REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2022
(Arising out of Special Leave Petition (Criminal)No. 2872 of 2022)

NOOR MOHAMMED **…Appellant**

Versus

KHURRAM PASHA **…Respondent**

J U D G M E N T

Uday Umesh Lalit, J.

1. Leave granted.

2. This appeal challenges the correctness of the judgment and order dated 17.12.2021 passed by the High Court of Karnataka at Bengaluru ('the High Court', for short) in Criminal Revision Petition No. 39 of 2021.

3. The instant proceedings arise out of Complaint Case No. 244 of 2019 instituted by the Respondent herein in respect of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the Act', for short) in the court of the Senior Civil Judge & JMFC, Nagamangala, submitting *inter alia:*

a) A cheque dated 25.02.2019 in the sum of Rs.7,00,000/- was drawn by the Appellant in favour of the Respondent towards repayment of hand loan received by the Appellant from the Respondent.

b) Said cheque was presented for encashment on 01.03.2019 but was dishonoured on account of "insufficient funds".

c) Statutory notice was issued by the Respondent to the Appellant on 12.03.2019.

d) However, the Appellant failed to repay the amount to the Respondent.

e) Consequently, the Appellant was guilty of offence punishable under Section 138 of the Act.

4. After the cognizance of the aforesaid complaint was taken and the summons were issued, the Appellant appeared before the concerned court through his counsel on 16.08.2019. On the very same date, an order was passed by the Trial Court directing the Appellant to deposit 20% of the cheque amount as interim compensation in terms of Section 143(A) of the Act within 60 days. The period so granted, got over on 15.10.2019 and on the request of the Appellant further extension of 30 days was granted; but no deposit was made by the Appellant.

5. When the matter was taken-up for examination of witnesses, an application was made on behalf of the Appellant under Section 145(2) of the Act seeking permission to cross-examine the Respondent. In view of his failure to deposit the interim compensation as directed, the application preferred by the Appellant was

found to be not maintainable and was dismissed by the Trial Court vide order dated 25.10.2019.

6. By subsequent order dated 29.11.2019 the Complaint Case was accepted by the Trial Court finding the Appellant guilty under Section 138 of the Act. The Trial Court directed the Appellant to pay fine in the sum of Rs.7,00,000/-, in default whereof to undergo simple imprisonment for six months. Out of the aforesaid sum, Rs.5,000/- was to be remitted to the State while the remaining amount of Rs.6,95,000/- was directed to be made over to the Respondent as compensation under Section 357 of the Criminal Procedure Code, 1973 ('the Code', for short).

7. The Appellant being aggrieved, preferred Criminal Appeal No. 190 of 2019 in the court of V Addl. District and Sessions Judge, Mandya, which appeal however was dismissed by the Appellate Court by its order dated 28.10.2020. The order of conviction and sentence passed by the Trial Court was thus affirmed. During the course of its order one of the points raised for consideration was whether the Trial Court had given sufficient opportunity to the Appellant to cross-examine the Respondent. It was observed by the Court:-

> "18. It is relevant to mention here that in the present appeal also, after filing of this appeal, accused did not comply with the order of this Court dated 30.12.2019 to deposit 20% of cheque amount, hence, it discloses that the accused is reluctant in complying with the order of this Court. Under these circumstances, this Court is of the opinion that learned Magistrate has rightly refused the prayer made by accused

> seeking permission to cross-examine P.W.1 and proceeded to pass impugned order"

8. The matter was carried further by the Appellant by filing Criminal Revision Petition No. 39 of 2021 in the High Court. The High Court by its judgment and order dated 17.12.2021, which is presently under challenge, dismissed said Criminal Revision Petition affirming the view taken by the courts below. It was observed that the conduct of the Appellant in not depositing the interim compensation as directed, showed that he was only interested in protracting the proceedings for one reason or the other.

9. In this appeal while issuing notice to the Respondent, this Court by its Order dated 01.04.2022 directed the Appellant to deposit a sum of Rs.3,50,000/- in the Registry of this Court and the amount has since then been deposited.

10. We have heard Mr. Shailesh Madiyal, learned advocate for the Appellant and Mr. Anand Nuli, learned Advocate for the Respondent.

