

Order on application filed U/s 143A of NI Act

1. The complainant moved application U/s 143A of Negotiable Instrument Act claiming direct the accused to pay interim compensation of 20% of total cheque amount i.e. 2 Crore 10 lakhs to the complainant. If the application is rejected, it will put to irreparable loss to the complainant till completion of entire proceedings. Hence, prays to allow the application.

2. The accused after service of suit summons appeared before the Court and substance of accusation and 313 statement of accused was recorded. Same were denied by the accused. Later on, filed objection to the application filed by the complainant. In the objection it is contended that, as per the version of the complainant case, there is an agreement of sale between complainant with accused for the purpose of purchase the property. The complainant known the financial condition of the accused, but, misused the cheque issued for the purpose of security. Therefore, the present application is not maintainable.

3. In the objection it is further averred that, claiming interim compensation is not mandatory and it has to be consider the defence of the accused and also financial distress of the accused. Further it has to consider behavior towards Court proceedings of

accused. Hence, under these grounds prays to dismiss the application.

4. Heard both sides. Perused the notes of arguments filed by both the parties and also consider the decisions relied upon by the accused counsel.

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

1. Whether the complainant made out sufficient grounds to allow interim compensation of 20% of the cheque amount?

2. What order?

6. For the above points my answers are as follows.

Point No.1: Partly affirmative

Point No.2: As per the following order.

REASONS

7. Point No.1: The present complaint filed U/s 200 of Cr.PC for the offence punishable U/s 138 of NI Act. According to the complainant the accused is owner of the property. The accused agreed to sell the said property for a consideration amount of Rs.6 Crores and executed agreement of sale, in favour of

complainant and received Rs.1 Crores as earnest money and remaining amount shall be paid at the time of sale. But the accused failed to perform his part of contract, due to which they agreed to end the contract between them.

8. The accused on 16-01-2024 issued a post dated cheque bearing No.28363 for Rs.2,10,00,000/- drawn on Union Bank of India, Sanjay Nagar Branch, Bangalore. Hence, the complainant lodged the complaint before the Court.

9. The complainant in support of his case got marked 8 documents out of that Ex.P6 is agreement of sale which discloses that for the sale of said property fixed consideration amount of Rs.6 crores and the purchaser paid Rs.1 Crore through online transaction.

10. In Ex.P6 document it could be seen the endorsement regarding one case is pending before the Court, due to which the due amount paid to the 1st party on or before 10-05-2024 and agreed to pay Rs.2,10,00,000/- as the final settlement. For the payment of the same have issued cheque bearing its No.028363 drawn on Union Bank dated 10-05-2024.

11. The next document Ex.P7 and 8 are account statement which discloses the payment made by the complainant in favour of accused. So these documents discloses the prima facie case of the complainant before

the Court.

12. As against, the learned counsel for accused submits before the Court that, the accused is co-operating with the Court and the present application moved only to drag the proceedings. Therefore it is reason for causing delay in proceeding the case. Since accused is co-operating with the Court hence, there is no reason to grant interim compensation to the accused. The learned counsel for accused in support of his case relied upon 2 judgment, which are discussed here in below.

13. In the case of **Mr.V. Krishnamoorthi S/o K. S. Venkatesan and Others V/s Dairy Classic Ice Cream Pvt. Ltd. decided in CrI.P No.632/2022 dated 01-06-2022** at para 15 and 16 observed as follows.

“15. There is no reason recorded by the learned Magistrate that the accused in the case at hand has adopted any of the factors as narrated hereinabove that would entail consideration of an application under [Section 143A](#) of the Act. With the reason that is rendered by the learned Magistrate as quoted (supra), the order granting 10% compensation, in the case at hand, becomes unsustainable. This Court is flooded with litigation with regard to grant of compensation under [Section 143A](#) of the Act by criminal courts. In several cases discretion is exercised for grant of compensation and in several other cases there are no reasons for exercise of such discretion. Therefore, it has become necessary to direct learned Magistrates that while considering applications filed under [Section 143A](#) of the Act, to notice at the outset, the conduct of the accused. If the accused has been unnecessarily evading the proceedings by seeking adjournments, consideration of the application would become imperative as the amendment itself is introduced to compensate such payees of delay tactics adopted by unscrupulous drawers of cheques.

