

Complaint Case 132 of 2019

J.O. Code WB01123

Order dt. 14.01.2025

Complaint files hazira. Accused person also files his hazira.

Ld. Advocate for both parties are present.

Record is taken up for passing order with regard to the petition under Section 143A of the NI Act dated 20.01.2024

The Ld. Advocate for the complainant submitted that in terms of Section 143(A) of the NI Act, Amended 2018 to direct the accused person to pay an interim compensation to the complainant and pass such order or orders the Court may deem fit and proper. Since the accused has pleaded no guilty at the time of his examination u/S 251 Cr.P.C.

Ld. Advocate for the accused person vehemently objected the petition and submitted that the same is not maintainable and liable to be rejected. He further submits that granting of the interim compensation amounts to prejudging of the case and the same should be done after a full fledged trial. He further states that cogent reasons has not been mentioned by the complainant for grant of interim compensation in his application u/S 143A NI Act. As such he prays for rejection of the same.

Heard. Considered.

Now on perusal of Section 143 A of the NI Act which provided that if the accused pleads not guilty to the accusation made in the complaint, the Court trying the offences under Section 138 of the act may order the drawer of the cheque to pay interim compensation to the complainant not exceeding 20% of the total amount of the cheque.

On perusal of the record it appears the accused person is present on contest the case and there is no chance of absconding and that the instant case has already been fixed for evidence.

The Hon'ble Apex Court in **CRIMINAL APPEAL NO.741 OF 2024, RAKESH RANJAN SHRIVASTAVA VERSUS THE STATE OF JHARKHAND & ANR** has been pleased to hold that "The exercise of power under sub-section (1) of Section 143A is discretionary. The provision is directory and not mandatory. The word "may" used in the provision cannot be construed as "shall".

Further the Honble Apex Court laid down that the broad parameters for exercising the discretion under Section 143A as:

"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 final 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 particular facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.”

Accordingly, this Court is of the view that prima facie case is laid down by the complainant in his petition that would convince this Court to allow the prayer. Further more, this Court finds that this case has been filed in the year 2019 and already five year has elapsed and the petitioner / complainant has filed the cheque to substantiate the prima facie case but in spite of passing of time there is no bonafideness from the side of the OP by paying any farthing to the complainant. Hence, for ends of justice, for providing interim compensation to the complainant as a temporary relief this court is inclined to allow the petition as per provision of Section 143A NI Act. The total cheque amount is Rs. (2200000/- + 2300000/-) = 4500000/- dt. 05.12.2018 as per the petition and the petitioner is liable to get 20% of the said cheque amount.

Hence It is

Ordered.

In view of the above, the petition under Section 143A of the NI Act is hereby allowed on contest. The accused person is directed to pay 20% of the cheque amount of Rs. 4500000/-/- i.e. Rs. 9,00,000/- within 60 days from the date of passing order dated 14.01.2025.

As per the contents of the provision as enshrined u/s 143A of N.I. Act, the amount of interim compensation payable under this Section may be recovered as if it were a fine u/s 421 of Cr.P.C, 1973. Therefore, on the basis of the above provision, the complainant is directed to take proper steps for recovery of the interim compensation as if it were a fine u/s 421 of Cr.P.C, 1973.

Fix _____ for

D/C

4th JM, Howrah

**Keya Sarkar
(JO Code WB01123)**