



ORDER BELOW EXH.13.

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 complianant has filed complaint under section 138 of N. I. Act. The amount of the dishonored cheque is of Rs. 11,25,000/-, Rs. 5,00,000/- 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. 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, 11,25,000/-(Eleven Lakh Twenty Five Thousand only), 5,00,000/- (Five Lakh 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 he has not stopped or block the income of complainant. The contentions in the complaint are false. There was no parternership talk between him and complainant. Therefore, he never asked for money to the complainant and Nitin Oza. Complainant never paid the amount as mentioned in the application.

He borrowed some amount from the complainant and out of that amount most of the amount was returned to them. He took handloan from the complainant and out of that he returned the amount of Rs. 8,27,427/-. Only Rs. 2,97,573/- remains to be paid to the complainant. He is ready to return the said amount. He is bound to return the amount of Rs. 2,97,573 only to the complainant. He never paid the cheque bearing No. 155370, 155371 and 155372 to the complainant. On 17.09.2020 his bag having cheque book, slip etc. was lost. He lodged report in the police station. On 18.09.2020 through online he stopped his payment. He never paid any cheque to the complaint in month of July 2021. Complainant and Nitin Oza in furtherance of there common intention has misused the cheque. They have taken his signed cheque behind his back. Complainant prepared bogus cheque and on the basis of that cheque filed false case against him. Accused denied to give partnership to the complainant and Nitin Oza. Therefore, complainant filed this false complaint. Complainant is not came with clean hand. Hence, prayed for rejection of the applicaiton.

4. Heard ld. advocate of 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 be 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- Wherein it is held that the principle that a criminal charge must be prove beyond reasonable doubt, applies to the case of offences punishable under section 138 of Negotiable Instrument Act. 3) 2016 MHLJ in M. Jairam Shetty V/s Vijay Hariya – Wherein Hon'ble High Court held that the presumption under section 139 is rebuttable. It is open to the accused to prove preponderance of

probabilities that the cheque was not issued towards consideration or towards the discharge of any debt or other liability. 4) 2016 (4) MHLJ Sachin Food Proceesar V/s Sanjay, MANA/H0014/2020, Tasneem V/s Ramesh - Wherein Hon'ble High Court held that the law is now fairly well settled that presumption to be drawn under section 118 (a) and 139 of N.I.Act can be rebutted not only through the direct evidence of the accused, but also from the materials on record and also by reference to the circumstances upon which accused relies. The standred of proof is essentially that of preponderance of probabilities and not proof beyond reasonable doubt. Basalingappa V/s Mudibasappa- Wherein Hon'ble Supreme Court has held that the presumption under section 139 is a rebuttable presumption and onus is on accused to raise probable defence. Standred of proof for rebutting presumption is that of preponderance of probability. To rebut presumption it is open for accused to rely on evidence led by him or accused can also rely on materials submitted by complainant in order to raise a probable defence. It is not necessary for accused to come in witness box in support of his defence. Section 139 impose an evidentiary burden an not a persuasive burden. I have gone through the citation referred by accused with due resepect the facts in the citated case and the case in hand are different. Therefore the citation referred above are not applicable to the case in hand.

5. Perused the record. It is the matter of record that accused

have filed their appearance and have 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.

6. In view of say filed accused has submitted that complainant is not came with clean hand and Complainant and Nitin Oza in furtherence of there common intention has misused the cheque. They have taken his signed 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 Nitin Oza. Therefore, deliberately to harass the accused, complainant filed this false complaint. He lodged report in the police station about his missing bag which contents the disputed cheque. 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 signed cheque of the accused and on the basis of bogus cheque filed false case against him. Also submitted that he has repaid most the amount to the complainant and regarding his lodging report to the misplace of bag is concerned he has not filed anything on record to

show the said fact. So also the said facts will decide after leading the evidence. 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.

7. On perusal of say filed by the accused it is clear that the accused has nowhere disputed his signature on the disputed cheque. 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.

8. 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 it, 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 pendency of proceeding. Under Section of 138 of the act, where he is already suffering double edged sword of lost

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of receivables by dishonour of the cheque. And subsequent legal cost in pursuing claim and offence. Considering all these aspects and the facts of the case and 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. 13 is allowed.
2. Accused is directed to pay 5 % of the amount of subject cheque brearing numbers 155370, 155371 & 155372 as interim compensation to the complainant within stipulated period.

Date-04.03.2023

Sd/-xxx
(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.