

MHAU110005112021



ORDER BELOW EXH.13

Perused application and say. Heard both the parties. Section 143-A of N.I. Act unless a provision for interim compensation which applies at trial stage. Matter is pending for evidence. Advocate for complainant filed present application on the basis of original cheques, book memo, notice and other documents claiming accused took loan of Rs.27,25,500/- on 21.01.2019 and gave cheque of Rs.11,91,105/- on 23.03.2021. Complainant claim that, accused served with notice but not replied nor paid loan amount which is outstanding till date. Hence, he prayed to allow this application and direct to accused to deposit 20% of cheque amount.

2. Advocate for accused given say and strongly objected this application by stating that, application is pre-matured and not tenebel. As initial burden is on complainant to prove and establish his case which is yet remaining. Accused is not at all liable to pay alleged cheque and amount. Moreover, alleged documents produced on record are not sufficient to hold any conclusion at this pre-matured stage. No such amount is due and outstanding against the accused. Advocate relied on the judgment of Hon'ble High Court which held that, provision of section 143-A of N.I. Act 1881 essentially to be held as 'directory' and not 'mandatory' to award interim compensation on mere invocation by the complainant. It will caused prejudiced and injustice to accused to direct him to deposit 20% cheque amount as interim compensation and prayed to reject the said application.

3. Advocate for complainant argued that, accused has accepted loan given to him. So also direction payment upto 20% of cheque amount is discretionary power of the court. Accused is prolonging the matter, hence to carb delay tactics.

4. While considering record process was issued on 09.09.2021 While

plea recorded on 21.10.2021, while present application was filed on 18.11.2021 and replied by accused on 17.03.2022. After perusal of documents complainant has filed original documents on record which points out primarily that accused had taken loan. In this matter, accused not remaining present, therefore, on 25.08.2022 matter was kept for argument on application at Exh.13 dated 18.11.2021 which is replied by the accused dated 17.03.2022. On 25.08.2022 last chance was given to advocate for accused to argue this application on next date, failing of which say will be accepted as argument. Today I am proceeding by accepting say filed by accused as his argument.

5. After going through say filed and citation of Hon'ble High Court relied upon, considering document filed on record at Exh.26 which shows compromise letter given to complainant by accused and also R.T.G.S. amount of Rs. 1,58,056/- with the complainant at this primary stage it is sufficient to show that, initial burden upon complainant to prima facia establish his case is absolved considering documents filed by the complainant. In fact, transfer of money from accused to the complainant itself shows primarily that, accused owe to the complainant the alleged amount. Without going into merits of the case, at this stage, sufficient material available to proceed to pass order against accused. From the record it can be seen that, accused took loan and given cheque, thereafter, filing of this complaint and present application dated 18.11.2021 on one or other pretext accused caused delay. Thereafter, the accused paid amount of Rs.1,58,056/- dated 17.11.2022 before that and after that accused not paid any amount nor remain present in the court in furtherance to show his voluntariness about compromise. The conduct of accused is causing delay and to carb such tactics section 143-A of N.I. Act is formulated.

6. It is true that power given under section 143-A of N.I. Act is discretionary in nature and not mandatory. Said section was inserted to carb delay tactic and speedy disposal of summary matters. Present matter filed in 2021, after that accused appeared in this matter on 21.10.2021 Considering

nature of offence and nature of proceedings, I am of the opinion that, complainant has filed document on record. Though still trial is going on and being beneficial legislation, I do not see any hurdle to grant relief considering prima facie case on documents filed on record. Application is allowed, accused to pay 20% amount to complainant before court within 60 days from today.

Phulambri
Date: 19.01.2023

(V. V. Raojadeja)
J.M.F.C., Phulambri

CERTIFICATE

I affirm that the contents of this P.D.F. File Order are same, word to word, as per the original Order.

Name of the Stenographer	:-	Shri. Yuvraj Bhagwansing Mirdhe
Court	:-	CJJD & JMFC Phulambri.
Date	:-	19.01.2023
Order signed by the Presiding Officer on	:-	19.01.2023
Order uploaded on	:-	25.01.2023