

ORDER ON APPLICATION FILED
U/SEC.143(A) OF N.I.ACT

The complainant has filed the present application under section 143(A) of N.I.Act seeking interim compensation. Accused has filed objection to the application.

2. Complainant has sworn to affidavit and stated that, he has filed this complaint U/s.200 for the offence punishable under section 138 of N.I.Act. It is further contended that, accused may be directed to deposit 20% of cheque amount as per the amendment to NI Act, as interim compensation to be paid to the complainant. Complainant undertakes to refund the interim compensation amount if the accused is acquitted by the court in this case, counsel for the complainant has relied upon the judgment between Laxmi Narassamma vs Sri Babanna Kulal in Cri.P.No.8043/2020 dt 12-1-2021 and B Sarvothamma vs S.M.Haneef in Cri.R.P.No. 926/2009 dt 17-7-2013. Hence prays to allow the application.

3. The accused has filed objection to the said application contending that, the application is bad, vexatious and not maintainable under the law. In the entire affidavit of the complainant, filed with this application, he has not shown any reason as to why the accused has to deposit 20% of cheque amount as interim compensation.

He simply says that, there is provision under N.I. Act. The complainant has filed in total 14 cheque bounce cases against this accused in Hosapete courts bearing C.C.No.2170/2021, 2171/2021, 2268/2021, 2355/2021, 2356/2021, 2367/2021, 1474/2021, 1475/2021, 252/2021, 309/2021, 311/2021 and bearing P.C.R. No.887/2019, 404/2021, 1347/2019, 599/2019, 1052/2019. Complainant is doing money lending business without obtaining the license. Apart from this accused, he has also filed the cases against other persons. Complainant is harassing the accused and giving mental torture to him. Accused has not borrowed any amount from the complainant. Accused has not executed any loan agreement as alleged by the complainant and he has not borrowed any loan from the complainant. Complainant further contends that, complaint alleged that, accused made payment towards the loan, but he has not mentioned any details pertaining to repayment and not produced any document. He has filed this false complaint. The allegations at the

application shows that, complainant has filed the application in order to make the wrongful gain. He has not assigned any tenable ground for filing this application. He relied upon the judgment reported in CrI.P.No.100261/2022 dated 17.02.2022, wherein Hon'ble High Court of Karnataka has observed that, "Magistrate has misconstrued the provision that, in the event accused does not plead guilty, he becomes liable to pay 20% as interim compensation. This is not the purport of the Act. But, that does not preclude Magistrate to pass appropriate orders of grant of compensation in a given case. What is necessary is only the application of mind and recording the reasons for grant of compensation". Hence, prays to dismiss the application.

4. I have heard the arguments of the learned counsel for the complainant and accused and perused the materials.

5. The following points arise for consideration;

1. Whether complainant has made out sufficient grounds to order interim compensation by the accused in his favour?

2. What order?

6. My answer to the above points are;

Point No.1 : In the Negative

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

REASONS

7. **Point No.1**: Having heard and on perusal of the record it reveals that, the case is one for the offence punishable under section 138 of N.I.Act.

8. As per Sec.143(A) of N.I.Act, court is empowered to direct drawer of the cheque to pay interim compensation to the complainant in summons case or summary trial, where he pleads not guilty to the accusation made in the complaint. As per the allegation in the complaint, complainant and accused are known to each other from several years. Out of the said acquaintance, accused has sought for financial assistance for the purpose of expansion of his business.

Accordingly, complainant has lent amount of Rs.12,77,800/- to the accused and accused has executed on demand promissory note agreeing to repay the said loan amount. In this regard, by the intervention of mutual friends of complainant and accused, when accused has failed to make regular payments, they have entered into amicable settlement. Accused has issued in total 12 cheques including the self or bearer cheque in the case on hand towards the part payment. When complainant has presented the said cheque, it was returned for the reason "Funds Insufficient". Thereafter, complainant has issued legal notice, which served on accused. Even though he has failed to make payment.

9. Complainant has now filed this application seeking interim compensation of 20% of cheque amount in view of Section 143(A) of N.I. Act. Per contra, the application is resisted by the accused on the ground that, the complainant is doing money lending business without obtaining license and denied the averments of the complaint as false. This application is filed

by the complainant in order to make wrongful gain.

10. Admittedly this complaint is filed for the offence punishable U/s.138 of N.I. Act. Complainant has filed this application, after the plea is recorded in this case, seeking interim compensation of 20% of cheque amount. I have perused the materials on record, the cheque in this case is a self drawn cheque and not a cheque issued in favour of complainant. The accused in the case has denied the accusation levied against him. Therefore, when the cheque is self drawn cheque and not issued in favour of the complainant, granting interim compensation, at this stage is not justifiable one. It is humbly submitted that, the judgments relied upon by the counsel for the complainant does not apply to the case in hand due to factual differences. Further, the judgment relied upon by the counsel for the accused aptly applies to the case in hand as to para-11 and 12 of the said judgment, wherein the Hon'ble High Court of Karnataka has interpreted Section 143(A) of N.I. Act and observed that, granting

interim compensation in pending proceedings lies within the discretion of the Court, because the term used in Section 143(A) is 'may'. As such, in the case on hand, in view of above discussion, Court in its discretion is of the opinion that, complainant has not made a ground to grant interim compensation in his favour. Accordingly, point No.1 is answered in the **Negative.**

11. **Point No.2:** In view of discussion on point No.1, I proceed to pass the following:-

O R D E R

The application filed by the complainant under section 143(A) of N.I.Act is hereby dismissed.

**(Trupti Dharane)
Addl.Civil Judge & JMFC,
Hosapete.**