MHLA120022852023	**SUMMARY CRIMINAL CASE NO.271/2023.** **ORDER BELOW EXH.NO.21.**

The complainant filed present application for interim compensation as per Sec.143-A of the Negotiable Instruments Act.

2. By this application, the complainant submitted that the present case is filed by him as per Sec.138 of the Negotiable Instruments Act, 1881. The disputed cheque is issued for Rs.18,00, 000/-. The accused present before this court and he pleaded not guilty. Hence, the complainant is entitled to get the amount to the extent of 20% of cheque amount. Hence, prayed to allow the application.

3. The accused filed his say at Exh.25 and objected the said application on the ground that the application is false. The dispute cheque is issued for security of hand loan which was misused by the complainant. There was no legal debt was accused towards the complainant. The complainant is doing ill-legal money lending business. Whatever the amount the accused has availed from the complainant, has already been paid by the accused in presence of witnesses and accused requested to the complainant to return the blank cheques obtain by him from the accused as a security. The complainant had taken disadvantage of the faith of accused. There are strong hopes for the accused of his acquittal in this case. Thus, the accused is not liable to deposit the 20% amount of cheque in the court. In all he prayed to reject the application.

4. Head the Ld. Advocate of complainant. Accused present. His advocate absent. The adjournment application is rejected. The The present application is filed on 19-12-2023. Considering the period of pendency of this application, it will not be proper to wait for the argument of accused. Hence, I proceed without argument of accused.

5. A reading of provision under Sec.143-A shows (i). interim compensation must not exceed 20% of the amount of the cheque, (ii). it must be paid within the time stipulated under Sub-sec.3, (iii). if the accused is acquitted, the complainant shall be directed to pay to the accused the amount of interim compensation with interest at the bank rate, (iv). The interim compensation payable under said section can be covered as if it were a fine under Sec.421 of the Code of Criminal Procedure, 1973, (v). If the accused were to be convicted, the amount of fine to be imposed under Sec.138 of the Act or the amount of compensation to be awarded under Sec.357 of the Code would stand reduced by the amount paid or recovered as interim compensation. Sub-sec.1 of Sec.143-A gives discretion to the court trying an offence under Sec.138 to order the drawer of the cheque to pay interim compensation to the complainant where the accused pleads not guilty to the accusation made in the complaint.

6. **In Rakesh Ranjan Shrivastav vs. State of Jharkhand and another (2024) 3 S.C.R. 438** wherein the Hon'ble Supreme Court held that the power under sub section 1 of section 143-A is discretionary and not mandatory. It is further held that while deciding the prayer made under section 143-A, the court must record brief reasons indicating consideration of all relevant factors- broad parameters for exercising desecration under section 143-A. The Hon'ble Apex Court held that the court will have to prima facie evaluate the merit of the case made by the complainant and the merits of defence pleaded by the accused in reply to the application. The presumption under section 139 of N.I. Act by itself is no ground to direct the payment of interim compensation as the presumption is rebuttable. The financial distress of the accused can also be a consideration. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case. If the defence of accused is found to be prima facie plausible, the court may exercise discretion is refusing to grant interim compensation. If the court concludes that the case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation be granted. It will have to consider several factors such as nature of the transaction, relationship if any, between the accused and complainant etc.

7. Taking into consideration the observation in above both cases, I perused the evidence of complainant. Accordingly, in the present case, the accused appeared on 19/12/2023. On the same day, his plea was recorded vide Exh.20. He pleaded not guilty and claims to be tried. I have perused the documents. The documents vide Exh.3 prima facie, transpires that the accused issued cheque in question which was dishonoured. The accused replied to the notice of complainant. The said reply notice is adduced on record by the complainant at Exh.35. Para 6 of the said reply notice discloses that the accused demanded amount of Rs.3,00,000/- hand loan to the complainant. He received some amount from the complainant and issued disputed cheque as a security for the said amount. The said cheque was dishonoured. As per the defence taken by him in reply notice, he may be paid said hand loan amount, but at this juncture, there is no prima facie evidence to believe that the accused had repaid the said hand loan amount. The documents at Exh.3 are sufficient to show prima facie, liability of the accused. There is no prima facie evidence that the accused has no liability to the extent of Rs.18,00,000/- on the date of cheque. The evidence of accused is not found to be prima facie plausible. However, the complainant has prima facie established the liability of accused. The evidence brought on record discloses that there is some transaction between accused and complainant. They know each other. The accused has no defence that he has no financial capacity. At this juncture, the defence of accused is not appears plausible. Moreover, there is no any material on record to use the discretion in favour of accused.

8. On applying the above mentioned touchstone of the facts of the present case, the accused pleaded not guilty and desires to conduct the trial. The accused challenged this application on the ground that there is much more chances of his acquittal and if he paid 20% of cheques amount, he will cause loss. He has no liability and his financial condition is very poor. In view of the amendment Act No.20 of 2018 and Sec.143A(1)(a) of the Negotiable Instrument Act, on his acquittal, the complainant shall be directed to pay to the accused the amount of interim compensation with interest at the bank rate and on conviction, the 20% amount of cheque will be deducted from the compensation. Therefore, no loss will be caused to the accused, if he will be acquitted after trial. The accused has opportunity to pay this 20% interest amount within 60 days. Since 27.08.2024 the matter is pending for cross examination of complainant. The accused failed to conduct the cross-examination within time. Thus, no cross order also passed against him. Therefore, there is no merit in the argument that accused is ready to conduct the trial speedily. This is not sufficient ground to reject this application. Hence, in view of the amendment Act No.20 of 2018 and Sec.143A(1)(a) of the Negotiable Instruments Act, the complainant is entitled for the compensation of 20% of the cheques amount. Accordingly, I pass the following order :-

ORDER

1. The application (Exh.21) is allowed.

2. The accused is directed to pay 20% of cheques amount to the complainant as a interim compensation i.e. **Rs.3,60,000/- (in words Rupees Three Lakhs Sixty Thousand only)** within 60 days from the date of this order subject to conditions specified under Sec.143(A) of Negotiable Instruments Act.

Digitally signed by GUNJAVATE APARNA SHIVAJI
Date: 2025.04.15 17:16:27 +0530

Nilanga
Date: 15/04/2025.

(**Smt. A. S. Gunjawate**)
2nd Judicial Magistrate First Class,
Nilanga.