 1881 that the interim compensation under sub-Section (1) of Section 143A shall not exceed 20% of the amount of the cheque.

40. That an accused is not guilty until proved to be so and is presumed to be innocent till held guilty is implicit through Section 143A of the NI Act, 1881 sub Clause (4) thereof itself, whereby it has been directed as under:-

"***S. 143 A: Power to direct interim compensation***

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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 year within sixty days from the date of the order, or withing such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

……

……",

41. To consider whether a legislation is mandatory or directory in nature as laid down by the Hon'ble Supreme Court in ***"Mohan Singh And Others Vs. International Airport Authority of India And Others" (1997) 9 SCC 132,*** regard must be had to the context of the said matter and the object of the provision and use of the word "**shall**" or "**may**" is not decisive. If a statutory remedy is provided for violation of the said provision then it can be construed as a mandatory provision as laid down by the Hon'ble Supreme Court in ***"State of U.P. And Others Vs. Babu Ram Upadhya" AIR 1961 SC 751.***

42. It is essential to observe that as stated in *Craies on Statute Law*, 5th edition, at page 242 :

> *"No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed."*

As to whether the statute is mandatory or directory depends upon the intent of the legislature and not always upon the language in which the intent is couched.

43. The difference between the provisions of Section 143A and 148 of the NI Act, 1881 has already been spelt out elsewhere hereinabove as detailed in the verdict of the Hon'ble High Court of Bombay in ***"Ajay Vinodchandra Shah vs. The State Of Maharashtra And Anr." 2019 (4) MHLJ 705.*** The factum that apart from the recovery of interim compensation as awarded under Section 143A of the NI Act, 1881 being made recoverable as if it were a fine under Section 421 of the Cr.P.C., 1973 and report from the recovery thereof being provided for, there is no further sentence provided under the statute for the same specifically when there is no imprisonment specified in terms of the enactment itself under Section 143A(5) of the NI Act, 1881 of any default sentence in the event of the fine not being recovered, the same itself makes it apparent that the intent of the legislature in using the word "**may**" in Section 143A(1) thereof for directing the drawer of the cheque to pay the interim compensation to the complainant at the stages as provided therein in Sub-Clauses (a) and (b) thereof which has mandatorily in terms of Section 143A(2) thereof been directed not to exceed 20% of the amount of the cheque, can only be termed to be directory in nature and cannot be held to be mandatory as sought to be interpreted by the learned Trial Court vide the impugned order.

44. Though, the other aspect, which cannot be overlooked is that the Statement of Objects and Reasons of the amendment in **Section**

148 of the NI Act, 1881 as amended by way of the Amendment Act No. 20 of 2018 as referred to in paragraph 7.2 of the verdict in ***Surender Singh Deswal @ Col. S.S. Deswal*** (supra) which reads to the effect:-

> ***"7.2 While considering the aforesaid issue/question, the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, as amended by way of Amendment Act No. 20/2018 and Section 148 of the N.I. Act as amended, are required to be referred to and considered, which read as under:***
>
> ***"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.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:—

(i) to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under Section 138, the Appellate 13 Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial court.

4. The Bill seeks to achieve the above objectives." "148. Power to Appellate Court to order payment pending appeal against conviction….

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court: Provided that the amount payable under this subsection shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in subsection (1) shall be deposited 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 appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, 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.",

making it apparent that through the said Negotiable Instruments (Amendment) Bill, 2017, Section 143A was inserted to provide that the Court trying an offence under Section 138 of the NI Act, 1881, may order the drawer of the cheque to pay interim compensation to the complainant in a summary trial or a summons case where he pleads not guilty to the accusation made in the complaint and in any other case upon framing of charge and that the interim compensation so payable shall be such sum not exceeding 20% of the amount of the cheque and vide the said Negotiable Instruments (Amendment) Bill, 2017, Section 148 was sought to be inserted into the Act to provide an appeal by the drawer against conviction under Section 138 of the NI Act, 1881 where 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.

45. The Statement of Objects and Reasons for introduction of Section 143A and 148 of the NI Act, 1881 vide the Negotiable Instruments (Amendment) Bill, 2017 is as under:-

"STATEMENT OF OBJECTS AND REASONS

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 realise 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.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:—

(i) to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138 may

order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent. of the amount of the cheque; and

(ii) to insert a new section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial court.

