

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

Dated this the 10th day of September-2024

PRESENT:

Smt.Nirmala.M.C, B.com., LL.B,
Judge & ACJM & MACT, Bengaluru.

CC No.7812/2013

Complainant:

Sri.Madhusudhan D Rao,
S/o. Late E Durgoji Rao,
Aged about 51 years,
R/at No.55-56,
3rd Cross, 2nd Main,
Chikka Adugodi, Brindavan Nagar,
Dharmaram College,
Bengaluru – 560 029.

(By Sri.Srinatha - Adv.)

-Vs-

Accused:

Smt.Rukmini.R.,
W/o.Venkatesh,
Aged about 54 years,
R/at 1st Main, 1st Cross,
Opp.SLV Stores,
Backside Gujarath Shop,
SBI Layout, Kodi Chikkanahalli,
Bengaluru – 5600076.

And also at
SS Residency,
3rd Cross, Bhavani Nagar,
S.G.Palya Opp.Chandrodaya
Suryodaya Kalyana Mantapa,
Bengaluru – 560029.

(By Sri.Somanna - Adv.)

SCCH-9

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CC No.7812/2023

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:	:	05.02.2024
Number of the application:	:	-
The date on which the objections are filed by different opponents:	:	20.08.2024
The date on which the orders were passed on the said application:	:	10.09.2024

// ORDERS //

The present application has been filed by the complainant u/Sec 143(A) of N.I. Act dated 05.02.2024 seeking interim compensation.

2. It is stated in the application that accused had issued cheque in favour of complainant for Rs.26,50,000/- and the said cheque was dishonoured for the reasons "Funds Insufficient". As per Sec.143 A (2) of NI Act the complainant is entitled for interim compensation on 20% of the cheque amount. This Court is empowered to direct the accused for an interim compensation as per amended provision of Sec.143A (2) of NI Act. Hence sought for allowing the application and direct the accused to pay 20% of the cheque amount as interim compensation.

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 either in law or on facts and the same is liable to be dismissed. Granting interim compensation is the discretionary power of the Court and it is not mandatory. While exercising such discretion Court has to taken into consideration as to whether liability is admitted or not. In the instant case liability is not admitted. It is further contended that there is no money transaction in between the complainant and accused. At any point of time accused has not borrowed the cheque amount from the complainant, complainant has manipulated the records and the cheque. The complainant has not stated sufficient reason to allow the application. On these 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 accused had received an amount of Rs.26,50,000/- from the complainant and agreed to repay the same within stipulated period. In repayment of the said amount accused issued the disputed cheque. However, cheque bearing No.120929 dated 12.04.2023 for Rs.26,50,000/- came to be dishonoured. Hence complainant got issued the notice and filed the complaint.

8. I have perused all the materials available on record with cautiously. As stated above, the accused has 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 filed written argument 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 20% of cheque amount as 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. Hence, 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 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."

13. As stated above the accused has taken some contentions in his objection and prayed for rejecting the application. 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 interlocutory 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 05.02.2024 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 PW1. On next date of hearing the present application has been filed by the complainant seeking interim compensation. Awarding 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. Perused the order sheet, it shows that accused is not unnecessarily evading the evading the proceedings.

14. The complainant alleging that he had paid Rs.26,50,000/- to the accused and in order to discharge the liability accused had issued the disputed cheque. But on the other hand, accused is not admitting the transaction as well as issuance of cheque and its signature. 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**.

15. Point No.2: For the aforesaid reasons court proceed to pass the following:

ORDER

The application filed by complainant u/Sec.143(A) of N.I Act is hereby rejected.

No order as to cost.

(Dictated to the stenographer, corrected by me and then pronounced by me in the open court on this the 10th day of September, 2024.)

(NIRMALA.M.C.)
Judge & ACJM,
Court of Small Causes,
Bengaluru.