

Order below exh.12 in S.C.C 856/2022

(CNRMHAH170039472022)

The complainant has filed this application under section 143-A of Negotiable Instruments Act for the issuance of direction to the accused to pay sum at rate of 20% amount of the cheque dishonoured in this case as interim compensation.

2. The accused filed say on this application that the amount mentioned in the application is Rs-70,000/- and the amount mentioned in the complaint is Rs-7,00,000/-. Therefore the complainant himself is not clear about how much amount was given by him to the accused. Therefore the contention of application are false. The accused has repaid all the amount which was taken by him to the son of complainant. The notice reply given by the accused is clear as to no amount is pending on part of accused. The amount mentioned in the cheque was never received by the accused.

3. Heard Learned Advocate for the complainant and Ld. Advocate for the accused. The amendment for power to direct interim compensation under section 143A came into force from 1.9.2018. This proceeding is filed on 18/08/2022. Thus the said provision is applicable to the present proceeding. As per section 143-A the Court may order the drawer of the cheque to pay interim compensation to the complainant in a summary trial or summons case, where he pleads not guilty to the accusation made in the complaint and in any other case upon framing of charge.

4. On perusal of the complaint the complainant has contended that two cheques were issued on 13/06/2022 for amount of Rs.3,60,000/- and Rs.3,40,000/- by the accused which were dishonoured on 15/06/2022. The

Ld. Advocate for the accused argued that the complainant has misused two blank cheques. The accused has paid the amount through online payment to the complainant, therefore there is no legally enforceable debt on the part of accused. The online payments made by the accused are of the dates previous to the notice issued by the complainant on 25/06/2022. The accused has categorically denied the contents of the demand notice in his notice reply. The demand of Rs. 7,00,000/- made in the notice is not legally enforceable debt. Learned Advocate for the accused by relying on caselaw of Hon'ble Supreme Court in Dashrathbhai Patel Vs. Hitesh Patel Criminal appeal No. 1497 of 2022 also argued that the notice is invalid therefore, section 138 and 143-A is not applicable.

5. On perusal of the record, it appears that the complainant has not filed the cheques or verified copies of cheques in this proceeding. The accused filed the online payment details along with exh. 18 which are supported by the contents of the notice reply by the accused more particularly as to dates and the mobile numbers from which and the number to which the payments were made. On perusal of the demand notice issued by the complainant there are no details regarding the online payments made by the accused. Apart from this in the application in at exh. 12 the amount taken by the accused is mentioned Rs. 70,000/-.

6. Considering these facts it is not clear at this stage whether the accused has issued disputed cheques therefore, at this stage without any clear prima facie evidence on the record allowing this application may cause prejudice to one of the party and will also result to delay in proceeding with the trial. Instead it will be appropriate to take evidence of both the parties with regard to whether there was legally enforceable debt and whether the

cheques were issued by the accused himself, to adjudicate this matter on merits.

7. Therefore, considering the record and the documents whether the complainant has prima facie case at this stage is not clear. The power to direct interim compensation under section 143-A is discretionary. Considering the facts and record it will be appropriate to expedite this trial and to decide this proceeding on its merits after the evidence of both the parties. For the reasons aforesaid I pass the following Order :

ORDER

1. The application at exh.12 is rejected.
2. The parties are directed to expedite the trial.

Sd/-

(S. S. Mulani)

JMFC Court no.3, Rahata

Date: 06.11.2023

Place: Rahata