



ORDER BELOW EXH.14.

This is an application for interim compensation to the extent of 20 % of the disputed cheque.

2. It is averred in the application that the complainant has filed complaint under section 138 of N. I. Act. The amount of the dishonored cheque is of Rs. 16,25,000/- and Rs. 3,19,123/-. Further he submitted that as per this act complainant is entitled to claim interim compensation amount as per section 143 (a). Further submitted that, Accused is drawer of cheque. The family of complainant has suffered a lot as the accused has blocked hard, earned money. Complainant is ready to abide the conditions which the Hon'ble Court may deem fit. Therefore, he prayed to direct the accused to pay interim compensation @ 20 % of cheque amount i.e, 16,25,000/-(Sixteen Lakh Twenty Five Thousand only) and 3,19,123/- (Three Lakh Nineteen Thousand One Hundred Twenty Three).

3. Accused has filed his reply and opposed the application. He submitted that there was no partnership of medical shop between complainant and him. Accused has taken hand loan from complainant and Rahul Bhandari. Out of that amount most of the amount is returned by him to them. The allegations of complainant are yet to be proved. Complainant, Rahul Bhandari and accused were

friends. Complainant has given hand loan of the Rs. 16,25,000/- to him. He paid Rs. 3,12,550/- to the complainant. Complainant asked accused to give cash amount. Therefore, accused in the Month of April 2020 to December 2020 has given an amount of Rs. 10,75,000/-. Now, only Rs. 2,37,450/- is remain to be paid to the complainant. Except this accused is not bound to pay any amount to the complainant. Accused has not given the alleged cheque to the complainant. The bag of accused containing cheque book, slip, blank cheque with the signature of accused etc. is misplaced. In that regard accused filed complaint in police station. The cheque mentioned in the complaint were in the bag which was misplaced. Accused use to keep his bag in the medical shop of the Rahul Bhandari. Complainant has took away alleged cheque from the bag of the accused behind his back. Complainant and Rahul Bhandari has misused the blank cheque of the accused. On the basis of that bogus cheque complainant has filed false case against the him. Complainant is not came with clean hand. Hence, prayed for rejection of the applicaiton.

4. Heard ld. advocate both sides. Ld. Advocate for the complainant has argued that accused is drawer of the cheque and he is entitled to claim interim compensation as per section 143 (a). Complainant is suffering from economic problem due to the act of accused. Therefore prayed to grant interim compensation. On the other hand ld. Advocate for the accsued aruged that complainant has filed false case against him on the basis bogus cheque. Further

argued that complainant cannot file present application under this section. Also argued that section 143 (a) is not mandatory in nature. To support his argument he relied upon **MANU/MH/2221/2022 In Ashwin Karokar V/s Laxmikant Joshi** – Wherein Hon'ble High Court has held that 143 (a) of the N.I.Act is discretionary and not mandatory. The word “may” as occurring in section 143 (a) of the N.I.Act empowers the court with a discretion to direct interim compensation and it is not necessary that in all cases. The trial court must necessarily direct the interim compensation to the paid and such directions should be given only on a case to case basis based upon the facts of each case. I have gone through the said citation while deciding the application under section 143 (a) it is necessary to consider whether there is requirement as spelt out from the facts of each case for grant of compensation and not to order award of deposit in each and every case. Therefore, with due respect the principle laid down in the cited case is applicable to the case in hand. However, the facts in the cited case and case in hand are different. Also relied upon **2016 (3) MHLJ Meera V/s. Ashalata Kondkar,**

- 2) **2016 MHLJ in M. Jairam Shetty V/s Vijay Hariya,**
- 3) **2016 (4) MHLJ Sachin Food Proceesar V/s Sanjay,**
MANA/H0014/2020, Tasneem V/s Ramesh,
- 4) **Basalingappa V/s Mudibasappa**

5. I have gone through the citation referred by accused with due respect the facts in the cited case and the case in hand are

difference. Therefore the citation referred above are not applicable to the case in hand.

6. Perused the record. It is the matter of record that accused has filed his appearance and pleaded not guilty. Section 143 (a) of N. I. Act read as under. 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.

7. In view of say filed accused has submitted that complainant is not came with clean hand and Complainant and Rahul Bhandari in furtherence of there common intention has misused the cheque. They have taken his signed blank cheque behind his back. Complainant prepared bogus cheque and on the basis of that cheque filed false case aganist him. Accused denied to give partnership to the complainant and Rahul Bhandari. Therefore, in order to harass the accused, complainant filed this false complaint. However, even though it is so complainant has prayed for interim compensation under N. I. Act. Therefore, for interim compensation section 143 (a) of N. I. Act is provided. So far as considering the say of accused that the complainant misued the blank cheque with the signature of the accused and on the basis of bogus cheque filed false case against him. Whether the cheque was misued or not, whether he

has returned most of the amount to the complainant or not is concerned the said facts will decide after leading the evidence. So also regarding lodging of report to the police station is concerned accused has not brought anything on record. Therefore, the said fact will not affect to the relief prayed under this application. Hence, the contention made by the accused will not affect while deciding the present application. Therefore, I do not find any substance in the contention made by the accused.

8. On perusal of say filed by the accused it is clear that the accused has nowhere disputed signature of cheque. His defence is only that complainant misused his blank cheque behind his back. As already discussed above. This fact will be considered at the time of trial. The process is issued against the accused by considering prima facie case against him. The said order is still in existence. Accused has not denied his liability however, accused has every opportunity to conduct cross examination of complainant and take defence as he wish.

9. Section 143 (a) of N. I. Act empowers the court trying the offence punishable under section 138 of N. I. Act to order the drawer of the cheque to pay interim compensation to the complainant in case accused pleads not guilty. Perusal of cheque dated on 19.07.2021 prima facie reveals the name of accused as drawer of cheque and signed on behalf of accused. Accused has not disputed his signature on cheque, in entire reply. Section 143 (a) of N. I. Act

opens with non obstinate clause and said provision prevails despite of anything to the contrary as mention in the code of Criminal procedure. The intent behind these provision is to provide aid to the complainant during the pendancy of proceeding. Under Section of 138 of the act, where he is already suffering double edged sword of lost of receivables by dishonour of the cheque. And subsequent legal cost in persuing claim and offence. Considering all these aspects in the interest of the justice, I hold that accused is laible to pay interim compensation to the tune of 5 % of amount of cheque. Hence, I pass following order.

ORDER

1. The application Exh. 14 is allowed.
2. Accused is directed to pay 5 % of the amount of subject cheque brearing numbers 155368, 155369 as interim compensation to the complainant within stipulated period.

Date-04.03.2023

(S.D. Mukkanwar)
Judicial Magistrate First Class,
(Court No. 3) Daund, Dist.- Pune

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 the Stenographer	:	D. R. Kore, Stenographer (Grade -III)
Name of Court	:	Smt. S.D. Mukkanwar 2 nd Jt. C.J.J.D , Daund Tq. Daund, Dist. Pune
Date of order	:	04/03/2023.
order signed by the P.O. on	:	04/03/2023.
order uploaded on	:	08/03/2023.