

ORDER BELOW EXH.16.

1. The complainant has filed the present application to direct the accused No. 1 to 3 to pay him 20% of the cheque amount as interim compensation. The complainant submits that as already prima facie case is established against the accused no. 1 to 3 and the accused no. 1 to 3 by denying the plea of guilty claimed to contest the matter, he is entitled to get 20% of the cheque amount from the accused no.1 to 3 as interim compensation in view of amended section 143A of the Negotiable Instrument Act, 1881 (for short the 'NI Act').

2. The accused no. 1 to 3 strongly opposed to present application by filing their detail say at Exh. 17 whereby they contends that the present application has not been filed by the complainant at early stage. It is also contended that the complainant has not bothered to produce original disputed cheque so that accused are unable to show alteration made therein to the Court. Further, accused contends that they are ready to conduct the matter expeditiously within time framed as provided in NI Act and therefore no need to grant present application.

3. Heard Ld. Advocate Shri. J.C.Aher for the complainant. He argued that as process is issued against the accused under section 204 of the Code of Criminal Procedure 1983 for the offence punishable under section 138 of the NI Act, it can be safely said that the complainant has established prima facie case against the accused no. 1 to 3. Further, he argued that though the original disputed cheque is not produced on record, he is about to produce at the time of giving evidence. He also argued that if so-called alteration in

disputed cheque was found by the Assistant Superintendent of this Court, verified copy of disputed cheque would have not been produced by the accused on record. Lastly he argued that considering nature of the provision application needs to be allowed.

4 On other side Ld. Advocate Shri Jayant Walinjkar vehemently argued that the complainant failed to file present application within reasonable time having the matter was fixed on number of dates. He also argued that the accused no. 1 to 3 never transacted with the complainant and they never issued such disputed cheque in favour of the complainant. The accused no. 1 to 3 are not liable to pay any legal debt towards the complainant and therefore, they cannot be insisted to pay 20% cheque amount before recording evidence. Ld. Advocate by drawing my attention towards provision under section 143A of the NI Act argued that in view of wording of the provision, such type of application must be entertained at the time of the trial and therefore present application cannot be allowed before trying the matter and therefore he prayed for rejecting the application.

5. Perused the record as well as contention raised by both parties pertaining to the present application. On perusal of record it is seen that accused no. 1 & 2 being a chairman and secretary respectively of the accused no. 1 i.e. registered firm issued cheque in favour of the complainant towards hand loan of Rs.6,99,600/-. On perusal of the complaint it is seen that said cheque dishonored on 25-07-2020 when presented for encashment. Thereafter, it is also seen that even after receiving notice by accused they did not pay cheque amount. In view of contentions made in the complaint of the

complainant, I found prima facie case against the accused to produced further and therefore process was issued against them. Further, so far as contention as to non production of original cheque is concerned, Assistant Superintendent of this Court verified the original cheque and sealed and signed the verified copy, therefore, such copy should be treated as a genuine until its genuineness rebutted by the accused at the time of trial. Therefore, I don't find substance in such type of argument made by the accused.

6. Further, accused strongly raised the objection as to stage of filing the present application. For that, I have gone through the provision of section 143A of the NI Act which clearly provides that such type of application can be filed when accused plead not guilty to accusation made in the complaint. In present case accusation is stated to the accused no. 2 & 3 vide plea at Exh. 14. Therefore, I found that the complainant filed present application at proper stage. Further, Ld. Advocate Shri. Walinjkar argued that provision of section 143A itself speaks that 'the Court trying an offence under section 138A may order the drawer of cheque to pay interim compensation to the complainant' which means only at the time of trial such type of application is tenable. However, I feel that Ld. Advocate misconstrued the said provision, in my view the Court trying an offence means the Court who has the jurisdiction to try the offence, it cannot be treated that such type of application can only be entertained at the time of trial.

7. In view of averment made by the complainant in his complaint as well as document produced alongwith, it is prima facie established that the accused no. 1 to 3 are liable to pay cheque

amount to the complainant. Further, the accused no. 2 & 3 denied the offence and claim to be tried, therefore necessary requirement for grant of interim compensation as contemplated in amended provision of section 143A of the NI Act is fulfilled, further, the accused no. 1 to 3 have not shown any justifiable reason as to why the present application should be rejected. The object and reason of new amended section 143A of the NI Act is to reduce the undue delay in disposal of cheque dishonored cases and also for providing interim compensation to the complainant. Considering all, I find fit case to grant 20% cheque amount as interim compensation to the complainant. Certainly, the accused no. 1 to 3 have time to pay amount of compensation within 60 days from the date of passing order and before payment of amount they cannot cross-examine the complainant, however for the complainant no need to await for 60 days for leading his evidence. Therefore, for the complainant it would be safe and proper to lead his evicting at the earliest. Hence, following order is passed.

ORDER

1. The application is hereby allowed.
2. The accused no. 1 to 3 are directed to pay 20% of the cheque amount i.e. Rs.1,39,920/- as interim compensation to the complainant within 60 days from today.
3. The Complainant shall make his evidence on next date.

Place :- Jawhar
Date :- 17-02-2022.

(S. V. Khaire)
Judicial Magistrate, F.C.
Jawhar.