

**ORDER BELOW EXH. 8 IN S.C.C. NO. 73/2019.**

The complainant society has filed this application for interim compensation @ 20 % on the cheque amount vide section 143-A of the Negotiable Instrument Act, (for short "N.I. Act"). Say of the accused was called thereon.

**Relevant facts about the instant application :**

2. Initially, after hearing both the parties, Ld. Predecessor vide its Order dt. 20/10/2021, allowed the application and directed the accused to pay interim compensation of Rs.18,59,872/- to the complainant society. The accused challenged said order before The Hon'ble Additional Sessions Judge, Karad by way of Criminal Revision Application No.23/2021. Therein, the Hon'ble Additional Sessions Judge vide its Judgment dt. 19/08/2022, allowed the Revision Petition of the accused and thereby pleased to set aside order below Exh.8. The Hon'ble Additional Session Judge, Karad further directed this Court to rehear the parties and decide the application Exh.8 a fresh. Accordingly, both parties appeared before this Court and they are reheard.

**Contentions of the complainant society :-**

3. The accused was working as a Manager in the complainant society. During the said period, the accused has committed embezzlement of Rs.92,99,364/-. For the purpose of said embezzlement, the accused issued the relevant cheque. The accused has committed embezzlement of amounts deposited by poor people on account of gold mortgage, other deposits etc. From time and again, the account holders of the complainant society are demanding the embezzled amount committed by the accused. Therefore, said embezzled amount is necessary to be given to the poor people.

Hearing of the case and decision on its merits will take its own time. During this period, the interim compensation @ 20 % upon the cheque amount is required to be given to the complainant society. Thus, the complainant society prayed to grant interim compensation of Rs. 18,59,872/- by way of interim compensation @ 20% upon the cheque amount of Rs. 92,99,364/-.

**Contentions of the accused :-**

4. The accused is working as a Manager at Dattakrupa Gramin Bigarsheti Sah. Pat-Sanstha, Malharpeth. In the year 2015, due to personal and family difficulties, he resigned from the earlier service in complainant society. Said resignation was accepted by Chairman and Secretary of the complainant society. At that time, the complainant society executed No Dues Certificate before the Notary.

5. After joining Dattakrupa Co-operative society, due to his hardwork and honesty, said co-operative society is getting goodwill in the society. Therefore, the complainant society and its Officers started grudge against the accused and started defamation of the accused. At that time, accused started Rudreshwar Gift Gallery shop at Malharpeth. During transportation of goods of the said shop, cheque book of the accused of Shivdaulat Co-operative Bank, Malharpeth was lost. He lodged complaint about missing cheque book to Police Station Malharpeth on 30/11/2008. He also gave complaint to Shivdaulat Co-operative Bank, Malharpeth.

6. But, his cheque book was not found. Thereafter, he received notice of the complainant society and came to know that, the said complaint is filed. The disputed cheque is from said missing cheque book. At that time, the accused issued notice to the complainant society regarding missing cheque book. But, the complainant society has filed said false complaint against him.

7. The embezzled amount is huge one. But, the complainant society never lodged any complaint in any police station or at any office against the accused, accept the complaint. It cannot be believed that, for the said embezzled amount, the complainant society taken the disputed cheque from the accused. It shows that, the complainant society has stolen the cheque book of the accused and defamed him. From year 2015 till filing this complaint i.e. till year 2019, the complainant society has remained silent. The complainant society has not produced any documentary evidence regarding alleged embezzlement. In fact, the alleged embezzlement never occurred in the complainant society. But, only to harass the accused, to defame him and preventing him in any service, the complainant and its officers are trying to take grudge against him. Due to which, he is facing suspicion of the people.

8. The accused is having suspicion that, officer of complainant society by name Udugade has stolen his cheque book. On 30/11/2018, he has lodged complaint against said Udugade in P.S.O. Malharpeth. But, no action was taken. Therefore, he filed complaint against said person. Hence, he prayed to reject the application.

9. Perused the record and proceeding. Heard Ld. Adv. Shri. A.D. Ghadge for the complainant and Ld. Adv. Shri. P.K. Ghadge for the accused. Following points arose for my determination, to which, I have recorded my findings thereon for the reasons to follow.