4. The Bill seeks to achieve the above objectives."

46. As regards the observations of the learned Trial Court to the effect that the Court at the stage of awarding the interim compensation, is not required to consider the strength of the defence of the accused and the same is immaterial at this stage and though, the arguments led on behalf of the accused may seem attractive at the first blush, the same cannot be gone into by the Court at the stage of consideration of directing payment of interim compensation in terms of Section 143A of the NI Act, 1881 as that would amount to a mini trial, it is essential to observe that the provisions of Section 294 of the Cr.P.C., 1973 apply to all proceedings before any Court where the Code of Criminal Procedure, 1973 is applicable. Section 294 of the Cr.P.C., 1973 provides to the effect:-

"**294. No formal proof of certain documents.**

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the

prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed: Provided that the Court may, in its discretion, require such signature to be proved."

47. Furthermore, as laid down by the Division Bench of this Court in ***"Dayawati Vs. Yogesh Kumar Gosain"*** in CRL.REF.No.1/2016 decided on 17.10.2017, the question No.III reads to the effect:-

> *"Question III: In cases where the dispute has already been referred to mediation – What is the procedure to be followed thereafter? Is the matter to be disposed of taking the very mediated settlement agreement to be evidence of compounding of the case and dispose of the case, or the same is to be kept pending, awaiting compliance thereof (for example, when the payments are spread over a long period of time, as is usually the case in such settlement agreements)? In the context of reference of the parties, in a case arising under Section 138 of the NI Act, to mediation is concerned, the following procedure is required to be followed:"*,

referred by the Metropolitan Magistrate vide order dated 13.01.2016 has been answered by the Division Bench of this Court to the effect:-

> ***"……***
> ***…….***
> ***III (i) When the respondent first enters appearance in a complaint under Section 138 of the NI Act, before proceeding further with the case, the Magistrate may proceed to record admission and denial of documents in***

accordance with Section 294 of the Cr.P.C., and if satisfied, at any stage before the complaint is taken up for hearing, there exist elements of settlement, the magistrate shall inquire from the parties if they are open to exploring possibility of an amicable resolution of the disputes…..”

48. That Section 294 of the Cr.P.C., 1973 is applicable to the proceedings in relation to complaints filed under Section 138 of the NI Act, 1881 has been so observed by the Hon’ble High Court of Calcutta in ***“Gouranga Sarkar Versus Biswajit Sarkar & Anr.” 2005 SCC OnLine Cal 15*** vide observations in paragraph 8 thereof, which reads to the effect:-

*“**8.** It further appears to me that the learned Magistrate did not mark the cheques as exhibit though the cheques were lying in Court record. P.W. 1 in his evidence stated that he has filed all the papers in Court. The learned Magistrate was totally unaware of the provisions of section 294 of the Code. Section 294 of the Code makes it clear that, “(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document…*

……

(3) where the genuineness of any document is not disputed, such document may be read in evidence in any enquiry; trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed provided that the Court may, in its discretion, require such signature to be proved.” Lower Court Record reveals that the complainant through his lawyer by ‘firisti’ i.e. list of documents dated 6.3.99 presented in Court some of the documents including the original cheques as well as

bank endorsement, postal A/D Card, etc. The original cheques are lying in case record which were filed along with list of documents on 6.3.99. P.W. 1 was examined on 6.3.99. The order sheet of the learned Magistrate dated 6.3.99 does not reveal that the accused or his lawyer questioned genuineness of the documents filed by the complainant in Court on 6.3.99. The learned Magistrate by his order did not reveal that the said cheques or other documents filed on 6.3.99 requires proof of signature. It is clear, therefore, the learned Magistrate did not at all follow the provisions of law and was totally oblivious of provisions of section 294 of the Code. The learned Magistrate had duty to examine any witness under section 311 of the Code to reveal truth for just decision of the case if he had any doubt in mind regarding issue of cheques. There was no suggestion also to P.W. 1 that the signature appearing on the cheques were not the signature of accused. When the accused or his lawyer did not dispute genuineness of the documents which were filed in Court the learned Magistrate committed error by coming to the conclusion that accused denied issue of cheques. In fact, there was nothing in case record to show that the accused denied issue of cheques and, the accused did not challenge filing of the documents by the complainant."

49. Likewise, the verdict of the Hon'ble High Court of Bombay in ***"Geeta Marine Services Pvt. Ltd. and another Versus State and another" 2008 SCC OnLine Bom 924*** also so holds qua the applicability of Section 294 of the Cr.P.C., 1973 in proceedings under Section 138 of the NI Act, 1881 vide observations in paragraphs 13, 14 & 15 thereof, which read to the effect:-

