



ORDER BELOW EXH.31 SUM.CRIMINAL CASE No.1677/2019

(Passed on 29th August 2024)

CNR NO. MHPU230032532019

1. This instant application is moved on behalf complainant for seeking interim compensation under section 143-A of the Negotiable Instruments Act, 1881 (in short N.I. Act).

2. As per the contentions of complainant, amount of Rs.8, 42,560/- is due and recoverable against accused partnership firm and its partners. Accused issued cheque bearing no.000486 for Rs.8, 42,560/- dated 17/07/2019 of HDFC Bank, Branch- Mohammadwadi, Hadapsar, Pune. The cheque was dishonored on its presentation. Therefore, complainant filed this complaint under N. I. Act. Process has been issued against accused. They appeared and pleaded not guilty. It is contended that, as per Amendment Act, 2018 in N.I. Act, now complainant is entitled for interim compensation up to 20% of cheque amount. Hence, complainant prayed to allow the application.

3. Accused no.2 filed say below Exh.37 and opposed the application on ground that the complainant filed false complaint against them. They denied all contentions of application and submitted that, on 22/08/2023 accused appeared in the matter but complainant has not filed the application at earlier date. The present application is filed only to prolong the proceeding. Accused no.2 is not liable to pay any amount to complainant. The complainant is misusing the legal procedure to harass him. Hence, he prayed for rejection of application.

4. Accused no.3 filed say at Exh.39 and opposed the application on the ground that, the complainant filed present complaint only against two partners accused no.2 and 3. In fact there are three partners. Third partner Dashrath Dahivade has not been made accused in the present complaint. However, the complaint as well as present application is not maintainable. If application is allowed accused no.3 will suffer financial loss. Hence, he prayed for rejection of application.

5. Heard both the learned counsels at length.

6. Upon rival contentions of both sides, following points arise for my determination to which I have given my findings along with reasons thereon as follows.

<u>Sr.No</u>	<u>POINTS.</u>	<u>FINDINGS.</u>
1.	Whether complainant is entitled to interim compensation under Sec. 143-A of N.I. Act.	No.
2.	What order ?	As per final order.

REASONS

7. Before proceeding it is desirable to note here the object of inserting Sec.143-A in the N.I. Act by way of amendment. The sole object of Sec. 143-A of N.I. Act is to address the issue of undue delay in final resolution of cheque dishonored cases so as to provide relief to payee of dishonored cheque and to discourage frivolous and unnecessary litigations, saving the time and money of litigating parties as well as Courts. Further, it was expected that the amendment will strengthen the credibility of cheque and help to raise trade and commerce.

8. In case in hand, by way of this application complainant claimed interim compensation. Accused raised objection that it is not

just and proper to pay the 20% of the cheque amount before trial, as complainant filed false complaint against them. It is also submitted that the complainant has not made third partner as accused in the present complaint. However, prima facie complaint is not maintainable.

9. Both Ld. Counsels for complainant and accused placed their reliance on Rakesh Ranjan Shrivastava Vs. State of Jharkhand 2024 0 Supreme Court 229 wherein Hon'ble Apex Court held that, provision of sub section 1 of section 143-A of Negotiable Instruments Act, 1881 which provides for grant of interim compensation is directly and not mandatory. The provision is discretionary the word 'may' used in the provision cannot be construed as 'shall', non-payment of interim compensation by accused does not take right to defend prosecution, the broad parameters for exercising the discretion under section 143-A are as follows:-

- i] The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.
- ii] A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.
- iii] If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.
- iv] If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any between the accused and the complainant etc.
- v] There could be several other relevant factors in the peculiar facts

of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.

10. In the backdrop of above legal position, I have gone through the record of the case in hand. It is the case of complainant that, accused partnership firm is carrying out business of manufacturing ready-mix concrete. Accused no.1 is partnership firm, accused no.2 and 3 are partners. Accused partnership firm purchased flyash material from the complainant for their business. Accused purchased said material worth of Rs.8,42,560/- till 01/04/2018. The complainant produced on record invoices, original cheque, demand notice and postal acknowledgment receipts.

11. So, far as objection of accused that third partner has not been made accused in present complaint is concerned, accused filed partnership deed on record. Upon perusal of partnership deed, it is seen that, accused no.2, 3 and third partner Dashrath Tulshiram Dahivade established partnership firm. In reply to the objection of accused, ld. Counsel for complainant submitted that, third partner Dashrath Dahivade was retired partner when transaction took place in between complainant and partnership firm. However, it is disputed question whether third partner was existing partner or retired partner when alleged transaction took place.

12. It is to be noted that, the complainant suppressed the fact of existence of third partner and his date of retirement. When complaint is filed against partnership firm all the partners responsible for the business are liable to the transaction effected by the partnership firm. In instant case, prima facie it is not clear that being partners only accused no.2 and 3 are liable to pay the alleged amount to complainant. As laid down in Rakesh Ranjan Vs. State of Jharkhand (Supra) the provision

under section 143-A is discretionary and not mandatory. Considering the facts and circumstances of present case, it is not just and proper to grant interim compensation to complainant by holding the liability of only two partners.

13. Thus, in view of above discussion, I am of the opinion that it is not just and proper to allow interim compensation up to 20 to complainant. Hence, I answer point No.1 in negative and to answer point No.2, I pass the following order:-

ORDER

1. The application below Exh.31 is rejected.
2. Costs in cause.

Rajgurunagar-Khed
Date :-29-08-2024

(S.B.Naiknavare-Garad)
Judicial Magistrate F.C.
Court No.3, Rajgurunagar-Khed
Dist. Pune