

Order dated 21/12/2022

Today is fixed for order.

The complainant namely Asim Das is present before this Court.

One adjournment petition has been filed on behalf of the accused.

Ld. Advocate for the accused and complainant are present.

Heard. Considered. The time prayer is rejected as no medical documents are attached with the petition.

The record is taken up for passing order.

The complainant by way of filing a petition u/s 143A of Negotiable Instrument Act 1881 as well as through his Ld. Advocate has submitted that the accused had pleaded not guilty of the accusations u/s 138 of Negotiable Instrument Act 1881 in respect of one cheque being no. 764875 dated 07/08/2019 amounting Rs.2,00,000/- drawn on Vijaya Bank, Howrah Branch and the Ld. Advocate has prayed for 20% of the cheques amount as interim compensation as laid down in the Act.

Ld. Advocate for the defence has submitted that the nature of section 143A of Negotiable Instrument Act 1881 is directory and not mandatory and it would cause hardship to the accused if the prayer of the complainant will be allowed by the Court.

Heard both sides. Considered.

Perused the entire record.

It transpires that this Court has primarily satisfied itself about the sufficient materials for proceeding against the accused person. The accused namely Ashish Ghosh has entered appearance. After hearing both the parties to this case this court has found that a prima facie offence under section 138 of Negotiable Instrument Act 1881 was made out against the accused Ashish Ghosh and he has pleaded not guilty. Save and except saying not guilty of the offence no positive case was/is made out by the accused till now. During hearing, Ld. Advocate for the accused has also not denied the issuance of the cheque to the complainant by the accused. Therefore, I finds no impediment to pass an order for interim compensation in favour of the complainant.

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Hence, it is

**Ordered**

that the petition under section 143A of Negotiable Instrument Act 1881 filed by the complainant is considered and allowed.

The accused, the drawer of the impugned cheque is hereby directed to pay 10% of the impugned cheques amount i.e Rs. 2,00,000/- x 10%= Rs. 20,000/- to the complainant as interim compensation within 60 days from the date of the order and in default the complainant is at liberty to execute the same as per provision of section 143A (5) of the N.I Act 1881.

Be it mentioned that in case of the acquittal of the accused from this case the above specified amount with interest as per prevalent bank rate at the beginning of financial year within 60 days from the date of the order or within such time period as specified by the Court be repaid to the accused by the complainant.

It is also pertinent to mention here if any amount of fine be imposed in future upon the accused persons, shall be reduced by the amount paid or recovered as interim compensation under this Act.

To 13.02.2023 for payment and evidence.

Complainant is directed to be ready with the evidence of this case on the next date fixed.

D/C by me.

J.M. 3<sup>rd</sup> Court, Howrah

Yesmin Ara Khatun JO Code WB01335  
Judicial Magistrate, 3<sup>rd</sup> Court,  
Howrah