In the submission of Mr. Madiyal, in case the order of interim compensation as directed in terms of Section 143A of the Act is not complied with, the amount can be recovered in terms of Sub-Section 5 of said Section 143A as if it were a fine under Section 421 of the Code, but it would not be within the competence of the court to deprive an accused of his right to cross-examine a witness; the denial of such right resulted in great prejudice to the

Appellant and as such, the judgments and orders passed by the courts below suffered from illegality and are required to be set aside.

On the other hand, Mr. Nuli submits that the orders passed by the courts below were consistent with the mandate of Section 143A and the right to cross-examine was rightly closed by the courts below.

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

> "**143A. Power to direct interim compensation. –** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant –
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> (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
> (b) in any other case, upon framing of charge.
>
> (2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.
>
> (3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
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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 years, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.
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> (5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

> (6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section."

12. After empowering the court to pass an order directing the accused to pay interim compensation under Sub-Section 1 of Section 143A, Sub-Section 2 then mandates that such interim compensation should not exceed 20 per cent of the amount of the cheque. The period within which the interim compensation must be paid is stipulated in Sub-Section 3, while Sub-Section 4 deals with situations where the drawer of the cheque is acquitted. Said Sub-Section 4 contemplates repayment of interim compensation along with interest as stipulated. Sub-Section 5 of said Section 143A then states "the interim compensation payable under this Section can be recovered as if it were a fine". The expression interim compensation is one which is "payable under this Section" and would thus take within its sweep the interim compensation directed to be paid under Sub-Section 1 of said Section 143A.

13. The remedy for failure to pay interim compensation as directed by the court is thus provided for by the Legislature. The method and modality of recovery of interim compensation is clearly delineated by the Legislature. It is well known principle that if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable. While relying on the decision of the Privy Council in ***Nazir***

***Ahmad vs. King Emperor*[1]**, a Bench of three Judges of this Court made following observations in ***State of Uttar Pradesh vs. Singhara Singh and others*[2]**.

> "**7**. In Nazir Ahmed case, 63 Ind App 372; (AIR 1936 PC 253 (2)) the Judicial Committee observed that the principle applied in Taylor v. Taylor [(1875) 1 Ch D 426, 431] to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that "it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves".
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> **8**. The rule adopted in Taylor v. Taylor [(1875) 1 Ch D 426, 431] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him."
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> (Emphasis supplied)

[1] AIR1936 Privy Council 253 (2)
[2] AIR 1964 SC 358

In ***J.N. Ganatra vs. Morvi Municipality***[3]**,** exercise of power of dismissal having not been done in conformity of the Act, the same was set aside. It was stated:-

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

In ***Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala***[4]**,** a Constitution Bench of this Court stated the normal rule of construction in such cases as under:-

> "**27.** Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income tax authorities for proper administration of the Act. The Commission while

[3] (1996) 9 SCC 495
[4] (2002) 1 SCC 633

> exercising its quasi-judicial power of arriving at a settlement under Section 245-D cannot have the administrative power of issuing directions to other income tax authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119."
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> (Emphasis supplied)

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

15. Since the right to cross-examine the respondent was denied to the Appellant, the decisions rendered by the courts below suffer from an inherent infirmity and illegality. Therefore, we have no hesitation in allowing this appeal and setting aside the decisions of all three courts with further direction that Complaint Case No. 244 of 2019 shall stand restored to the file of the Trial Court. The Trial Court is directed to permit the Appellant to cross-examine the Respondent and then take the proceedings to a logical conclusion. With these observations the appeal is allowed.

16. It is also directed that 20% of the cheque amount namely Rs.1,40,000/- must be deposited by the Appellant as interim compensation. The Registry is directed to make over a sum of Rs.1,40,000/- to the Trial Court i.e. Senior Civil Judge & JMFC, Nagamangala, Karnataka. The amount shall be kept in deposit in Complaint Case No. 244 of 2019 and shall abide by such orders as the Trial Court may deem appropriate to pass. Rest of the amount along with accrued interest, if any, shall be made over to the Appellant. The Registry shall take out a Pay Order in the name of the Appellant which shall be handed over to the learned counsel for the Appellant.

17. In the end, it must be clarified that we have not and shall not be taken to have reflected on the merits of the matter which shall be gone into after affording right to cross-examine as stated above.

……..J.
[Uday Umesh Lalit]

……..J.
[S. Ravindra Bhat]

……..J.
[Sudhanshu Dhulia]

New Delhi;
August 02, 2022.