

**IN THE COURT OF THE JUDGE COURT OF SMALL CAUSES
AND A.C.M.M, AT BENGALURU**

Dated this the 22nd day of April-2024

PRESENT:

**Sri.Shambhulingayya Mudimath, B,com., LL.B,(Spl)
Judge & ACMM & MACT, Bengaluru.**

CC No.1893/2023

Complainant: Sri. B.Ravi,
S/o.Budhattighan
Aged about 50 years,
R/o.No.201, 2nd Floor,
KCR Elite Apartment,
Shamma Gowda Layout,
Halasuru,
Bengaluru.

(By Sri.M.V - Adv.)

Accused: -Vs-
M/s.S.Y. Garments,
Rep.by its Proprietrix,
Smt.T.Mahadevi Thimmaraju,
Sy.No.226/3, Vysur Agraharam
(Village,) Kakkadasam Post,
Krishnagiri District,
Tamilnadu - 635107

SISAL DESIGNS
No.933-J-685,
Post:Palcode,
Tamilnadu - 636808.

(By Sri. N.N.M - Adv.)

Provision under which the application is filed	:	143-A of N.I.Act
Relief Sought for	:	Interim Compensation
The date on which the application is filed:	:	08-04-2023
Number of the application:	:	-
The date on which the objections are filed by different opponents:	:	15-05-2024
The date on which the orders were passed on the said application:	:	22-04-2024

// ORDERS //

The present application has been filed by the complainant u/Sec 143(A) of N.I. Act seeking interim compensation when the case was posted for cross-examination of PW1.

2. It is stated in the application that the complainant has filed the above case against the accused for the offence punishable U/Sec. 138 of NI Act. The complainant has filed above case for recovery of 75 lakhs. Therefore, complainant is seeking an order to direct the accused to deposit 20% of the cheque amount as per the amended

act. Hence complainant sought for allowing the application and direct the accused to deposit 20% of the cheque amount as per newly amended act.

3. On the other hand, the learned counsel for accused has filed detailed objection stating that the application filed by the complainant is not maintainable. Hence question of considering the application does not arise. The accused is not a proprietor of M/s S.S.Y.Garments as alleged by complainant. The M/s. S.Y.Garments was purchased by the complainant and her husband B.Ravi from the accused as back as on 29.11.2021 and complainant has falsely shown that accused is the proprietor of M/s. S.Y.Garments. It is further contended that the above Garments is no longer in existence as alleged in the complaint and on the other hand, the partnership by name M/s.Eric Garments was formed by the accused. The accused was having 50% of the share and complainant was having 50% of share. The accused towards payment of 50% share in the said partnership has contributed the plant and machinaries of M/s.S.Y.Garments. It is further contended that since M/s.S.Y.Garments is not in existence hence same has been taken over by the M/s. Eric Garments, the accused is not liable to pay alleged debt of M/s.S.Y.Garments. It is further contended that the complainant and her husband have

insisted the accused to sell M/s.S.Y.Garments in their favour and accused agreed for the said proposal and after negotiation the market value of all the plants and machines was fixed at 1 crore 45 lakhs. In this regard, a deed of purchase was also entered between accused and complainant and her husband and they have taken away the plant and machineries of M/s.S.Y.Garments. Hence the complainant and her husband became owners of M/s.S.Y.Garments and accused is nothing to do with the M/s. S.Y.Garments. The accused also contended other facts with regard to M/s.S.Y.Garments and operation of account by the husband of complainant. The accused also contended that the complainant has falsely alleging accused borrowed Rs.75 lakhs. The accused has not at all issued any cheque in favour of complainant. The accused further contended that the accused is having any liability and discharging the liability and he never issued any cheque. The signature found in the cheque is forged one and hence question of depositing of the cheque amount does not arise. On these and other grounds he prayed for rejecting the application.

4. Heard arguments and perused the records.

5. The points that arise for my consideration are as follows:

1. Whether the complainant has made out grounds to allow the application filed u/Sec 143A of NI Act?

2. What Order?

6. My findings to the above said points for my consideration are as under:

Point No.1: In the **Negative**;

Point No.2: As per final order for the following:

REASONS

7. **Point No.1:** The records shows that the complainant has filed this case against the accused alleging the offence punishable u/Sec 138 of N.I. Act. It is the case of the complainant that the accused has borrowed Rs.75 lakhs from the complainant and assured that he would repay the amount within 45 days. But accused failed to repay the amount. However issued disputed cheque in favour of complainant and said cheque was dishonoured. Hence filed the complaint.

8. I have perused all the materials available on record with cautiously. As stated above, the accused have filed detailed objections and sought for rejecting the application.

9. At the time of argument the learned counsel for complainant has vehemently argued and requested the court to award interim compensation as prayed in the application. On

the other hand the learned counsel for accused has also vehemently argued and requested the court to reject the application.