16. The order of the learned Magistrate impugned herein does not bear any such reason as is indicated hereinabove. The amount involved in the transaction is Rs.5,56,71,208/- and 10% of the said amount would mean Rs.55 lakhs. Therefore, it was necessary for the learned Magistrates to apply his mind, record such reasons which would demonstrate application of mind and then allow the application for grant of compensation in terms of the Act. In the absence of the aforesaid, I deem it appropriate to exercise my discretion under [Section 482](#) of the Cr.P.C., set aside the order impugned and remit the matter back to the hands of the learned Magistrate to pass appropriate orders on the application, bearing in mind the observations made in the course of the order.”

14. The Hon’ble Court observed that the Magistrate while passing the order consider whether accused has been unnecessarily evading the proceedings by seeking adjournments and pass the order with suitable reasons by directing the accused to pay the interim order.

15. The learned counsel for accused also relied upon another judgment decided in the case of **Rakesh Ranjan Shrivastava V/s The State of Jharkhand and Another decided in CrI.AP No.741/2024** wherein at para 16 it is observed that, factors to be consider while exercising discretion. Further the Court observed that while passing order on application U/s 143A of the NI Act 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 under sub section 1 of

Sec.143A.

16. So consider both the judgments relied upon by the learned defence counsel, in this case the accused has given reply to the demand notice and same is produced by the complainant before the Court. Wherein he admitting the receiving of an advance amount of Rs.1 Crore from the complainant. The cheque in question issued for a security purpose. Further it is contended that the litigation pending on the schedule property is well known to the complainant but, he forced to execute agreement sale and agreed to purchase the said property after litigation would be cleared in all respects.

17. Thus, the accused admitting the issuance of cheque to the complainant and the agreement of sale account details and reply notice given by the accused itself it clearly discloses before the Court that, there is a prima facie case in favour of the complainant, as the transaction between complainant and accused is admitted by both the parties.

18. The transaction between the parties in respect of agreement of sale of schedule property and same was cancelled due to on the schedule property litigation was pending. Therefore, it is the duty of the accused to repay the earnest money to the complainant. But as per Ex.P6 the accused and his family members agreed to

repay Rs.2,10,00,000/- to the complainant and issued the cheque in question.

19. On perusal of the order sheet, which discloses that the accused after obtaining bail continuously absent before the Court. Even while recalling his warrant he was not present before the Court. Since there is a prima facie case and in the present case the accused deliberately evading for the payment of the same to the complainant, even though he admitting the issuance of cheque and transaction between them.

20. Therefore, the claimed amount is huge amount and as per the records the complainant made payment on 19-12-2020 and now we are in the year 2025, so even after laps of 5 years no payment was made by the accused which causing more irreparable loss and hardship to the complainant. Therefore, if an interim compensation of 10% of the cheque amount is awarded, it will give some relief to the complainant.

21. The defence of the accused in respect of cheque in question issued only for the security purpose and the said contention has to be consider after full fledged trial in order to consider that whether the cheque in question mature to present for the encashment.

22. Therefore, if 10% of the cheque amount is

awarded to the complainant it will meet the ends of justice and if the complainant failed to succeed the case, then the said amount has to be refunded from the complainant. Accordingly, I answer the point No.1 in the partly affirmative.

23. Point No.2. In view of answer the point No.1 in the **affirmative** hence, I proceed to pass the following

ORDER

The application filed by the complainant U/s 143A of NI Act is partly allowed.

The accused is hereby directed to pay interim compensation of 10% of the cheque amount.

For cross of PW1.

Call on 28-04-2025.

**III Addl. Sr.C.J & JMFC.,
Ranebennur.**