

MHKO050019922021 	<u>S.C.C.No. 1073/2021</u> <u>Order passed below Exh.No.13</u> <u>Shubham Rajendra Alase</u> <u>Vs.</u> <u>Surekha Sudhakar Kokate</u>
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Present application is filed by complainant u/sec. 143(A) of Negotiable Instruments Act seeking order against accused for payment of interim compensation of 20% amount of cheque i.e. Rs.50,000/-.

2. It is mentioned by complainant that, present complaint is filed u/s 138 of N.I Act. He has Rs. 2,50,000/- due from accused and for the same she has issued cheque in question. The said cheque was dishonored and due to that present complaint is filed. As per amendment on 02-08-2018 section 143 (A) of N.I. Act accused is amended and the accused is required to pay 20% amount of disputed cheque to the complainant i.e. Rs.50,000/- as interim compensation. Therefore, he prayed that, this court has power to allow this application.

3. On present application say from accused is called. The accused has strongly objected the application and submitted that, the application is false, no money is due on her, accused is grand-mother of complainant, she has not issued cheque, on 09/02/2018 she lost her bag in which passbook of Bank of Maharashtra alongwith other bank documents were kept, she has filed N.C.No. 133/2018 for it, the complainant has misused the said lost documents, the complainant has falsely taken her signatures by submitting her that signatures are required for crop loan against land properties, she has filed suit to cancel certain sale deeds, she is 67 years age old lady, she is suffering from different diseases, complainant has cheated her to take that cheque, she has not used google pay account, the complainant has in collusion with his father and mother has filed several cases against her

to mentally and economically harass her, she has no economic source and this case is filed to harass her, therefore she prayed to reject present application.

5. I have heard Ld. Advocate for complainant and Ld. Advocate for accused. I have gone through the application, say, plea and documents filed on record. Present complaint is filed on 07.05.2021, plea of accused is recorded on 26.10.2021 and accused has pleaded not guilty to present offence. Thereafter, case is pending for cross-examination of complainant. As mentioned supra present application is filed for claim of interim compensation as per the amended section 143 (A) of N.I. Act. As section 143 (A) is involved it is necessary to reproduce the said section. :-

“Section 143 (A) Power to direct interim compensation :- (1)
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.”.

6. Upon perusal of the notification in the Gazette of India Dated 02.08.2018 it seems that, the Negotiable Instruments Amendment Act 2018 is notified from 2nd August 2018 with the amendment in Act inserting section 143(A) and 148. As per section 143(A) it is mentioned that, the drawer of the cheque may be ordered by the Court trying an offence u/sec. 138 to pay interim compensation on following conditions.

- (1) If the accused pleads not guilty to the accusation made in the complaint.
- (2) In any other case upon framing of the charge.
- (3) The interim compensation shall not exceed 20 % of total amount of cheque.

7. Apart from these conditions, in present case as mentioned supra the case is filed on 07.06.2021, plea is recorded on 26.10.2021 and the amendment Act has come into force on 02.08.2018. Therefore, present case is registered after the effect to the amendment and the accused has pleaded not guilty to the accusation as per her plea at **Exh.12**. Therefore, it seems that, the accused is liable to pay interim compensation up to 20% of cheque amount to the complainant. The complainant has mentioned that, he is ready to pay back the interim compensation amount if paid by accused to him in case the accused is acquitted from the case. Accused has taken several defenses regarding issue of cheque as well as her liability. However, all those contentions from accused can be considered after evidence. Therefore, in view of said amendment, the accused pleading not guilty and filing of present case after the notification in official gazette of the said amendment the complainant is entitled to claim interim compensation from accused. The amount of cheque involved in present case is Rs. 2,50,000/- as per the original cheque filed on record along with list of documents of

Exh.18. Out of the said total amount 20% comes to Rs.50,000/-. Therefore, in view of the above circumstances, I am of the view that, complainant is entitled to claim interim compensation. Therefore, I proceed to pass the following order.

ORDER

1	Application below Exh.13 is hereby allowed.
2	The accused is hereby directed to pay complainant interim compensation of Rs.50,000/- (i.e. 20%) of total amount of cheque within 60 days from the date of this order.
3	In case, the accused is acquitted the complainant is directed to repay the amount of interim compensation recovered by him from accused with interest @ bank rate as published by Reserve Bank of India prevalent at the beginning of relevant financial year within 60 days from the date of order to repay to accused.
4	This order be followed subject to the terms and conditions of provisions of section 143(A) of Negotiable Instruments Act.
5	The complainant shall file on record undertaking to repay any amount of interim compensation received from accused at the conclusion of trial in case the accused is acquitted.

Ichalkaranji
Date : 08/07/2022

(Dr. D. G. Patwe),
Judicial Magistrate First Class,
Court No.1, Ichalkaranji.

C E R T I F I C A T E

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

Name of the Stenographer	-	Shri. C. R. Patil, Grade-III
Name of Court	-	Judicial Magistrate First Class, Ichalkaranji.
Date of Dictation	-	08/07/2022
Order signed by the P.O. on	-	08/07/2022
Order uploaded on	-	08/07/2022