

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

Dated this the 06th day of May-2024

PRESENT:

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

CC No.3642/2023

Complainant: Sri. Goutham Babu PV
S/o.Venkatesh Babu P
Aged about 31 years,
21, Old No.125,
Sri Said Vasavi Nilayam,
7th Main, 6th Cross,
Srinivas Nagar,
1st Stage BSK,
Bengaluru - 560050.

(By Sri.GBPV- Adv.)

Accused: -Vs-
G.Shanmukha Swamy,
S/o.Guru Swamy,
No.405, 9th Main, 5th A Cross,
Srinivasa Nagar, 3rd Stage,
Banashankari,
Bengaluru - 560085.
Also at
No.1277, 9th A Main Road,
Srinivasa Nagar,
Bengaluru - 560050
And
No.1406, Ground Floor,
9th Main Road,
9th Cross, Srinivasa Nagar,
3rd Stage,

Bengaluru - 560050.

(By Sri. SRS - 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:	:	17-10-2023
Number of the application:	:	-
The date on which the objections are filed by different opponents:	:	-
The date on which the orders were passed on the said application:	:	06-05-2024

// O R D E R S //

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 case against the accused for the offence punishable U/Sec. 138 of NI Act. The plea was recorded and accused denied the plea and claims to be tried. The complainant has lost his hard earned money because of

the attitude, conduct and act of the accused. The accused is not ready to pay the amount, which will definitely consume lot of time and this will cause agony mentally as well as financially to the complainant. If accused is directed to pay 20% of the cheque amount no hardship would be caused to the accused. The complainant undertakes that in case of acquittal he will return back the amount to the accused in accordance with law. Hence he sought for allowing the application.

3. In spite of sufficient opportunity the accused failed to file objection to the above application.

4. Heard the complainant side 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 an amount of Rs.50,000/- from the complainant and assured that he would repay the amount by the end of February, 2023. But accused failed to repay the amount as agreed. However he issued disputed cheque in favour of complainant and said cheque was dishonoured. Hence this complaint.

8. At the time of argument, the complainant has vehemently argued and requested the court to award interim compensation as prayed in the application. In support of his argument he relied upon judgment reported in **2022 SCC Online 1047 (V.Krishna Murthy V/s Diary Classic ICE Creams Pvt.Ltd.,)** and judgment of **Hon'ble High Court of Chattisgarh, Bilaspur**, in a case between **Rajesh Soni V/s Mukesh Verma.**

9. I have perused the entire materials available on record with cautiously. No doubt the records 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." The judgment relied by complainant **Crl.Pn No.632/2022, (Mr V Krishamurthy V/s Diary Classic Ice Creams Pvt Ltd)** wherein 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.”

10. 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 us discuss 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.

11. 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."

12. 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 17.10.2023 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. On the same day, 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, 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. After filing application the case was posted for objection and hearing on application. As stated above the Order Sheet shows that the accused has not taken much more time to cross-examine the PW1. 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)**.

13. 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. Further at the time of hearing on application the complainant vehemently argued and submitted that, since accused failed to file the objection the application deserve to be allowed. It is true that the accused did not filed any objection to the application. Mere non filing of objection does not give rises to allow the application. The applicant has to establish independently grounds to allow the application. Non filing of objection itself is not a ground for allowing the application. Hence argument on this point holds no water.

14. The complainant alleging that he paid Rs.50,000/- to the accused and in order to discharge the liability accused had issued the disputed cheque. The records shows that accused is not admitting the transaction as well as issuance of 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 no sufficient grounds to allow the application and awarding interim compensation by exercising discretionary power as contemplated under the above Act. Therefore, with light of the above observation and discussion I answer **Point No.1 in the Negative.**