

SCC 91/2022
Anandmohan Vs. Ritesh

ORDER BELOW EXHIBIT - 6
(Passed on this 25th day of January,2023)

1. Present application is filed by the complainant. It is submitted that, the accused and complainant are having family relations. In the month of November,2020 the accused had visited to the complainant and told him that, he is intending to start his new business with his partner and the accused is in need of money and he requested to the complainant to give him hand loan. It is further submitted that, the complainant had agreed to give him hand loan of Rs.22,00,000/- through R.T.G.S. and in cash.

2. It is further averred that the accused had given certain cheque to the complainant and to him to withdrawal the same in the month of May 2021, the complainant contacted the accused before depositing the said cheque but the accused had requested the complainant that due to some reason the amount of the repayment of the said hand loan amount and further requested that he will arrange the said amount till the month of February,2022. But the accused had issued a fresh cheque of Rs.300,000/- in favour of complainant. But the complainant deposited the same cheque on 08/02/2022 in the state bank of India the said cheque returned to the complainant unpaid with returning memo on the reason of "01 Funds insufficient" The said memo received by the complainant on 10/02/2022. The accused had cheated the complainant. Therefore complainant prayed to allow the application.

3. Accused filed his say at Exh.14 and contended that, the complainant paid an amount of Rs.15,00,000/- to the accused only in two installment and even out of that the accused has also returned 6,91,000/- to

the complainant in installment by account transfer and the said aspect clearly reflects from the account statement of the accused and his colleague namely Mrs. Kalpana S. Autkar (i.e. Rs.4,61,000 from the account of accused himself and Rs.2,30,000/- from the account of Mrs. Kalpana Autkar. But the said fact is suppressed by the complainant from the record of this Court. Even the accused has issued 10 to 12 cheque to the complainant as security as demanded by the complainant and out of this he has misused the same. Therefore, the present application is liable to be rejected.

4. Learned advocate Shri. M.D. Paliwal for the complainant argued that, the complainant had given hand loan amount of Rs.22,00,000/- in total to the accused for the purpose through cash and R.T.G.S. Disputed cheque was issued by the accused for discharging his legal debt and liability. But said cheque was dishonored for the reason of fund insufficient. The accused has defrauded to the many persons by taking such hand loan and even the plaintiff is also become escape goat all these fraud by accused. The statutory notice issued to the accused but he did not pay and return the cheque amount. The accused is under liability to pay legal debts. The accused may be directed to give 20% amount of the cheque. He placed reliance upon unreported judgment of Supreme Court in Noor Mohammad Vs Khurram Pasha SLP (Criminal) No.-2872-2022, and unreported judgment of High Court Chattisgarh in Rajesh Soni s/o Shri. P.R. Soni Vs. Mukesh Varma s/o Late shri. J.P.Varma.

5. Ample opportunities given to the accused but he failed to argue. Therefore, his say was taken as argument.

6. In Noor Mohammad case cited supra – The Hon'ble Supreme Court of India has directed to deposit quantum of amount under Section 143 (a) of Negotiable Instrument Act and held that, failure to deposit

compensation amount would not render to deny right to cross examination.

7. In Rajesh Soni cited supra – The Hon'ble High Court of Chhatisgarh held that – Section 143 A is mandatory provision.

8. On going through the averments of the complainant, it shows that the complainant had given hand loan of Rs.22,00,000/- in total to the accused by way of cash and RTGS. The copy of the disputed cheque and return memo it would show that, it was returned with remark fund insufficient. Thereafter, statutory notice dated 02/03/2022 was also issued to the accused.

9. Per contra, the accused did not bring any fact that he had given reply to the statutory notice. On the contrary it is contended that, the complainant had given only Rs.15,00,000/- to the accused. The accused has returned Rs.6,91,000/- to the complainant by bank transfer. Even Rs. 4,61,000/- has been transferred from account of Kalpana Autkar. Considering this fact it is crystal clear that, the complainant had given hand loan to the accused. At this juncture it is not apt to consider the quantum of the hand loan which is subject matter of the trial and evidence. Prima facie the liability accrued in favour of the complainant and accused. Therefore, I do not find any reason to reject the present application.

10. In Ashwin Ashokrao Karokar Vs. Laxmikant Govind Joshi in Criminal Writ Petition No.88/2022 dated 07/07/2022. The Hon'ble High Court of Bombay held that – Provision of Section 143A of Negotiable Instrument Act 1881 are directory and not mandatory. The discretion is upon the Court either grant or not to grant interim compensation. Considering this ruling, I have no doubt in mind that the present provision of Section 143-A of Negotiable Instrument Act is directory and not mandatory.

11. The quantum of compensation upto 20% can be granted as per Section 143-A of Negotiable Instrument Act. In the present case the amount of hand loan is huge. the case may take time for evidence an conclusion of final hearing. Even it is monetary loss to the complainant. Thus it is fair to grant at least amount to prevent a loss. Therefore, it is apt to grant 20% compensation of cheque amount i:e Rs.60,000/-. Thus present application is deserves to be allowed. Hence, I proceed to pass the following order:-

ORDER

1. The application Exh.6 is allowed.
2. The accused is hereby directed to deposit 20% compensation of cheque amount i.e. Rs.60,000/- to the complainant within one month from the date of this order.
3. The complainant is entitle for recovery of said amount as per rule.

Parshioni
Date:25/01/2023

(O.J. Kulkarni)
Judicial Magistrate, First Class,
Parshioni.