<u>Sr.No.</u>	<u>Points for determination</u>	<u>Findings</u>
1	Whether the complainant society is entitled for the interim compensation as prayed ? If yes, to what extent ?	<u>Yes.</u> <u>@ 20%.</u>
2	What order?	<u>As per final order.</u>

**Arguments :-****From the complainant :-**

10. The complainant society has satisfied the criteria to grant interim compensation vide judgment of Hon'ble Bombay High Court in Ashwin Karokar's case (*infra*). The complainant has proved notice and cheque. The accused has admitted his signature over the cheque. The complainant is file within limitation. The interim compensation is required for business purpose. The application is filed after the accused pleaded not guilty. The complainant has filed the affidavit in form of examination-in-chief immediately. Rozmana shows conduct of both parties regarding presence in the Court. Conduct of accused also necessary to be seen. Earlier, the accused has not filed any application for adjournment to pay or follow the interim compensation order. The defence of accused is after thought. The authorities relied upon by the accused are not applicable to the facts of present case. He has relied upon, i) **D.L. Sadashiva Reddy Vs. V.G. Kona Reddy, (Cri. Petition NO. 3904 of 2021- Hon'ble High Court of Karnataka)**, ii) **D.L. Sadashiva Reddy Vs. V.G. Kona Reddy, (Special Leave to Appeal (Crl.) No. 10151/2021 - Hon'ble Supreme Court)** and iii) **Ramchandra Barathi @ Satosh Sharma V.K. and ors. Vs. The State of Telangana (2022 LiveLaw (SC) 986)**.

**From the accused :-**

11. The purpose of amended provision of Section 143-A of the N.I. Act is to avoid the delay by the accused. The said provision is discretionary in nature. Presumption under Section 139 is not absolute. Three grounds for grant of interim compensation as per the Ashwin Karokar's case (*infra*) are only some of instances and do not cover entire causes. Interpretation of the provision submitted by the complainant is not correct. The complainant has adduced his evidence and the accused cross-examined the witness. The case is pending for

further evidence of the complainant.

12. From 26/08/2022 till date, the complainant has not adduced any evidence and intentionally delayed the proceeding. At this stage, interim compensation is not necessary. Trial is at fag end. The complainant is a co-operative society and the allegations levelled against the accused are of fraud. But, as per the Maharashtra Co-operative Society Act, whether inquiry was conducted, whether audit was conducted, that is not forthcoming on record during evidence of complainant. Regarding the alleged fraud, no offence is lodged till date. It is the case of the complainant that, audit report is submitted by concerned auditor. But, despite cross-examination, till date, complainant society has not file the same on record. Therefore, as per Section 106 of the Evidence Act, presumption is to be required to be drawn that, said report is against the said society. Considering factual aspects, at this stage, only examination-in-chief cannot be considered while deciding the application. Cross-examination also needs to be considered. He has relied upon, i) **Ashwin Ashokrao Karokar Vs. Laxmikant Govind Joshi, (Cri. Write Petition No.48/2022 - Hon'ble High Court Bombay Bench Nagpur)** and ii) **Ashwin Ashokrao Karokar Vs. Laxmikant Govind Joshi (Cri. Write Petition No. 71/2022 - Hon'ble High Court Bombay Bench Nagpur).**

### REASONS

#### As to point No. 1:-

13. As per Amending Act No. 20 of 2018, section 143-A was inserted by way of amendment in the N.I. Act. Therefore, it is necessary to consider Section 143-A which reads as under :-

#### **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 complainant; 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.
  - (5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).
  - (6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.

14. The object of the said amendment can be summarized that, “.....It is proposed to amend the said Act with a view to address the

*issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payee of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money*". Thus, considering the object behind the said provision, it is necessary to consider the case at hand.

15. The instant complaint was filed on 26/03//2019. Thereafter, Ld. Predecessor issued process against accused for offence punishable under section 138 of the N.I. Act. The disputed cheque is of dt. 10/01/2019. On 12/06/2019, Ld. Predecessor stated the particulars of the offence to the accused, to which, the accused pleaded not guilty. The disputed cheque is shown to be issued after the amendment of section 143-A of the N.I. Act. Thus, it is shown that, the alleged offence was committed prior to the introduction of section 143-A of the N.I. Act. As per the judgment of Hon'ble Supreme Court in G.J. Raja Vs. Tejraj Surana [(2019) (19) SCC 469], the said provision is held to be prospective in nature. Therefore, section 143-A of the N.I. Act is applicable to the case at hand.

