

Order Below Exh.23 in Criminal Case No.2754/2022

- [1] Heard learned advocates for the parties. Read the application. Perused the record.
- [2] By way of present application, ld. advocate for the complainant Mr.R.S.Joshi submit that the complainant has filed present complaint against accused for the offence punishable u/s.138 of the Negotiable Instrument Act. It is further say of the complainant that accused has issued disputed cheque sum of Rs.1,37,500/- in the name of complainant and on depositing the said cheque to encash the cheque returned back with the endorsement "Funds Insufficient" and on inquiry of the above endorsement regarding returned of the cheque, the concern bank has informed the complainant that Funds Insufficient, therefore, complainant contacted the accused and informed about the dishonour of the cheque but accused did not pay the amount to the complainant, therefore, the complainant issued statutory demand notice against the accused through his learned advocate and sent the same to serve by RPAD and the said demand notice served to the accused but accused did not care to pay the disputed cheque amount

within 15 days of service of the legal demand notice. Thereafter, the complainant filed present complaint u/s.138 of the Negotiable Instrument Act and on presentation of present complaint, the summons was issued against the accused and they were remained present and the plea of accused recorded vide Exh. 17 and 18 and the accused have denied the offence u/s.138 of the Negotiable Instruments Act. Thereafter, present case proceeded for cross-examination of the complainant.

[3] He further submitted that considering the facts, it clearly and ostensibly transpires that accused has denied the offence, and present case proceeded, therefore, for interim compensation as per the provision envisaged u/s.143-A of the Negotiable Instruments Act, the complainant has moved the present application and submitted that if the accused will not be directed to pay appropriate amount as interim compensation of cheque amount to the complainant, then the accused by hook or crook by showing one or another reasons delay the present case. Therefore, he prays to allow the present application and prays to direct the accused to pay appropriate amount of cheque amount towards interim compensation to the

complainant.

[4] Learned advocate for the accused Mr.B.N.Leuva raised objection and submitted that he will file reply and ready to proceed with the matter. Learned advocate for the accused has submitted that accused have remained present in the court. He further says that at present financial condition of the present accused are not good, they are not in a position to pay cheque amount or interim compensation to the complainant, therefore, he prays to reject the present application.

[5] He further submitted that the accused are innocent and on the basis of false, frivolous, fabricated facts with malice intention to harass the accused, complaint filed by complainant by misusing the disputed cheque in question. He further submitted that he is ready to proceed with the matter. He further submitted that if present application will ordered to be allowed and accused be directed to pay 20% amount of disputed cheque to the complainant then it will cause injustice to the right and interest of the accused. Therefore, he prayed to reject the application by awarding special cost to the accused.

[6] I have gone through lengthy submissions as

advanced by the learned advocates for the parties and also gone through the provisions as envisaged under Section 143-A of the Negotiable Instruments Act and on perusal of the record, it is undisputed fact that the complainant has filed the present case against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and on the service of summons, accused have remained present along with their advocate, thereafter, plea of the accused were recorded vide Exh. 17 & 18 and accused have denied that they committed any offence u/s. 138 of the Negotiable Instrument Act. Further it appears that learned advocate for the accused Mr. Soni submitted that they will file reply and ready to proceed with the matter. Learned advocate for the accused made submissions and prays to reject the present application as filed by the complainant.

[7] Further, it transpires that the complainant has moved the present application under Section 143-A of the Negotiable Instruments Act to direct the accused to pay 20% of cheque amount towards interim compensation to the complainant and it transpires that

the present application of the complainant is strongly resisted by the accused and also learned advocate for the accused made submissions that the financial condition of the accused are poor and he is not in a position even to pay 20% of cheque amount towards interim compensation to the complainant.

[8] Further while considering the submissions as advanced by the learned advocate for the parties and while considering the provisions as envisaged under Section 143-A of the Negotiable Instruments Act and main aim to introduce Section 143-A in Negotiable Instruments Act is to reduce the undue delay in the cheque dishonour cases and while considering the provisions as envisaged under Section 143-A of the Act, it empowers the Court to order the drawer of the cheque to pay interim compensation to the complainant (i) in case of a summary trial or a summons case, where the drawer pleads not guilty to allegations made in the complaint, and (ii) in any other case, upon framing of the charges."

[9] Therefore, while considering the provisions as envisaged and considering the facts in the instant case on hand, it is undisputed fact that vide Exh.17 & 18 plea of the accused were recorded and the accused have not pleaded guilty to the allegations as made by the complainant in his complaint and as discussed due to not pleading guilty, the present complaint reached to the cross-examination of the complainant and nothing transpires on the record that the accused has submitted any rebuttal evidence on record and while considering the conduct of the accused, I am of the view that if 20% of the cheque amount towards the interim compensation amount will not be ordered in favour of the complainant during the pendency of the present case on hand, then it will cause injustice to the right and interest of the complainant and the accused will take undue advantage to delay the proceedings of the present case on hand. Hence, in the larger interest of justice, I pass the following order as follows:

O R D E R

- [1] The present application of the complainant is hereby ordered to be allowed.
- [2] As per the provision envisaged u/s.143-A of the Negotiable Instrument Act, the accused are hereby directed to pay 20% amount of the disputed cheque as interim compensation to the complainant within period of 20 days of this order.
- [3] No order as to cost.

Order signed and Pronounced in open Court on 7th March, 2023.

Date : 07.03.2023
Place : Kalol.

[Prem H. Singh]
Addl. Chief Judi. Magi.
Kalol
Unique ID Code No.GJ00746

/pbshah/