

ORDER BELOW EXH. 8 IN S.C.C. No. 73/2019

1. This is the application filed by the complainant under Section 143A of the Negotiable Instruments Act (in short 'N.I. Act') for interim compensation.

2. The complaint has been filed for the dishonor of cheque of amount of Rs. 92,99,364/-. The process was issued against on 06/05/2019. The plea of the accused was recorded below Ex. 10 on 12/06/2019 to which accused pleaded not guilty. The instant application has been moved by the complainant on the same day of the plea. It is contention of the applicant/ complainant that the complainant is credit bank (Patsanstha). The accused was working as a Manager of complainant patsanstha. The accused has committed the embezzlement of a money worth of Rs. 92,99,364/- while working as Manager of complainant patsanstha. The cheque in question has been issued to compensate to above mentioned embezzlement committed by the accused. The accused has committed said embezzlement of money deposited by poor people by way of deposits, gold loans etc. Now, those people are asking for return of their money. It will take considerable long time to decide the case and therefore, meantime to return the money of above mentioned depositors, the complainant has filed the instant application to have interim compensation from accused of Rs. 18,59,872/-.

3. The accused has filed his reply below Exh. 14 & contested application vehemently. It is the contention of the accused that he was working as Manager of complainant patsanstha till the year of 2015. After 2015, he resigned from the post of Manager of complainant patsanstha. At the time of his resignation, the complainant patsanstha has agreed by notarized deed that no any

dues is payable by him to the complainant patsanstha. Thereafter, he joined one Dattakrupa Gramin Bigarsheti Sahakari Patsanstha (Dattakrupa Non-Agricultural Co-operative Credit Bank). Due to his (accused's) honesty, integrity and hard work Dattakrupa Gramin Bigarsheti Sahakari Patsanstha has acquired good reputation due to which the complainant patsanstha and its officers were jealous of him and trying to defame him. The accused had started a gift gallery namely Rudreshwar Gift Gallery at Malharpeth. While he was shifting the material of Gift Gallery his cheque book was lost. Therefore, he had lodged complaint with Malharpeth Police Station on 30/11/2018 and had also informed his banker Shivdaulat Sahkari Bank about the loss of his cheque book. He then never found the lost cheque book again.

4. It is further contention of the accused that when he first time received the demand notice, he came to know that the cheque in question has been misused by the complainant from the lost cheque book. He replied said demand notice and made aware to the complainant that the cheque in question is lost from his cheque book. It is further contended by accused that he has never committed embezzlement of any amount. The complainant patsanstha has stolen cheque book of accused and filed the instance bogus and false complaint. The accused has also filed Revision Application against the order of issue process passed by this Court. Therefore, as per accused instant application for liable to be rejected. Finally, accused has made prayer to reject of this application.

5. Heard advocate for complainant and advocate for accused at length. Perused the record.

6. Section 143A of N.I. Act has been inserted in the act by Amendment Act 20 of 2018. Said section reads as follows :-

“143A. Power to direct interim compensation.-

- (1) 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 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 percent 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 years, 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.

7. Perusal of above mentioned section shows the scheme of interim compensation in cheque bounce case as follows:-

- i) Under Section 143A, the interim compensation can be awarded not exceeding 20% the amount of cheque,
- ii) The pre-condition before passing an order interim compensation is that the accused must have pleaded not guilty,
- iii) The interim compensation shall be paid within 60 days from the date of the order the time can be further extended not more than 30 days on sufficient cause being shown by the drawer of the cheque.
- iv) In the case of acquittal of the accused, the complainant is liable to repay amount of the interim compensation to the drawer with interest at the bank rate as published by Reserve Bank of India.

8. Thus, the scheme of Section 143A N.I. Act nowhere prescribe the guidelines about how to use discretion while awarding the interim compensation. There appears no guiding principles in Section about how to use discretion to determine the quantum of compensation within range of its upper limits of 20 % of cheque amount. Therefore, after the perusal of Section 143A N.I. Act, the impression can be gathered that in almost every case wherein the plea of the accused has been recorded, and where the application for

interim compensation has moved, such interim compensation can be awarded. The only pre-condition appears that the plea of accused must have been recorded.

9. In the instant case, the plea of the accused has been recorded below Ex. 10 and accused has pleaded not guilty. Thus, the instant application is technically fit for being entertained. Now, the question is whether applicant is entitled to receive interim award. Now, it is the defence of the accused that he is not guilty at all. In fact, he does not owe any legally enforceable debt to the complainant. In fact, it is contention of the accused that the cheque in question has been stolen by the complainant patsansta, the act against which the accused has made complaints with various authorities. It is also contention of the accused that the very order of this Court of issue process is assailed by the accused in Revision Application. Thus, it is the contention of the accused on these above mentioned grounds, the instant application of the complainant is liable to be rejected.

10. I am in disagreement with the contention of the accused. Firstly, the Section 143A N.I. Act itself does not provide for entitlement or dis-entitlement of the complainant to receipt of interim award on basis of the merit or de-merit of the very complaint. Whether the complaint is bogus or false is a matter to be decided after the trial. This is not the stage where the merit of the complaint can be decided. It is true that it may be possible that finally the accused may be acquitted of the offence of cheque bounce leveled against him. It may be also possible that it would turn out that he was not owing at all any legally enforceable debt to the complainant. In such case, the section 143A N.I. Act has provided the

counter compensation to the accused in a way that in such circumstances, the complainant is liable to repay the amount of interim compensation received by him at the rate of interest prescribed in the section itself. In my considered opinion this is the only guarantee/security offered by the Section 143A to the accused in case of his final acquittal. But the possibility of his acquittal howsoever be high does not make the complainant dis-entitled to receive the interim compensation. The fact that the very issue process order of this Court is under challenge before Superior Court is in itself no bar to award interim compensation unless the Superior Court has by its order directed otherwise. Therefore, there is no legal bar in the instant case to the complainant to receive the interim compensation.

11. Now, the only question what should be the quantum of interim compensation. As observed above there are no guiding principle in the Section 143A N.I. Act about how to determine the quantum of interim compensation. In absence of such guidelines, the Court has to look deeply into the pleadings, the circumstances and documentary evidence in order to have clue about deciding such quantum. In the instant case, the complainant is the Co-operative Credit Patsanstha. It is in business to accept the deposits from general public and to offer loans for needy persons. As such, the money possessed by the complainant is a public money for which complainant is accountable for public. Therefore, in my considered opinion, the complainant is entitled to receive the interim compensation to its fullest limit of 20% of cheque amount. Thus, the complainant is entitled to the amount of Rs. 18,59,872/- as interim compensation. The accused is liable to pay the same. Accordingly,

the application deserves to be allowed. Hence, I pass following order.

-: O R D E R :-

1. The application is allowed.
2. The accused is directed to pay Rs. 18,59,872/- (Rs. Eighteen Lakhs Fifty-Nine Thousand Eight Hundred and Seventy-Two) to the complainant as an interim compensation within 60 days from the date of this order.
3. Costs in cause.

Place : Patan
Date :- 20/10/2021

Sd/-
(Pramod S. Patil)
Judicial Magistrate F.C., Patan.