16. Therefore, as the accused pleaded not guilty to the accusation made in the complaint, then provisions of section 143-A attracts to the case at hand. In Ashwin Karokar's Case (*supra*), Mr. D.L. Sadashiv's case (*supra*) decided by the Hon'ble High Court and Hon'ble Supreme Court have held that, the provisions of section 143-A of the N.I. Act are discretionary/directory in nature and not mandatory. Thus, now, it becomes settled law that, the provisions of section 143-A of the N.I. Act is discretionary in nature.

17. Now, the next question is necessary to be considered as to how the said discretion is required to be exercised. In this regard, the Hon'ble Bombay High Court Bench at Nagpur in Ashwin Karokar's Case (*supra*) has laid down guidelines for the said purpose. Therein, at para No. 9.2 and 9.4 of its judgment, the Hon'ble Bombay High Court has

held that,

**9.2** This is supplemented by the fact that from a plain reading of Section 143-A of the N.I. Act, it is clear that it is a provisions enacted as an interim measure, during the pendency of the trial, when the guilt of the accused is still to be determined. The word 'may', thus used in Section 143-A (1) of the N.I. Act, has to be construed in light of the fact that the direction to ward compensation, is at the trial stage and as an interim measure. The fact that even in cases under Section 138 of the N.I. Act, the presumption under Section 139 of the N.I. Act, is not absolute, but is rebuttable, also has to be born in mind. That apart, in a particular case, given the requirement of Section 138 of the N.I. Act, it may so happen that the complaint itself may not be maintainable, for the cheque not having been presented during the period of its validity; the notice not having been issued in the stipulated time; the complaint not having been filed within the time stipulated therefore; the debt may not be a legally enforceable debt or liability; the memo/advice regarding dishonor not having been placed on record etc. theses are only some of the instances and do not cover the entire plethora of causes, which may make the complaint itself not maintainable. To direct the grant of interim compensation, in such cases, merely because of the existence of a cheque, by holding that doing so is mandatory, would not be justifiable.

**9.4** Section 143-A of the N.I. Act, though enacted with an intent to ensure speedy disposal of the proceeding pending under Section 138 of the N.I. Act, the said intent, insofar as section 143-A of the N.I. Act is concerned, does not make the provision mandatory, as what is conferred upon the Court by virtue of the said provision is a discretion to direct interim compensation and no right is created in the complainant under it, to demand the entitlement to compensation. Grant of interim compensation, would be at the discretion of the court, based upon consideration of various factors, such as (a) whether the requirements of Section 138 of the N.I. Act, were fulfilled (b) whether the pleadings disclose the drawing of the presumption (c) whether the proceedings were within limitation and (d) whether prima facie a legal debt or liability was disclosed from the complaint or the notice of demand preceding it, and factors as such (see: B.R. Upadhya and anant H. Ulahalkar (supra)).

**18.** Therefore, considering the above guidelines, it is necessary to see whether the complainant has satisfied the criteria for claiming interim compensation. It is pertinent to note that, the accused has challenged the order of issue process before the Hon'ble Additional Sessions Judge, Karad in Criminal Revision Application No. 16/2019. Therein, the Hon'ble Additional Sessions Judge has dismissed said revision petition of the accused vide its Judgment dt. 19/08/2022.

19. Here, it is not the case of the accused that, the complaint itself is not maintainable for the grounds that, cheque not having been presented during the period of its validity; the notice not having been issued in the stipulated time; the complaint not having been filed within the time stipulated therefore; the memo/advice regarding dishonor not having been placed on record etc.

20. Record shows that, the complainant society has filed on record the original disputed cheque dt. 10/01/2019, the original cheque return memo, copy of notice and acknowledgement receipt. The disputed cheque is shown to be deposited in the bank by the complainant on 18/01/2019. The cheque return memo is shown to be of the date 19/01/2019. The notice is shown to be issued on 12/02/2019 and received by the accused on 14/02/2019. The complaint is shown to be filed on 26/03/2019. Further, the accused has not disputed its signature over the disputed cheque. But, he has defence of theft of disputed cheque by the complainant, grudge against him etc.

21. Thus, considering the documents filed on record by the complainant society, pleadings of the complainant society, *prima facie* it is shown that, the requirements of Section 138 of the N.I. Act are fulfilled. The pleadings disclose drawing of the presumption, the proceedings were within limitation and *prima facie* a legal debt or liability is disclosed from the complaint.