*"**13.** That takes me to the main issue which is canvassed in these petitions regarding procedure to be followed regarding marking the documents as exhibits. I am dealing with a case where the parties lead evidence by filing affidavits. Whenever, an affidavit in lieu of examination-in-*

chief is filed, the witness has to enter the witness box and formally depose to the contents of the affidavit and only thereafter an affidavit can be read as examinationin-chief [See Shelatkar Construction Pvt. Ltd. v. Creative Enterprises, 2008 All MR (Cri) 475]. After the said formal examination-in-chief is recorded, the stage contemplated by section 294 of the said Code of 1973 will come in the picture. The documents are required to be tendered along with a list and the rival party is called upon to admit or deny genuineness of such documents. As per sub-section (3) of section 294 where the genuineness of any document is not disputed, such document may be read in evidence in the trial without proof of the signature of the person by whom it purports to be signed. Thus, when genuineness of the document produced is not disputed after being called upon as required by sub-section (1) of section 294, the said document can be treated as proved and examination of a witness for proving the document is not required. In this behalf, it will be necessary to refer to a decision of Full Bench of this Court in the case of Shaikh Farid Hussainsab v. State of Maharashtra, 1981 Mh.L.J. 345. Paragraph 7 of the said judgment reads thus:

"7. Section 294 of the Code is introduced to dispense with this avoidable waste of time and facilitate removal of such obstruction in the speedy trial. The accused is now enabled to waive the said right and save the time. This is a new provision having no corresponding provision in the repealed Code of Criminal Procedure. It requires the prosecutor or the accused, as the case may be, to admit or deny the genuineness of the documents sought to be relied against him at the outset in writing. On his admitting or indicating no dispute as to genuineness, the Court is authorised to dispense with its formal proof thereof. In fact after indication of no dispute as to the genuineness, proof of documents is reduced to a sheer empty formality. The section is obviously aimed at undoing the judicial view by legislative process."

(Emphasis supplied)

14. *The issue before the Full Bench was answered in paragraph 18 which reads thus:*

"18. We accordingly hold that sub-section (3) of section 294 of the Code covers post- such documents can be read in evidence as genuine without the formal proof. In our view, Ganpat Raoji's case is not correctly decided."0

(Emphasis added)

Therefore, the document which is admitted under sub-section (3) of section 294 of the said Code of 1973 can be read in evidence as genuine without the formal proof of the said document. Therefore, after affidavit in lieu of examination-in-chief is filed and formal evidence of the witness is recorded, the exercise provided by section 294 of the said Code of 1973 will have to be completed by the learned Magistrate.

15. *The real issue arises when a dispute is raised regarding the proof of a document or admissibility of a document in evidence which is tendered along with a list of documents or along with an affidavit in lieu of examination-in-chief. My attention was invited to the decision of the Apex Court in the case of Bipin Panchal (supra). Paragraphs 12 to 15 of the said decision read thus:*

"12. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the Court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial Court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional Court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate Court would be deprived of the benefit of that evidence, because that was not put on record by the trial Court. In

such a situation the higher Court may have to send the case back to the trial Court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-mouled to give way for better substitutes which would help acceleration of trial proceedings.

13. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.

14. The above procedure, if followed, will have two advantages. First is that the time in the trial Court, during evidence taking stage, would not be wasted on account of raising such objections and the Court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior Court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial Court, can determine the correctness of the view taken by the trial Court regarding that objection, without bothering to remit the case to the trial Court again for fresh disposal. We may also point out that this measure would not cause

any prejudice to the parties to the litigation and would not add to their misery or expenses.

15. We, therefore, make the above as a procedure to be followed by the trial Courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence."

(Emphasis supplied)

against which an SLP was filed in the Hon'ble Supreme Court of India which was dismissed vide order dated 05.12.2008 in Special Leave to Appeal (Crl.) 8436-8438/2008 titled ***S.N. Khetan vs M/S KSL & Industries and Anr***.

50. The verdict of the Hon'ble High Court of Punjab & Haryana in ***"Joginder Singh Vs. Anurag Malik"*** in CRM-M-4629 of 2015, a verdict dated 23.02.2015 also in relation to proceedings under Section 138 of the NI Act, 1881 observes categorically to the effect that in case the petitioner who was facing proceedings under Section 138 of the NI Act, 1881 in case of a dishonoured cheque seeks to establish some documents, it would be open to the petitioner to avail the benefit of the provisions of Section 294(3) of the Cr.P.C., 1973.

