

Order below Exh. 12 in Case No. 3081/SS/2019

1. This is an application made by the complainant under section 143A of the Negotiable Instruments Act (for short '*the N.I. Act*') with a prayer to direct the accused to pay interim compensation to the extent of 20% of the cheques amount.

2. The complainant has contended that, the accused persons have pleaded not guilty. Therefore, the accused persons are required to be directed to pay interim compensation to the extent of 20% of the cheques amount.

3. The accused have filed their reply dated 13.10.2023 running into five pages. The sum and substance thereof is to the effect that, the complainant has suppressed material facts from this Court. The accused persons are denying the case of complainant in toto. The subject cheques were lying with the complainant as security. The provisions under section 143A of the N.I. Act are directory in nature. On these major grounds, the accused persons have prayed for rejection of the application.

4. Heard learned Advocates for both the sides. Perused record. In support of his submissions, the Ld. Advocate for accused has placed reliance upon following case law :

- I) JSB Cargo and Freight Forwarder Pvt. Ltd. V/s. State and Another, CRL.M.C.2663/2021 of the Hon'ble Delhi High Court.*
- II) Sadashiva Reddy s/o. Late Lakshmana Reddy D. V/s. Mr. V. G. Kona Reddy s/o. Govinda Reddy Konareddy in Criminal Petition No. 3904/2021 decided on 01.06.2021 by the Hon'ble Karnataka High Court.*
- III) G. J. Raja V/s. Tejraj Surana 2019 (19) SCC 469.*

IV) Mr. Ashwin Ashokrao Karokar V/s. Mr. Laxmikant Govind Joshi in Criminal Writ Petition No. 48/2022 decided on 07.07.2022, our Hon'ble High Court, Bench at Nagpur.

5. The case is for offence punishable under section 138 of the N.I. Act. The accused persons have pleaded not guilty to the accusation made in the complaint. In view of the provisions of Section 143A of the N.I. Act, this Court has power to direct the accused to pay interim compensation to the complainant. I have carefully gone through the case law cited on behalf of the accused. By the said decisions, it is now set at rest that, the provisions under section 143A of the N.I. Act are directory in nature and not mandatory.

6. It is trite that, at this *pre-trial* stage, the Court is not expected to go into the merits and demerits of the case. No comment can be made on the merits of the case at this stage. Moreover, interim compensation can be granted only to the extent of 20% of the cheque amount. So also, the complainant is required to repay the said amount with interest at Bank rate as published by the Reserve Bank of India if the case results in acquittal.

7. Here, useful reference can be made to the decision in the case of ***L.G.R. Enterprises Vs. P. Anbazhagan, [(2019) 4 BC 483]***, wherein, the Hon'ble Madras High Court has observed thus :

“Therefore, whenever the trial Court exercises its jurisdiction under Section 143A(1) of the Act, it shall record reasons as to why it directs the accused person (drawer of the cheque) to pay the interim compensation to the complainant. The reasons may be varied. For instance, the accused person would have absconded for a longtime and thereby would have protracted the proceedings or the accused person would have intentionally evaded service for a long time and only after repeated attempts, appears before the Court, or the enforceable debt or liability in a case, is borne out by overwhelming materials which the

accused person could not on the face of it deny or where the accused person accepts the debt or liability partly or where the accused person does not cross examine the witnesses and keeps on dragging with the proceedings by filing one petition after another or the accused person absconds and by virtue of a non-bailable warrant he is secured and brought before the Court after a long time or he files a recall non-bailable warrant petition after a long time and the Court while considering his petition for recalling the non-bailable warrant can invoke Section 143A(1) of the Act. This list is not exhaustive and it is more illustrative as to the various circumstances under which the trial Court will be justified in exercising its jurisdiction under Section 143A(1) of the Act, by directing the accused person to pay the interim compensation of 20% to the complainant.”

8. The above quoted observations make it clear that, the list of reasons is not exhaustive and it is more illustrative as to the various circumstances under which the trial Court will be justified in exercising its jurisdiction under Section 143A(1) of the Act, by directing the accused person to pay the interim compensation of 20% to the complainant. One of the reason mentioned in the above list is the enforceable debt or liability in the case which is borne out by overwhelming materials which the accused person could not on the face of it deny.

9. The documents produced along-with the complaint *prima-facie* support the case of the complainant. In other words, there is overwhelming material on record *prima-facie* in favour of the complainant. The application cannot be rejected merely because the accused persons have denied the transaction in toto. As discussed above, this is not the stage to go into the genuineness or falsity of the complainant's case. Record indicates that, the accused persons have appeared after issuance of bailable warrant. In fine, the accused

persons have caused delay in entering their appearance. Having regard to the object behind inserting section 143A of the N.I. Act, the application deserves to be allowed. The cheques in question are of total amount of ₹7,50,000/-. The amount of interim compensation to the extent of 20% would be ₹1,50,000/-. In view of the decision in the case of *Lyka Labs Limited and Another V/s. The State of Maharashtra and Another in Criminal Application No. 886/2022 decided on 08.03.2023 of the Hon'ble High Court of Bombay*, the interim compensation order has to be passed against accused No. 1. Hence, Order :

ORDER

1. Application Exh. 12 is allowed in the following terms.
2. Accused No. 1 shall pay ₹1,50,000/- (Rupees One Lakh Fifty Thousand) to the complainant as interim compensation within 60 days from the date of this Order.

Mumbai
Date : 31.01.2024

Sd/-
(Mahesh V. Phade)
Metropolitan Magistrate
7th Court, Dadar, Mumbai