

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, NO.I,
PERUMBAVOOR**

Present : Sri. ANISH BABU M.B., JUDICIAL FIRST CLASS MAGISTRATE

Friday the 16th day of May, 2025/ 26th Vaisakha 1947

CMP No. 858/24 in ST No. 152/23

Petitioner/Complainant : Sreekandan C.S, S/o Sreedharan Namboothiri,
Sangeerthanam, Perumbavoor.

(By Adv. Akhil Bhaskar)

Respondent/Accused : Jayakumar.V, Vasudevam, Venmonythazham,
Venmony P.O, Alappuzha.

(By Adv. V.G.Jawahar)

Order : Dismissed

This CMP is coming on today for a hearing, the court passed the following:

ORDER

This is an application filed by the complainant in the above case under Section 143A of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act').

2. The petitioner/complainant submits as follows: In order to discharge the amount owes to the complainant, the accused, on 16.11.2022, issued a cheque dated 01.11.2022 bearing No.016866 to the complainant drawn on Union Bank of India, Venmony Branch for an amount of Rs.5,00,000/- and it was dishonoured for the reason 'Funds Insufficient'. Hence, the complainant issued a lawyer's notice to the accused on 25.11.2022, and it was served. However, the accused has not paid the

legally enforceable debt due to the complainant. According to the complainant, he is entitled to get 20% of the cheque amount as interim compensation under Section 143A of the NI Act. Hence the petition.

3. An opportunity was granted to the respondent/accused to file an objection. In the objection, it is stated that the above petition is not maintainable. The complainant does not have a legally enforceable right to the recovery of the amount as alleged in the petition, as no amount is due to the complainant from the accused. The alleged cheque was not issued by the accused to the complainant. It is again submitted that no undue delay is caused for the finality of the case by the act of the accused. According to the respondent/accused, it is not mandatory to allow the petition under Section 143(A) of N.I. Act. It is further submitted that the respondent/accused has no income to remit the amount now. He has no assets in his name. Hence, prays for the dismissal of the petition.

4. Heard the learned counsel on both sides. Perused the materials.

5. The points that arise for determination are: -

1. Whether this application be allowed?
2. If so, on what terms?

6. **Point Nos. 1 and 2:** For the sake of convenience, both points are considered together. Section 143A of the NI Act deals with the power of the trial court to grant interim compensation. It is pertinent to note that the provision is directed to be invoked at a stage when the accusation raised against the accused is read over to him and when he pleads not guilty to the same. In the case at hand, the

accusation was read over to the accused on 06.01.2024, to which he pleaded not guilty. In this connection, it will be worth quoting the decision of the **Hon'ble Supreme Court of India in Rakesh Ranjan Shrivastava Vs. State of Jharkhand, reported as 2024 ICO 427: (2024) 4 SCC 419**. The Hon'ble Apex Court held as follows (at Para.16);

‘Only if the complainant makes out a prima facie case, a direction can be issued to pay interim compensation. At this stage, the fact that the accused is in financial distress can also be a consideration. Even if the Court concludes that a case is made out for grant of interim compensation, the Court will have to apply its mind to the quantum of interim compensation to be granted’

The Hon'ble Apex Court of India also held that the exercise of power under sub-section (1) of Section 143A is discretionary and the provision is directory and not mandatory. Taking note of the parameters issued by the Hon'ble Apex Court of India in the Rakesh Ranjan Shrivastava case (supra), it is to be noted here that the accused has denied the execution of the impugned cheque in favour of the complainant. It is to be noted here that the presumption under Section 139 of the N.I. Act, by itself, is no ground to direct the payment of interim compensation, as the presumption is a rebuttable one. The complainant has not even worded in the present petition whether there was any legally enforceable debt in order to attract the penal provisions contained in the NI Act. Moreover, it is also not possible to hold at this stage whether the impugned cheque did represent any enforceable debt at the time of encashment, as the complainant has not mentioned any form of financial transactions with the accused in the present petition. It is specifically submitted by the accused that he has no income to remit any amount, and also that he has no assets in his name. In such a situation, in the event of non-payment of interim compensation, if any, as

fixed under Section 143-A would definitely invites drastic consequences and the recovery of interim compensation from the accused would be become impossible. In the light of the discussion made herein above, this court is of the considered opinion that the petition is liable to be dismissed. The points are answered against the complainant.

In the result, the petition is dismissed.

Pronounced by me in Open Court this the 16th day of May, 2025.

sd/-

**Judicial Magistrate of 1st Class-I,
Perumbavoor**