

C.R Case 14 of 2024
Reg. No. 14 of 2024

Order No. 15 dated 25.02.2025

Today is fixed for passing necessary order in respect of the petition u/s 143A of N.I. Act, 1882 filed by the complainant.

The complainant is present by filing Hazira.

The accused is found absent by filing petition. Ld Adv for accused filed a petition undertaking to file fresh v nama on behalf of accused person on next date fixed which is considered And allowed.

The case record is taken up for passing order.

Heard both sides on last occasion at length.

By filing the aforesaid petition, the complainant prays to pass order to give direction to accused to pay the interim amount of Rs.1,80,000/- being the 20% of the amount mentioned in the Cheques within the period as may the Court think fit and proper as the complainant is undergoing financial crisis due to nonpayment of amount mentioned in the Cheques.

During the course of hearing, Ld. Advocate for the complainant submitted that this is clear case of conviction to the accused for the offence u/s 138 of N.I. Act as the accused himself admitted to make payment of Rs.1,50,000/- out of Rs.9,50,000/- taken by him as loan, so he prayed to allow the petition.

On the other hand Ld. Advocate for the accused submitted that the complainant does not come before the Court with clean hands as he suppressed the material facts before the Court that the accused was the proprietor of A2b Consultation Service at Darjeeling, with collaboration of Jyoti Placement Service situated at Bihar and the wife of the complainant visited the office of the accused to work abroad in which mutual agreement took place in between them to make payment of Rs 18 Lakhs to apply for visa to U.K. and out of which the amount of Rs.9,50,000/- was paid as consultation and engaging fees.

Ld. Advocate for the accused person further submitted that the accused had handed over two cheques as the mode of security in case

of default in service as promised by them. Since Rohita Rai Sherpa being the wife of the complainant was unable to provide police clearance certificate, the accused to save his goodwill gave those two cheques and also returned Rs.1,50,000/- to the complainant. But to his utter surprise both complainant and his wife went to his partner Sunil Kumar Thakur, the accused Anil Lama's partner Sunil Kumar Thakur being the director of Jyoti Placement Service of good faith completed the work and thereafter UK visa was granted to the complainant's wife and has presently been residing in UK.

Contd....Order No. 15 dated 25.02.2025

So in spite of paying service to them, the complainant and his wife cheated and misappropriated and damaged his goodwill for which he sent the legal notice to the complainant's wife as well as lodged complaint before the Matigara PS.

Thereafter the Ld. Advocate for the accused tried to impress the Court by making further submission that there is no accommodation loan given by the complainant to accused rather complainant and his wife is liable to make payment of remaining amount. He further submitted that there are trial points to be determined by the Court and he is sure about the order of acquittal of the accused from this case so he prayed to reject the petition.

Perused the case record, the complaint petition, written objection, documents submitted and materials on record.

Considered.

On perusal of the complaint u/s 138 read with 142A of N.I. Act filed by the complainant, it is averred that the accused had approached the complainant for the short term loan of Rs.9,50,000/- for very few days only and to discharge and fulfil the liabilities on receipt of the aforesaid amount, the accused had issued two Cheques amounting to Rs.4,50,000/- and Rs.5,00,000/- dated 15.12.2023 and 14.12.2023 drawn on Bandan Bank, Darjeeling Branch in favour of the complainant. The aforesaid cheques were bounced back due to insufficient fund in the bank of account of drawer i.e. accused,

thereafter he issued Demand Notice to him to make payment but he failed hence instant case.

Sec 143A of the Negotiable Instruments Act, 1881, grants power upon the trial Court to direct payment for interim compensation. Section 143A reads:

"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 the 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 per cent 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.

Contd....Order No. 15 dated 25.02.2025

(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."

Now, I would like to bring here the guideline as enumerated by the Hon'ble Supreme Court in the reportable judgment of **Rakesh Ranjan Srivastava vs the State of Jharkhand and Another** which is follows

"c. **The broad parameters for exercising the discretion under Section 143A are as follows:**

i. The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

ii. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.

iii. If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.

iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the

complainant, etc. v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive."

So, considering the guideline of the Hon'ble Apex Court, an incumbent duty cast upon the Court to prima facie evaluate the merit of the case made out

Contd....Order No. 15 dated 25.02.2025

by the complainant and the merits of the defence pleaded by the accused in reply to the application while considering the application u/s 143A of N.I. Act.

While going through the averment of the complaint, this Court finds that the complainant alleged of taking short term loan of Rs.9,50,000/- by the accused as the complainant is close acquaintance with him. But ironically not a single scrap of paper has been filed by the complainant like loan agreement or money receipt etc during the course of hearing of the petition whereas the bunch of papers has been filed by the accused showing the truthfulness of defence taken by him in reply to the application prima facie at this stage of the case. There are allegation and counter allegation, admission and denial from both sides which reflects that there are certain facts in issue which are required to be proved and dis-proved, that cannot be possible without laying down evidences from both sides.

It is the settled position of law that the power under Sub Sec 1 of Sec. 143A of N.I. Act is discretionary and not mandatory.

Even at this stage, the Court needs to consider various factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant and the paying capacity of the accused.

The nature of transaction as alleged in between the parties transpired from averment of the complaint and documents produced by accused created a doubt over the mind of the court and to clear those doubts this court require assessment of evidence. At this stage the materials availed on record in the form of documents supplied by the accused, the defence of the accused found to be prima facie plausible rather than the merit of the petition made out by the complainant. Further this Court does not find any intentional or deliberate attempt to drag the case longer by the accused. Nor any

document submitted by the complainant to show that he has been going through financial crisis either.

Therefore, considering above all, the petition is devoid of any merit.

Hence, it is

Ordered

that the petition u/s 143A of N.I. Act filed by the complainant is considered and rejected on contest.

Accused must be present on the next date fixed for recording plea id WA will be issued.

Fixed **06\03\2025** for Plea

D & C by me

Sd/-

*Chief Judicial Magistrate
Darjeeling*

Sd/-

*Chief Judicial Magistrate
Darjeeling
UID No. WB01231*