



**Criminal Case No.1665-2024**  
**(Order Below Exh.9)**

1. Heard learned to **Advocate Mr. C. N Kakkad** for the Complainant as well as **Learned advocate Mr. R. P .Pandya** for the accused. In the present case, the advocate for the complainant has submitted that the plea of the accused has also been recorded vide Exhibit 8. The case involves a cheque amounting to Rs. 2,50,00,000.00 (Two Crores Fifty Lakhs), which was returned as fund insufficient. In this case the substantial amount involved, therefore As per the new amended Section 143A N. I Act 1881. The Complainant has sought interim compensation during the proceedings. The granting interim compensation would provide financial relief to the complainant, aligning with the legislative intent behind such provisions, to ensure interim relief in such matters. Therefore, it is humbly requested by the complainant that this application be allowed, and the accused be directed to deposit 20% of the cheque amount or such other amount as the Hon'ble Court deems appropriate.

2. This court has recorded the plea of the accused vide exhibit no: 8 on dated 19-9-2024, after order to try present trial as summons trial. In plea the accused pleaded not guilty and claimed to be tried. Accused has denied the case and the allegations levelled by the complainant against him.

3. If we briefly observe the facts of the case, it seems that a cheque said to have been issued by the accused in favour of the complainant got dishonoured after 1<sup>st</sup> September, 2018. The complainant, in sequel dishonoured of the cheque issued notice and completed other formalities being required of filing the complaint. The accused replied to the notice/ did not reply to the notice. This court has taken cognizance of the offence under Section 138 of the NI Act as the complaint filed by the complainant found in order. The process issued to the accused for said offence, has been served and the accused appeared in person as well as through his learned advocate. Accused was asked whether he wants to enter into the settlement with the complainant qua the dispute. (Following mandate in a case of **M/s. Meters and Instruments Private Limited & Anr. Versus Kanchan Mehta, (2018) 1 SCC 560**).

4. Learned advocate appearing for the accused has vehemently argued against the present application. He would argue that in the present case the accused has a very sound defence. He stated that the complainant has misused & forged the disputed cheque. The present accused Namely Kirit Govabhai Nadhera (Complainant) has filed an FIR under G.R. No. 11186009400883 /2024 against the complainant ( Bhavesh Chandulal Thakrar) under Sections 465, 467, 471, and 114 at Veraval City Police Station.

**The brief facts of the FIR are as follows:**

The alleged offense took place between 17/05/2023 and 11/12/2023 in Veraval, where the accused's office is located in front of Rajendra Bhuvan Road, Vinayak Plaza, near The Veraval People's Cooperative Bank Bus Stand. The crime was specifically committed on 05/11/2024 at 19:40 hrs. The accused persons **(1) Bhaveshbhai Chandulal Thakarar, (2)**

**Nehalben Bhavesh Thakarar, and (3) Sudhirbhai Tulshidas Chandarana** are residents of Veraval. The allegations in the FIR state that funds from the complainant's term loan account at The Veraval People's Cooperative Bank were illegally transferred to the account of accused Nehalben, who is the wife of accused Bhaveshbhai. Additionally, funds were transferred from the business friend's account (No. 003134401000038) into the account of accused Bhaveshbhai. It is further alleged that the accused forged the complainant's signature and fraudulently used a forged rubber stamp of Somnath Enterprises to close the business friend's account and link it to his mobile number. With the assistance of the bank manager, the accused allegedly withdrew Rs. 50,00,000/- (Fifty Lakhs) through Cheque No. 010982 from the business friend's account at The People's Bank of Veraval. Moreover, a forged signature of the complainant and a counterfeit rubber stamp of Somnath Enterprises were used to issue Cheque No. 010985 for Rs. 1,00,00,000/- (One Crore) at ICICI Bank Veraval, which was then used to file a false negotiable instrument case.

6. He further submitted that the said dispute cheque was never signed by the accused and therefore police sent to the FSL for Handwriting expert vide **Exhibit No 11**, the signature of the accused is questioned in the said police case as well as this complaint. He further submitted that in absence of cogent evidence, the complainant cannot seek compensation under Section 143A of the NI Act he also argued that every criminal trial has to be decided on touchstone of principle beyond reasonable doubt whereas in the present case trial is yet to begin. In those circumstances he argued

that no order for compensation can be passed merely on the basis of certain documents which are to be proved by the complainant.

6. Learned advocates for the accused also argued that lawmakers have used the word “may” in Section 143A of the NI Act which rest discretion upon the court whether to pass order or not. He further argued that in other words the nature of Section 143A of the NI Act is directory and therefore the complainant cannot press for granting the interim compensation without proving his case. In line with this argument he submitted to reject this application.

7. The argument advanced by learned advocates for the accused left this court to decide two important questions, viz. 1, whether the provision under Section 143A of the NI Act is directory or mandatory? 2. Whether accused has any locus standi to object application under Section 143A of the NI act, in other word, whether the say of the accused can be considered while deciding the application under Section 143A of the NI Act?

