

MHNG080000192023



SCC No.10/2023  
Pramod -VS- Ashfaque

**ORDER BELOW EXH.10**

(Passed on 06/01/2025)

1] This application is filed by the complainant under Section 143 (A) of Negotiable Instrument Act for direction to accused to pay compensation to the complainant. Accused filed say below Exh.11 and resisted the application.

2] Heard advocate for the complainant and the accused. Perused the complaint, the documents filed by the complainant, the application and the say filed by the accused.

3] The record shows that my Learned Predecessor recorded the plea of both the accused on 30.08.2023 below Exh.7. Both the accused pleaded not guilty. This application is filed on 10.11.2023.

4] The case of the complainant is that accused are his good friends. Accused no.1 deals in sells of secondhand vehicle by his firm by name National Motors situated at Ganesh Nagar Nagpur and accused no.2 is government servant. Both accused entered into

agreement with complainant on 23.06.2021 and agreed to purchase four wheeler Maruti Suzuki Ertiga having registration no.MH-46-BA-1175 of complainant for total consideration of Rs.6,30,000/-.

5] It is further case of the complainant that, accused payed complainant Rs.4,00,000/- as a consideration amount out of Rs.6,30,000/- and it is fixed that remaining amount will be given to the complainant after transfer of the vehicle.

6] After some days as the registration process delays, accused no.1 got canceled the agreement and demanded the earnest money given to the complainant. Complainant repay Rs.1,50,000/- to accused no.1 on 08.10.2021 and give assurance to return back the remaining amount within 1 month. Till that day, the possession of the vehicle was with accused no.1.

7] Unfortunately before refunding the remaining amount of Rs.2,50,000/- the vehicle met with an accident and got damaged. Therefore accused no.1 decided to keep the vehicle with himself and given undertaking to return the amount of Rs.2,30,000/- to the complainant. Out of that amount, accused returned Rs.1,50,000/- to the complainant vide two cheques of Rs.50,000/- each and executed a settlement and compromise deed on 29.08.2022 with complainant and undertaken to pay remaining amount of

Rs.2,30,000/-. Accordingly accused no.1 given cheque of Rs.1,55,000/- to the accused which is the subject matter of the present case but the same cheque was dishonoured as payment stopped by the drawer.

8] As per Section 143-A, the compensation as regards the dishonor of the cheque is prescribed in the Negotiable Instrument Act.

9] Advocate for the accused relied upon the judgment of Hon'ble Supreme court in the case of ***Rakesh Shrivastava VS State of Jharkhand*** bearing Cri. Appeal No.741/2024, wherein Hon'ble Apex Court held that, "The provisions of Section 143-A of N.I. Act, we have to be held as directory and not mandatory. Hence we have no manner of doubt that word 'may' used in Section 143-A cannot be constituted or interpreted as 'shall'. Therefore, the power under sub-section 1 of section 143-A is discretionary."

10] The Hon'ble Apex Court laid down some parameters for exercising the discretion under Section 143A those are described in Paragraph no.19 of the judgment and are as follows -

*"19. Subject to what is held earlier, the main conclusion can be summarized as follows:*

- a) *The exercise of power under sub-section (1) of Section 143A is discretionary. The provision is directory and not mandatory. The word 'may' used in the provision cannot be constructed as 'shall'.*
- b) *While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.*
- c) a) *The broad parameters for exercising the discretion under Section 143A are as follows:*
  - i. *The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.*
  - ii. *A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.*
  - iii. *If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.*
  - iv. *If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted.*

*While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.*

- v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.”*

11] After going through those parameters, it found that as per the parameters prescribed by the Hon'ble Apex Court, the Trial Court have to evaluate the merits of the case prima facie along with the prima facie case made out by the complainant and the accused while deciding the application for compensation.

12] The complainant filed original Compromise Agreement on record. I have perused carefully the agreement. It bears the signature of complainant and both the accused. Both the accused undertaken themselves to pay the amount of Rs.1,55,000/- by way of Cheque No.005384 of Axis Bank Ltd., Kamptee. It is specifically mentioned in the Compromise Agreement that they have given the post-dated cheque no.005384 on the date of the Compromise Agreement of the future dated 15.10.2022. Prima facie after going through this agreement and without going through the document

with and formal proof, it seems that both the accused are seems to be liable for payment of Rs.1,55,000/- by way of the cheque in dispute. Therefore as per the judgment of Hon'ble Apex Court and the parameters given for exercising discretion, the complainant prima facie establishes that both the accused undertaken themselves to pay the amount of Rs.1,55,000/- to the complainant and therefore they have given the cheque under the dispute and therefore under such circumstances, the interim compensation is required to be awarded to the complainant.

13] The act prescribes the compensation to the tune of 20% of the cheque amount. After going through the Compromise agreement, it seems that it is a commercial agreement. The vehicle is in the possession of accused no.1. Therefore as it seems from the record that the transaction between the complainant and the accused is of commercial in nature. Both the accused are required to pay the compensation at the tune of 20% of the cheque amount i.e. 31,000/-. Hence, considering all these circumstances and the judgment of Hon'ble Supreme Court both the accused are directed to pay 20% amount of cheque as compensation i.e. Rs.31,000/- jointly or severally to the complainant. Hence I pass the following order.

**- ORDER -**

- 1] The application (Exh.10) is allowed.
- 2] Both the accused are directed to pay compensation of Rs.31,000/- i.e. 20% amount of the cheque to the complainant jointly or severally within one month from the date of order.
- 3] If accused failed to pay the compensation then complainant is at liberty to take the aid of section 421 of Cr.P.C. for the recovery of the amount.
- 4] Order is dictated in open court.

Kamptee  
Date : 06/01/2025.

**(Mohan R. Kamat)**  
Civil Judge, Junior Division,  
Kamptee.