22. In order to deal with the submissions of Ld. Advocate for the accused, firstly, it is necessary to be stated that, as per Ashwin Karokar's Case (*supra*), it is nowhere held that, evidence of both parties, if adduced, is required to be considered while deciding this interim application. Moreover, while deciding this application, the Court is not required to consider evidence either in form of examination-in-chief or in form of cross-examination of the

complainant. The submissions of the Ld. Advocate for the accused are touching to the merits of the case and the same needs to be decided after hearing both the parties and after conclusion of trial. At this interim stage, said aspects cannot be considered. Therefore, the submissions of Ld. Advocate for the accused are not acceptable.

**23.** Ld. Advocate for the complainant society has relied upon, D.L. Sadashiv's case (*supra*) decide by the Hon'ble Karnataka High Court and thereafter by the Hon'ble Supreme Court. In its reply, the Ld. Advocate for the accused has relied upon M/s. Synthetics and Chemical's case (*supra*). I have gone through, D.L. Sadashiva's case (*supra*). Therein, it was observed by the Hon'ble Karnataka High Court that, “ I do not think that the accused should be heard in detail before passing the order under Section 143-A. It need not be a detail order also. There is any infirmity in the impugned order. Petition is dismissed”. The Hon'ble Supreme Court in Special Leave Petition of the said case, has observed that, Section 143-A of the N.I. Act is discretionary power and accordingly dismissed the Special Leave Petition.

**24.** In M/s. Synthetics and Chemical's case (*supra*), the Hon'ble Supreme Court has held that, the decision which is not expresse and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141 of the constitution. Thus, I am of the respectful view that, this Court is bound by the observations and ratio laid down in above case laws and the same are duly considered while deciding this application.

**25.** In Ramchandra Sharma's case (*supra*), the Hon'ble Supreme Court has considered the issue of remand application by the police. But, with the due respect to the ratio laid down therein, I am of the view that, the said case law is not applicable to facts of the present case.

26. Further, for above reasons, other submissions of Ld. Advocate for the accused are not acceptable. Thus, I am of the view that, the complainant society is entitled for the interim compensation vide Section 143-A of the N.I. Act.

27. The next question would arise regarding quantum of interim compensation. As per sub-section (2) of Section 143-A, it is provided that, the interim compensation under sub-section (1) of the Act shall not exceed 20 % of the amount of the cheque. In Ashwin Karokar's case (*supra*), the Hon'ble High Court has held that, “*it is the discretion upon the Court to direct the grant of interim compensation anywhere between the range of 0 (zero) to 20 (twenty) % of the cheque amount, indicating that in the given case, it would be permissible for the Court, to even decline awarding of any interim compensation, of course, for the reasons to be recorded.....*”

28. It is contended by the complainant that, the accused has committed the embezzlement of the cheque amount which were deposited by poor people in the complainant society by way of gold mortgage etc. The account holders of the complainant society are demanding the embezzlement amount from time to time. The amount of poor people is required to be returned to the poor people. It would take time to decide the complaint on its merits. Therefore, the complainant society may be awarded 20 % of the cheque amount which is Rs.18,59,872/- as an interim compensation. Thus, considering the factual aspects, claimed public money of the complainant society, its business to accept the deposits from public and accountability of complainant society towards public, I am of the view that, the complainant society is entitled for the interim compensation at the rate of 20 % of the cheque amount. The cheque amount is shown to be of Rs.92,99,364/- and its 20 % of the interim compensation amount would come to Rs.18,59,872/- Thus, I have recorded my findings on point No. 1 accordingly.

**AS TO POINT NO. 2 :-**

29. As, I have recorded my findings on point no. 1 as per above, the complainant society is entitled for interim compensation of Rs.18,59,872/- from the accused vide Section 143-A of the N.I. Act. As per sub-section (3) of Section 143-A, the accused is liable to pay the said interim compensation amount within 60 days from the date of this Order. Hence, in answer to point No. 2, following order is passed.

**ORDER**

- 1) The application is allowed.
  - 2) The accused is directed to pay interim compensation of Rs.18,59,872/- to the complainant by way of interim compensation within 60 days from the date of this Order.
  - 3) Parties to take note.
- (Dictated and pronounced in open Court.)

Date :- 17/02/2023.  
Place :- Patan.

( P. S. Girgaonkar )  
Judicial Magistrate (F. C.)  
Patan.