



CNR No. : MH070002612022

Presented on : 22/04/2022

Registered on : 22/04/2022

Decided on : 10/03/2023

Duration: 00 Ys. 10 Ms. 18 Ds.

Exh.13

IN THE COURT OF SESSION LATUR, DIVISION AT UDGIR

**(Presided over by Shri D.P. Satawalekar, Additional
Sessions Judge)**

CRIMINAL REVISION APPLICATION NO. 8/2022

**Sushilkumar
Mamdi,**

Age 52 Yrs. Occ. Business

Resident of Plot No.KHB/LIG/2,

Akka Mahadevi Colony, Opposite High
Court, Kalburgi

Malshettappa

APPLICANT

VERSUS

1) State of Maharashtra

Through APP, APP Office, Udgir

2) Vijaykumar Malikarjun Mankari,

Age Major, Occ. Business

R/o.Deoni, Tq. Deoni,

District Latur.

Mr.S.M.Mududage Advocate for the applicant.

Mr.S.K.Malbhage, Advocate for the respondent No.2.

J U D G M E N T

[Delivered on this 10/03/2023]

1) Being aggrieved by the order dated 19.03.2022
passed by the Ld. JMFC Deoni below Exh.38 in STCC

No.74/2021 directing depositing interim compensation of Rs.2,50,000/- (10%) within 60 days from the date of order, this revision application is preferred to challenge the legality, propriety and correctness of the order.

2) The revision applicant is original accused and the respondent No.2 is original complainant. The respondent No.1 is Maharashtra State impleaded as a formal party.

3) In short, respondent No.2 filed STCC No.74/2021 before learned trial court for the offence punishable U/Sec.138 of the N.I.Act, wherein process is issued against the applicant. Thereafter respondent No.2 filed application (Exh.38) on 19.03.2022 for directing the applicant to pay the 20% of the cheque amount to the respondent No.2/complainant as interim compensation. Notably, the dishonoured cheque in the case is of Rs.25,00,000/-, therefore, the amount of 20% would arrive at Rs.5,00,000/-. Further, on the same day learned trial court directed the applicant to pay interim compensation of Rs.2,50,000/- (10%) within 60 days from the date of the order.

4) Being aggrieved by that this revision application is preferred.

5) Heard learned advocate Mr.S.M.Mududage for the applicant and learned Adv.S.K.Malbhage for the respondent No.2.

6) From the matter on record following points arise for my determination and my findings thereon with reasons are as under :-

Sr. No.	POINTS	FINDINGS
1]	Whether the impugned order is correct, legal, and proper ?	Yes
2]	What order ?	The revision application is dismissed.

REASONS

As to points 1 and 2 :

7) Indisputably, the revision applicant is original accused and respondent NO.2 is original complainant before learned trial court in the impugned case bearing STCC No.74/2021. It is alleged in the complaint that the applicant issued cheque No.250886 of Rs.25,00,000/- dated 21.12.2022 drawn on his account in favour of respondent No.2 for the repayment of hand loan obtained by him from respondent No.2. Further the said cheque was dishonoured, and the impugned complaint came to be filed. After the cognizance summons was issued to the applicant as an accused and in response to that the applicant appeared before learned trial court. Thereafter the impugned application (Exh.38) was filed before learned trial court for direction to the applicant to pay Rs.5,00,000/- which are 20% of the cheque amount of Rs.25,00,000/-. Learned trial court partly allowed that applicant and directed the applicant to pay Rs.2,50,000/- (10%) as interim compensation to the complainant within 60 days from the date of order.

8) The grievance of the applicant is that his say was not called by learned trial court before passing the order. It is

also submitted that the order of learned trial court against natural justice as he was not heard. The principle of '*Audi Alteram Partem*' that hear the other side or hear both sides is not adopted by learned trial court. Based on that this order is shown as incorrect and prayed for setting aside the impugned order.

9) It is seen that the amended provisions of Section 143-A of the N.I.Act is empowering the court to order the drawer of the cheque to pay interim compensation to the complainant in case he does not plead guilty. I would reproduce Section 143-A of the N.I.Act for better appreciation.

Section 143-A :

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) 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 per cent. 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, (2 of 1974).

(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, (2 of 1974) shall be reduced by the amount paid or recovered as interim compensation under this section.

10) It appears from that section that it is enabling provision to the court to direct the interim compensation. It does not contemplate any stipulation upon the court to call the say of the accused before passing the order of interim compensation. No doubt, as a natural justice learned trial court could call the say of the accused and hear him on the relief. But it is not mandatory. Further, it can be irregularity and illegality. Therefore, I do not find any illegality, incorrectness or impropriety in the impugned order. Hence, I answer point No.1 in the negative and pass following order.

ORDER :-

- 1)** Criminal Revision Application No.8/2022 is rejected.
- 2)** Inform the Ld. Trial Court accordingly.

Udgir.

Date : 10.03.2023

(D.P.Satawalekar)

Additional Sessions Judge-1, Udgir

CERTIFICATE

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

Name	of	Mr.K.S.Malshette (Grade-I)
Stenographer		
Court		District Judge-1 & Additional Sessions Judge, Udgir
Date		10/03/2023
Order signed by the		14/03/2023
Presiding Officer on		
Order uploaded on		14/03/2023