

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST
CLASS-II, VARKALA**

Present: Sri.Aravind.P, Judicial Magistrate of First Class-II

Dated this the Saturday 26th day of April, 2025

Criminal Miscellaneous Petition No.30/2023 in S.T.No.28/2023

**Petitioner/Complainant :- M/s V.S.Hollowbricks represented by its
proprietor Sasankan, S/o Bhasi, V.S.Land,
Asanmukku, Palayamkunnu, Varkala.**

(By Adv: Sri.Praveen.S)

**Respondent/Accused :- Nami Nissam, Arabian Choolah Family
Restaurant, Resort road, Opposite Desadan
Resort, Varkala ICliff, Varkala.**

(By Adv: Sri.Shibukumar)

This petition having been finally heard on 24.04.2025 and the Court on 26.04.2025 delivered the following:-

Order

This is a petition filed by the learned counsel for the complainant in the above case u/s 143 A of the Negotiable Instruments Act, 1881 (hereinafter referred as 'the act').

2. **Brief averments in the petition are as follows:** S.T.28/2023 is filed u/s 138 of the act. The respondent/accused has issued a cheque for an amount of `39,000/- (Rupees Thirty Nine Thousand only). The respondent/accused has appeared before the court on 20.04.2023 and pleaded not guilty. Since the respondent has pleaded not guilty, the petitioner is entitled to get 20% of the cheque amount u/s 143 A of the act as interim compensation.

3. If the respondent is not ready to pay the said amount to the petitioner, then this court has jurisdiction to realize the said amount u/s 421 of the Cr.P.C. So the present petition is filed for directing the respondent/accused to pay `7,800/- (Rupees Seven Thousand and Eight Hundred only) as interim compensation to the petitioner. Hence the petition.

4. Respondent appeared and filed objection. Brief averments in the objection are as follows:- The petition is not maintainable either in law or on facts. Petitioner is having no authority to sought accept interim compensation as per the act. The respondent has not issued the cheque. The same will be revealed during the trial of the case. The interim compensation is not mandatory as per the act.

5. The present petition is filed with an intention to grab interim compensation from the respondent/accused. The present petition is filed without any bonafides. So the objection of the respondent concluded with a prayer to dismiss the petition.

6. This court heard the learned counsel on either sides and perused the records.

7. For an easy discussion, this court is intending to extract s.143 A of the act.

“Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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

percent 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.
- (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, shall be reduced by the amount paid or recovered as interim compensation under this section.”

8. The complaint was filed by the petitioner/complainant alleging that the respondent/accused issued a cheque bearing no.357304 dated 04.04.2019 of Federal Bank Ltd., Varkala branch for an amount of ` 39,000/- (Rupees Thirty Nine Thousand only). The respondent appeared before the court on 06.01.2023 and she was enlarged on bail on the same day itself. Thereafter, the particulars of offence were read over and explained to the respondent and he pleaded not guilty on 20.04.2023.

9. This court is intending to rely on the decision reported in **Jisha Vs. State of Kerala and Another (2019 (5) K.H.C 729)**. Relevant portion is extracted below for easy reference.

“6. As per the provision, the trial court dealing with the prosecution under Section 138 N.I Act may order the drawer of the cheque to pay interim compensation to the complainant at two stages as contemplated therein, which have been stated hereunder:

(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.

It is also provided under sub-section (6) of the provision that 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 to or received as interim compensation under this section. It is pertinent to note that the provision is directed to be invoked at a stage when the accusation raised against the accused are read over to him and when he pleads not guilty to those. Therefore in a circumstance where the accusations have been read over to the accused and only when he pleads not guilty that the power under Section 143A can be invoked by the trial court. The crucial time for invocation of jurisdiction under Section 143A of the Act is the time at which the accusation is read over to the accused and he pleads not guilty to those. The words 'where he pleads not guilty', itself indicate that the interim compensation has been ordered under the provision, not as a penalty. Penalty involves an element, which is penal in nature, whereas compensation will only works out as a consolation to the complainant aggrieved by the bouncing of the cheque. For imposing or for directing the accused to pay interim compensation, the trial court need not have ventured to establish the guilt or non guilt of the accused of the offence alleged against him. Only when he pleads not guilty to the offence that the trial court is empowered to invoke the jurisdiction under Section 143A N.I Act. The position secured by sub-section (6), wherein adjustment of the interim compensation from the fine amount imposed under Section 138 N.I. Act or from the amount of compensation awarded under Section 357 Cr.P.C, also indicates that the amount directed to be paid is not a penalty. For reasons stated above, the argument of the learned counsel that the direction to pay compensation is violative of the second part of Article 20(1) of the Constitution of India is devoid of merits and is discarded.

7. It is indicative on a reading of Section 143A which has been newly introduced into the N.I Act that the Court trying an offence under section 138 shall suo motu

exercise the power. There is no need for an application to be filed by the complainant in that regard. Likewise, the section also does not provide for an opportunity, for the accused to be heard. Nowhere under Section 143A N.I. Act, it is provided that prior to passing of an order directing payment of interim compensation, the accused needs to be granted an opportunity of being heard. Eventhough the word 'may' is in use in the provision, it will have the impact of 'shall' since prosecutions launched under Section 142 cannot be identified as scrupulous or unscrupulous ones at the preliminary stage when complaint is filed. Interim compensation contemplated under Section 143A N.I. Act is something meant to be imposed on all accused irrespective of the amount involved in the prosecution filed under Section 142 N.I Act. Therefore, the argument of the learned counsel that the objection filed by him to the application under Section 143A N.I. Act was not considered by the court is of not that much relevance”.

10. As per s.143 A of the act and the dictum laid down in the above mentioned decision, this court has got jurisdiction to direct the respondent to pay interim compensation to the petitioner. That means, the respondent can be directed to pay 20% of the cheque amount. Here, the cheque amount is `39,000/- (Rupees Thirty Nine Thousand only). So 20% of the same is `7,800/- (Rupees Seven Thousand and Eight Hundred only). So this court is of the view that the respondent is directed to pay interim compensation to the petitioner.

In the result, petition is allowed and the respondent is directed to pay `7,800/- (Rupees Seven Thousand and Eight Hundred only) as interim compensation u/s 143 A of the act within sixty days from the date of this order.

(Pronounced by me in Open Court, on this the 26th day of April, 2025).

ARAVIND.P
JUDICIAL FIRST CLASS MAGISTRATE-II

APPENDIX:- NIL

JUDICIAL FIRST CLASS MAGISTRATE-II

**Order in CMP No.30/2023
in ST 28/2023
Dated: 26.04.2025**