51. Furthermore, the order of the Hon'ble Supreme Court in ***Suo Moto Writ (CRL) No.(s) 1/2017*** categorically observes vide order dated 20.04.2021 that the Draft Rules of Criminal Practice, 2021 annexed to this order be finalized in terms of the discussion in the order with it having been directed vide paragraph 19(a) thereof to the effect:-

"(a) All High Courts shall take expeditious steps to incorporate the said Draft Rules, 2021 as part of the rules

governing criminal trials, and ensure that the existing rules, notifications, orders and practice directions are suitable modified, and promulgated (wherever necessary through the Official Gazette) within 6 months from today. If the state government's co-operation is necessary in this regard, the approval of the concerned department or departments, and the formal notification of the said Draft Rules, shall be made within the said period of six months.",

and significantly, in the said Draft Rules of Criminal Practice, 2021, it has been observed in Chapter V Miscellaneous Directions No.19 (i), directions for expeditious trial to the effect:-

*"**19.DIRECTIONS FOR EXPEDITIOUS TRIAL***

i. In every enquiry or trial, the proceedings shall be held as expeditiously as possible, and, in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. (section 309 (1) Cr.PC.). For this purpose, at the commencement, and immediately after framing charge, the court shall hold a scheduling hearing, to ascertain and fix consecutive dates for recording of evidence, regard being had to whether the witnesses are material, or eyewitnesses, or formal witnesses or are experts. The court then shall draw up a schedule indicating the consecutive dates, when witnesses would be examined; it is open to schedule recording of a set of witness' depositions on one date, and on the next date, other sets, and so on. The court shall also, before commencement of trial, ascertain if the parties wish to carry out admission of any document under Section 294, and permit them to do so, after which such consecutive dates for trial shall be fixed.

…..

……”,

thus, the same also in view of the observations in ***"Geeta Marine Services Pvt. Ltd. and another Versus State and another" 2008 SCC OnLine Bom 924, "Gouranga Sarkar Versus Biswajit Sarkar & Anr." 2005 SCC OnLine Cal 15, "Joginder Singh Vs. Anurag Malik"*** in CRM-M-4629 of 2015 & ***Suo Moto Writ (CRL) No.(s) 1/2017,*** it becomes apparent that the provision of Section 143A of the NI Act, 1881 has essentially to be held to be '***directory'*** and cannot be termed to be '***mandatory'*** to the effect that the Trial Court has mandatorily to award the interim compensation under Section 143A of the NI Act, 1881 in all proceedings tried under Section 138 of the NI Act, 1881 on the mere invocation thereof by a complainant and thereby order in terms of Section 143A(2) thereof, the interim compensation to the tune of 20% of the amount of the cheque invoked.

52. The applicability of Section 294 of the Cr.P.C., 1973 has been made essential in all proceedings in criminal trials and undoubtedly, the proceedings under Section 138 of the NI Act, 1881 are termed to be quasi criminal in nature.

53. Furthermore, the observations of the learned Trial Court to the effect that even if it be assumed that the provisions of Section 143A of the NI Act, 1881 is discretionary in nature, the Court is still clothed with the powers to grant interim compensation to the complainant after providing sufficient reasons, it is essential to observe that the award of interim compensation in terms of Section 143A of the NI Act, 1881 has to be after providing sufficient reasons and whilst taking the same into account, the determination of interim compensation

directed to be paid by the petitioners herein to the extent of the maximum of 20% of the cheque amount to the complainants without even considering the submissions that have been sought to be raised by the petitioners in relation to bank statements of the complainant and without resorting to the provisions of Section 294 of the Cr.P.C., 1973 cannot be held to be within the contours of Section 143A of the NI Act, 1881 to be with sufficient reasons. Furthermore, there are no inherent powers conferred on a criminal court of a Magistrate *dehors* enabling provisions of a statute.

54. In view thereof, the impugned order dated 21.09.2021 of the learned Metropolitan Magistrate (NI Act), Digital Court-01, PHC/New Delhi in CC No.CC NI Act 12-20 titled as "***SAVITA SURYAVANSHI Vs. M/S JSB CARGO AND FREIGHT FORWARDER PVT LTD***" and in CC No.CC NI Act 100-20 titled as ***"SUNEEL SURYAVANSHI Vs. M/S JSB CARGO AND FREIGHT FORWARDER PVT LTD*** is set aside with the matter being remanded back to the learned Trial Court to dispose of the application under Section 143A of the NI Act, 1881 filed by the complainants of the said complaint cases seeking interim compensation from the accused after invocation of Section 294 of the Cr.P.C., 1973 and considering the submissions that are made by the petitioner in response to the applications under Section 143A of the NI Act, 1881 and taking into account that vide this verdict it is categorically held to the effect that the provision of Section 143A of the NI Act, 1881 is directory in nature and not mandatory.

55. The learned Trial Court shall however dispose of the application under Section 143A of the NI Act, 1881 within a period of 30 days from the receipt of this order.

56. The petitions CRL.M.C.2663/2021 and CRL.M.C.2730/2021 are disposed of accordingly.

57. Copy of this judgment be circulated to all Subordinate Criminal Courts of Delhi by the learned Registrar General of this Court.

ANU MALHOTRA, J.

DECEMBER 20, 2021
Neha Chopra