

**S.S.C. No. 329/2020**Kiran Laxman Gajinkarb vs.
Umesh Sudhakar Sawant**MHSI06-000680-2020****Order Below Exh.35 in S.C.C. No.329/2020**

(Passed on : 06/08/2024)

This application is filed by the complainant for seeking interim compensation, as Provided under Section 143(A) of the N. I. Act, for 20% of the cheque amount (in view of amendment Act of 12/08/2018) from the accused.

02. Accused has filed his say at Exh.38 and stated that, complainant has filed present application to cause delay in matter. As per section 143-A, prayer of interim compensation cannot be claimed at this stage. 20% amount u/s. 143-A is discretion of the Court and it is not mandatory. The burden is on complainant to prove that, accused has issued cheque to him in relation to legal debt payable to him. If, order is passed as to pay 20% amount as interim compensation, then, there is difficulty to recover it after acquittal. Accused is ready for hearing. Hence, he prayed for application may kindly be rejected with cost.

03. Perused the record, application and say.

04. Considering the amendment in Negotiable instrument act, it gives discretion to the Court that, Court may order the drawer of the cheque to pay interim compensation to the complainant, provides, in summons cases where accused pleads not guilty to the accusation made in the complaint. However, said amendment of 2018 has prospective in effect and only applicable in cases where offence has been taken place after this amendment. That is after 01/09/2018. It is important to note here

the effect of the amendment in present case as it is settled principle laid down by Hon'ble Supreme Court in **G. J. Raja Versus Tejraj Surana, decided on 30 July 2019 by Honble Justice U. U. Lalit.**

05. In present case in hand, on perusal of complaint, *prima facie* it appears that, cheques were issued by the accused on 20/04/2020 and it was returned dishonored on 16/07/2020. No doubt, it is not mandatory to allow interim compensation. However, by considering *prima facie* case, process is issued against accused. Application filed on 10.10.2023 and accused has filed reply on 08/01/2024. To denial of interim compensation, accused must satisfy that, delay has not been caused at his instance. However, no such grounds stated by accused. NBW was issued against him for non-appearance. Hence, he delayed the trial. Therefore, he is not entitled to escape from liability.

06. Further, complainant under section 138 of N.I. Act are directed to be expedite as per guidelines given by the Hon'ble Supreme Court. Matter is of the year 2020 and since then, more than 4 years are lapsed. Considering the period of delay, complainant entitled to get interim compensation as per the object of section 143-A of N.I. Act. Considering this aspect, I am of the view that, compliant is well within the period required by amendment act 2018. However, in such cases Court has discretion to grant interim compensation to the complainant.

07. Therefore, in order to fulfill the object and intention of the legislation and considering the stage that, is in present case

accused has pleaded not guilty vide Exh.10, I have pass following order.

–:: **ORDER** ::–

1. Application is partly allowed.
2. Accused is directed to pay 10% of the cheque amount to the complainant as interim compensation, within the period of 60 days from the date of the order and same will be taken into consideration at the time of imposing fine or amount of compensation after conclusion of the trial.
3. The complainant to give undertaking that in case of acquittal of the accused, the complainant would repay the said amount of interim compensation, if received, along with the bank interest within 60 days after such order of acquittal.
4. Both parties to take note.

(Dictated and pronounced in open Court.)

Date:– 06/08/2024

(Smt.R.G.Kumbhar)

Place:–Sawantwadi

Judicial Magistrate, First Class,
Sawantwadi.

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer	:- U. B. Hundekar (Grade-3)
Court	:- Jt.C.J.J.D. & J.M.F.C. Sawantwadi
Date	:- 06/08/2024
Judgment/Order signed by the Presiding Officer	:- 08/08/2024
Judgment/Order uploaded on	:- 08/08/2024