8. Having heard learned advocates for both sides. Perusing section 143A of the NI Act in background of statement and object of bringing the statute to law book, whereby law makers thought it fit to empower the court trying the cases under NI Act, to grant interim compensation even without holding accused guilty. This idea behind bringing the legislation clearly denotes it as mandatory or directory ?. Alongside Section 143A, legislatures have also brought to statute book section 148 under very same statement and object. The Hon'ble Supreme Court in case of **Surinder Singh Deswal @ Col. S.S. Deswal and Others Vs. Virender Gandhi, (2020) 2 SCC 514**, had

occasion to interpret the nature of section 148. Hon'ble Apex Court in paragraph 8.1 hold that:

“8.1. Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction Under Section 138 of the N.I. Act, is conferred with the power to direct the convicted Accused - Appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the Accused - Appellant has been taken away and/or affected. Therefore, submission on behalf of the Appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 1.9.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), relied upon by the learned senior Counsel appearing on behalf of the Appellants shall not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and

Reasons of the amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence Under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence Under Section 138 of the N.I. Act was filed prior to amendment Act No. 20/2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the Appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended.”

9. The Hon'ble Supreme Court in the case of **Rakesh Ranjan Shrivastava v. The State of Jharkhand & Anr.** [2024] 3 S.C.R. 438 : 2024 INSC 205, had occasion to interpret the nature of section 148. Hon'ble Apex Court in paragraph 19 hold that:

**19.**Subject to what is held earlier, the main conclusions can be summarised as follows:

a.The **exercise of power under sub-section (1) of Section 143A is discretionary.** The provision is directory and not mandatory. The word “may” used in the provision cannot be construed as “shall.”

b.**While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.**

c. The broad parameters for exercising the discretion under Section 143A are as follows:

i. The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

ii. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.

**iii. If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.**

iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.

v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.

10. According to Hon'ble Supreme Court **Rakesh Ranjan Shrivastava(Supra)**, Section 143A of the Negotiable Instruments Act is not mandatory and the power to order interim compensation is considered discretionary, meaning courts are not obligated to grant it in every case; they must consider the specific circumstances before deciding to award interim compensation.

11. The answer of the first question is clear from the aforementioned ratio. **The nature of Section 143A is not mandatory but discretionary.**

12. On perusal of the facts of the cases is that the complainant and accused have good relations and because of the mutual relation complainant has lent money Rs.10 Crore to the accused and the complainant agreed and provided the accused with ₹10 crores. Hence, after some point of time the Complainant asked for his due amount of Rs. 10 crores. However, after persistent persuasion of the complainant the accused issued a cheque bearing cheque no 009266 on 22 June 2024, which is drawn on Bank Rs. 2,50,00,000.00 (Two Crores Fifty Lakhs). and assured that it will be cleared on presentation. However as per the instruction of the accused the complainant produced the said cheque in his own account at Veraval and after producing the said cheque the complainant was informed by the banker that the cheque produced by him was dishonored with remarks of "Account Closed" on 15 June 2024. Thereafter, the complainant informed the accused about the dishonor of the cheque then the accused did not give a satisfactory reply. Therefore, within the limitation period the complainant issued a statutory demand notice and sent it to the accused through 24/06/2024 his advocate on and the same was served to the accused on 04/07/2024 as an online tracking report issued by the Postal department. However, after service of notice the accused neither complied with the notice nor made the payment of due amount till today, therefore, the complainant filed the present case under Section-138 of Negotiable Instrument Act on date 10-1-2024. but there is no evidence which shows that the complainant has lent 10 crores to the accused. looking into the document produced by the complainant, the accused

had a reply notice on date 06-07-2024 and stated that total denial of the complainant notice. **The accused defences are as follows:**

- The accused did not receive Rs. 10,00,00,000/- from the complainant.
- The complainant misappropriated valuable security and created forged signatures.
- The complainant holds a total of 45 cheques from business friend's cheque book (No. 003134401000038) with blank or missing signatures (Cheque Nos. 010981 to 011025).
- The complainant also possesses 10 cheques from a current account.
- He **never executed the check** in favor of the complainant.
- If any cheque is presented, it was either **not issued by him** or was **blank and later filled in by the complainant** without his authorization.
- The complainant has failed to provide **any documentary evidence** proving that such a huge amount was lent to the accused.

Furthermore, the accused has substantiated his defense by presenting strong documentary evidence, including:

- **A detailed reply to the legal notice** sent by the complainant, refuting the claims.
- **A First Information Report (FIR) against the complainant, highlighting allegations of fraud and forgery. FIR under G.R. No. 11186009400883 /2024 against the complainant Bhavesh Chandulal Thakrar) under Sections 465, 467, 471, and 114 at Veraval City Police Station.)**

- **An audit report**, which clearly establishes that the accused had not issued any cheque in favor of the complainant as a part of any legal debt or financial liability.

13. Looking into the defence of the accused has already denied the case of the complainant by pleading not guilty, he has not executed cheque or cheque was blank but filled by complainant etc. As noted earlier, the complainant has not produced any documentary evidence regarding lending huge money Rs. 10 Crores, the accused has taken strong defence i.e reply of the notice, FIR against Complainant, audit report which clearly shows that the defence of the accused is found to be prima facie plausible. Resultantly, I passed the following order.

### **ORDER**

1. The application filed by the complainant is hereby rejected.

Order signed and pronounced in open court today.

Date:17-02-2025

**(ARJUNSINH PRATAPSIKH RANDHIR)**

Place: Veraval

Chief Judicial Magistrate

Veraval

**(Code no. GJ01079)**