

CS – 30884 of 2021
(Redg. No. CS – 30884 of 2021)

Order dated : 19.09.2024

Today is fixed for hearing of petition u/s 143A of N.I Act dated 22.07.2024.

Ld. Advocate for both sides are present.

Now, the record is taken up for hearing the petition u/s 143A of N.I. Act.

Heard both sides in full.

Perused the record.

Considered the material available and the submission made over by the learned Counsels for both sides.

The learned Counsel for the complainant made argument in support of his petition and submitted that , this case is a case under section 138 of Negotiable Instrument Act and as per the recent amendment in the act, complainant has made this petition as guaranteed by the act after the said amendment,w.e.f. dated 01.09.2018. for interim compensation during pendency of the trial.

On the contrary, the learned Counsel for the accused herein raises no objection and left the issue on the wisdom of the Court.

After considering the submission made over by the learned Counsels for both sides and meticulous perusal of the referred sections and the discussion above made , this court is of the opinion that the word 'May' as used in the section is beneficial for the complainant because the complainant has already suffered as not payed by the accused, therefore, it is in the interest of the complainant as well the accused if the certain (the said maximum limit of 20%) part of the cheque amount is to be paid by the accused and in that case when the final judgment passed against him, he has to pay on lower side. The motto of the given section is to secures the interest of the complainant as well as of the accused and moreso, here the use of 'May' is as a matter of conventional courtesy and yet intend a mandatory force. Further, after having amendments in the act and having insertion of a new section being 143 A, complainant's act is well protected under the ambit of law. This court relied on the judgment which was decided by the Hon'ble Supreme Court in Smt. Bachahan Devi & Anr vs. Nagar Nigam,Gorakhpur & Anr and same was also relied on by the Hon'ble Chhattisgarh High Court in Rajesh Soni vs. Mukesh verma's case. Reliance is also given upon the Judgment of the Hon'ble Supreme Court of India in the case of Rakesh Ranjan Shrivastava vs The State of Jharkhand & Anr in Criminal Appeal No.741 of 2024 by this very Court during adjudication of the instant petition. It is also required to state herein that complainant succeed to show that there is a prima facie case in favour of the complainant and same was not challenged by the Ld. Defence counsel. On the contrary, the Ld. Defence counsel put stress on rebutting the presumption as favouring the complainant but same is required substantive evidence and for that both sides get their opportunity at later stage. Further, the impugned cheques herein is amounting Rs.2,73,000/-. Therefore, financial distress is not ruled out after dishonoured of this impugned cheques which were issued in favour of the complainant.

Contd.....p/2

Thus, on the basis of above mentioned findings and discussions , the petition for interim compensation as made out by the complainant deserves to be allowed.

Hence , it is

Ordered

that the petition dated 22.07.2024 u/s. 143A of N.I. Act is allowed on contest.

Accordingly, accused persons herein are thus directed to pay an amount of Rs.27,000/- (twenty seven thousand rupees only) to the complainant as interim compensation within 60 days from the date of this order i.d. complainant is at liberty to take recourse of law as available to him.

Complainant is hereby also directed by this court that in the event of acquittal of drawer of the cheque (the said accused herein), complainant shall to repay the amount of interim compensation, with interest at the bank rate as published by the RBI, prevalent at the beginning of the relevant financial year.

Let a copy of this order be supplied to the complainant free of cost.

To 29.11.2024 for evidence and payment.

T/C by me:

*Judicial Magistrate , 3rd Court,
Calcutta.(I/C)*