

ORDER BELOW EXH.17 IN S.S.C. NO. 378/2019

(Pravin Magnalal Doshi Vs. Vijay Rohidas Shinde)

(CNR No. MHPU17-001986-2019)

1. This is an application filed by the complainant seeking interim compensation to the tune of 20% of the cheque amount in view of the newly added section 143-A of The Negotiable Instrument Act 1881. (for brevity "N.I. Act").

2. Learned advocate for the complainant submitted that this Hon'ble court has recorded plea of the accused below Exh.16 whereby the accused has pleaded not guilty and claimed to be tried by this court. Therefore, in view of the section 143-A of N.I. Act the accused is liable to pay 20% of the cheque amount to the complainant as an interim compensation.

3. Learned advocate for the complainant has placed his reliance upon the judgment of Hon'ble Suprtme Court in G.J.Raja Vs. Tejraj Surana, Criminal appeal No. 1160/2019 and Surendrasing Deswal @ Col.S.S. and others Vs. Virendra Gandhi, 2019(2) Crim. 385 SC to contend that effect of the amendment of section 143-A of N.I. Act is to be prospective in nature and available to the cases where offences were committed after the introduction of section 143-A of N.I. Act, in order to force the accused to pay such interim compensation. Hence, prayed accordingly.

4. Per contra, the application came to be resisted by the accused. The accused has filed his say at Exh.19 to the present application. It is contended that, the complainant has filed present

application in order to harass the accused financially. The complainant has filed false case against the accused. The complainant alleged that the cheque of Rs. 1,00,000/- (One-lac rupees only) given by the accused to the complainant has been dishonored. The complainant has actually seeking to misuse the provision of the section 143-A of N.I. Act. As such, the accused is not in a position to pay 20% of cheque amount as interim compensation to the complainant.

5. It is further contended that, in section 143-A of N.I. Act the word “may” has been used to indicate that the court is not bound to order interim compensation and same is subject to judicial discretion. Hence, prayed to reject the application.

6. Heard both the sides. Perused the application and say filed thereon. So also, I have gone through the record. It is evident from the record that the complainant has filed present complaint on 24-04-2019 under section 138 of N.I. Act and alleged that the accused is liable to pay Rs.1,00,000 /-(One-lac rupees only) to the complainant towards the legally enforceable debt. However, the accused issued a cheque bearing No. 254658 dated 14/02/2019 in favour of the complainant of Rs.1,00,000 /-(One-lac) and said was dishonored to the reason of “**Funds insufficient**”. Thereafter, complainant issued a legal notice on 08/03/2019 and demanded amount of cheque to the accused. However, the accused has failed to pay the cheque amount. Therefore, the complainant has constrained to approach before this court.

7. The Parliament has passed The Negotiable Instrument Amendment Act 20 of 2018, whereby, two new sections viz. section

143-A and 148 have been inserted in the main Act. Section 143-A of the amendment Act 2018 is read as under-

“143A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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.*
- (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, shall be reduced by the amount paid or recovered as interim compensation under this section.”*

8. Perusal of above provision make it crystal clear that, it is discretionary and not mandatory on the part of the Court to order interim compensation such a word "Court may order" is used in the section which denotes that it is judicial discretion granted to the court to order interim compensation in appropriate cases which shall not exceed 20% of the amount of cheque. As far as amendment Act 2018 is concerned, it came in the force on 01/09/2018 by notification number SO.3995(E) dated 16/08/2018 issued by the Ministry of Finance of India. However, the said amendment is totally silent on the point of its effect such as prospective or retrospective. However, now the Hon'ble Supreme Court in G.J. Raja case cited supra, has made it clear that the section 143-A of amendment Act 2018 has prospective in nature. Now, coming to the fact of present case, obviously this complaint has been filed after the commencement of amendment Act 20 of 2018. Therefore, in my considered view an interim compensation to the complainant can be granted. As such, the accused has not pleaded guilty to the charge and claimed to be tried. However, the amount of cheque is a huge one. Therefore, in my view it will be proper to order 10% of cheque amount as interim compensation. Since, from the language of section 143-A it is manifest that the court is not bound to order 20% of the cheque amount as interim compensation. The only rider is given that the interim compensation shall not exceeds 20% of amount of the cheque. Hence, in my considered view that the complainant is entitled of Rs.10000/- (Ten-Thousand rupees only) i.e. 10% of the cheque amount as interim compensation from the accused. Of course, subject to condition that if the accused is acquitted after trial then complainant shall repay the accused the amount of interim

compensation with interest at the bank rate as published by R.B.I. prevalent at the beginning of the relevant financial year from within 60 days from the date of the order. Hence, I pass the following order :-

ORDER

1. The application Exh.17 is partly allowed.
2. The accused is directed to pay Rs.10000/- (Ten-Thousand Rupees only) i.e. 10% of the cheque amount as an interim compensation to the complainant within 60 days from the date of this order.
3. The complainant to furnish the undertaking before the Court that after accept of interim compensation from the accused that in case the accused is acquitted he shall repay to the accused the amount of interim compensation with interest at the bank rate as published by RBI prevalent at the beginning of the relevant financial year within 60 days from the date of the order.
4. No order as to costs.

Sd/--

(Khwaja C. Kalal)

Date:- 06/02/2024 Judicial Magistrate First Class, Indapur,
Tal. Indapur, Dist. Pune.

C E R T I F I C A T E

“ I affirm that the contents of this P.D.F. file order are same word for word as per original order.”

Name of Steno : Shri. Chalwade G.S. (Grade – III)

Court Name : Shri. Khwaja C. Kalal,
2nd Jt. C.J.J.D. & J.M.F.C., Indapur.

Date of Order : 06/02/2024

Order signed by : 06/02/2024
presiding officer on

Order uploaded on : 06/02/2024