10. I have perused the entire materials available on record. No doubt the present application is filed under Sec.143A of NI Act seeking direction against the accused to deposit interim compensation. The records also shows that the accused appeared before the court and enlarged on bail and pleaded not guilty. If an application is filed under Sec.143A of NI Act, then how to dispose such application and what are the powers conferred on Magistrate to dispose such application are elaborately considered in some of the judgments of Hon'ble High Courts. In this regard I would like to rely judgment in **Crl.OP No.15438 and 15440/2019 (L.G.R Enterprises and other V/s P. Anabazhagan)** the Hon'ble Madras High Court has held that - "the granting of interim compensation is a discretionary power vested with the trial Court and must be supported by reasons". In **Crl.Pn No.6878/2019,(Smti Usha T.R. V/s Sri B.H.Venkatachalaiah)** the Hon'ble High Court of Karnataka held that - "the application U/Sec. 143-A of N.I.Act must be disposed by assigning reasons". In **Crl.Pn No.201213/2020,(Jahangir S/o Lalsab Nadaf V/s Farooq Ahmed Abdul Razak)**) the Hon'ble High Court of Karnataka held that - "the Court while disposing the application U/Sec.143-A of N.I.Act exercise its discretionary power in a

judicious way.” In **Crl.Pn No.632/2022, (Mr V Krishamurthy V/s Diary Classic Ice Creams Pvt Ltd)** the Hon’ble High Court of Karnataka observed and held that-“while disposing application U/Sec.143-A of N.I.Act to notice the conduct of the accused that if the accused has been unnecessarily evading the proceedings by seeking exemption consideration of the application would become imperative and the amendment itself is introduced to compensate such payees of tactics adopted by unscrupulous drawers of cheques”. in **Crl.Pn.No.100261/2022,(Smti Vijaya V/s Shekharappa and another)** the Hon’ble High Court of Karnataka, Dharwad Bench held that - “awarding compensation u/Section 143-A of N.I.Act is not mandatory but it is discretionary vested with the Magistrate to exercise power to direct the drawer of the cheque to pay 20% of the compensation amount as an interim prayer by assigning reasons.”

11. The ratio and dictum of the above referred judgments are that the application filed U/sec 143-A of NI Act must be disposed by assigning reasons and awarding compensation is not mandatory and it is a discretionary power of the court. Therefore by keeping these principles of law let me discuss the application of present case on hand. Admittedly, when the case was set down for cross-examination of PW.1, the present interim application has been filed by the complainant.

12. Now it is better to re produce the amendment to NI Act by inserting section 143A. The Section 143A of the Act reads as follows:

"143A. Power to direct interim compensation.-- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant--
(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
(b) in any other case, upon framing of charge.
(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.
(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial 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.
(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 11974).

(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."

13. As stated above the accused has taken some contentions in his objection and prayed for rejecting the application. The whatever contentions taken by the accused cannot be considered at this stage and those contentions can be considered only after full fledged trial of the case. Further the merit of the case cannot be discussed at this juncture since it is only adjudicating of interim application. As stated above the substance of accusation were already read over and accused pleaded not guilty and claims to be tried. It is material to note that, on dated 10.04.2023 the substance of accusation were read over and accused pleaded not guilty and claims to be tried. Hence case was posted for cross examination of PW.1. Then on 08.05.2023 the present application has been filed by the complainant seeking interim compensation. Thus the order sheet clearly goes to show that soon after recording of substance of accusation on the next hearing date the present application has been filed by the complainant. On looking to the order sheet at this juncture it prima facie shows that the accused has not taken much more time to cross examine the PW.1 and he has not been unnecessarily evading the proceedings or to cross examine the PW.1. Apart from this,

awarding of interim compensation U/sec 143(A) of NI Act is a discretionary power not a mandatory power, because in the said provision the word 'MAY' has been used. This ratio has been held by Hon'ble Apex Court in a case between **RAKESH RANJAN SHRIVASTAVA V/s THE STATE OF JHARKHAND & ANR. (CRIMINAL APPEAL NO. 741 OF 2024)**. Further the conduct of the accused is also important while considering the application filed under Sec.143A of NI Act. In this regard in a judgment cited above **Mr V Krishnamurthy** supra held that the conduct of the accused that he is unnecessarily evading the procedure then consideration of the application would become imperative. As stated above at this juncture this court do not find any reason that the accused is unnecessarily evading the proceedings. The record shows that soon after recording the substance of accusation immediately the application has been filed for interim compensation.

14. The complainant alleging that he paid Rs.75 lakhs to the accused and in order to discharge the liability accused had issued the disputed cheque. The accused is not admitting the transaction as well as issuance of cheque. The accused also disputing the signature appears on disputed cheque. Therefore, it appears that there are serious dispute about transaction and issuance of cheque. Hence I am of the opinion that the complainant has not made out prima facie case to allow the application. Hence I am the view that at this juncture there are