

C - 493/19

Shilpa Agarwal vs. Narendra Gupta

Order Date: 22.04.2025

Today is fixed for order with respect to petition filled by the complainant u/s 143A of the N.I Act.

Both the parties files hazira.

Heard both sides on last occasion.

The record is taken up for passing order.

By filling the instant petition Ld advocate for the complainant/ petitioner submits that the instant case was filled on 12.07.2019 before the Ld ACJM Barrackpore and thereafter the same was transferred to this Court. The accused has surrendered and pleaded non guilty and hence the Complainant/ petitioner has prayed for interim Compensation of 20% to the tune of the cheque amount in favour of the Complainant. The Ld. Advocate for the complainant has relied in the decision of the Hon'ble Supreme Court in Criminal Appeal no.1160/19, SLP (Crl.) No.3342/19, G.J Raja vs. Tejraj Surana.

Ld advocate for the accused has filed one written objection and prayed for rejection of the petition. It is submitted that the instant case has been filed by suppressing the materials facts. There was a business relationship between the accused persons and the complainant and for the purpose of security against the supply of goods by the complainant the accused had given one post dated cheque to the complainant in good faith. On 30.1.19 prior to the alleged cheque the accused paid the entire sum of Rs.2,00,000/- to the complainant Shilpa Enterprise by way of bank transfer being id no. BKIDH 19030957419 dt.30.1.19. Thereafter the accused requested the complainant to return the cheque several times but he did not return the same. Complainant in order to cheat the accused presented the cheque for encashment. There is no existing legal liability as the entire amount of cheque. Ld. Advocate for the accused has relied in the judgment of the Hon'ble Apex Court in Rakesh Ranjan Srivastava vs. State of Jharkhand (Supra) Criminal Appeal No.741/24 wherein the Hon'ble Court clearly stated that sec.143A NI Act is not mandatory in nature. He has filed the bank statement with respect to the payment of Rs.2,00,000/- to Shilpa Enterprise on 30.1.19.

Heard and considered.

Section 143A of N.I. Act provides that

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence u/s.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 complainant ; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty percent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub sec(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.

(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 year 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 show by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a find under section 421 of the Code of Criminal Procedure, 1973.

(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, shall be reduced by the amount paid or recovered as interim compensation under this section.

This amendment of NI Act came into force with effect from 1.9.18, the purport of the amendment is that the court may in certain circumstances, award interim compensation which shall not exceed 20% of the amount of the cheque. And such interim compensation can be permitted to be withdrawn in terms of the said amendment in the event of court directs deposit of the amount as interim compensation in terms of section 143A, it is recoverable by initiating proceedings under section 421 of the CrPC. One of the purpose of the amendment is because of delay tactics of the unscrupulous drawers of dishonour cheque. The injustice cost the payee of a dishonored cheque had to be considered. Thus, while exercising the discretionary power in dealing with an application u/s.143 A of the NI Act the conduct of the accused has to be considered.

In the instant case was filed on 12.7.19. Thereafter process was issued against the accused person on 18.1.20. Thereafter the accused appeared before this court on 15.10.22. After appearing he filed one petition u/s.205 CrPC praying for dispensing his appearance before the court. The same was allowed with a condition to remain present physically for plea but thereafter he remained absent on several days. The accused was finally examined u/s 251 on 29.2.24. It is pertinent to mention here that the parties have admitted that they had business relationship and the accused is the customer of the complainant. The accused stated that he paid Rs.2,00,000/- to the complainant on 30.1.19 and the same has been admitted by the complainant. Ld. Advocate for the complainant stated that the said payment was not made towards the cheque with respect to which this case has been filed. On perusal it appears that the instant case was filed on 12.7.19 and the payment was made on 30.1.19. The complainant had send the legal notice to the accused on 30.5.19 and the said notice was received by the accused on 1.6.19. The accused did not file any reply whatsoever which he could have sent to the complainant stating that he had payment of the cheque amount. Since the appearance in the instant case on 15.10.22 no such claim was made by the accused until the hearing of the instant petition. Considering the examination u/s.251 and keeping in mind the objectives of introducing the section I am of the view that interim compensation of 10% should be awarded in favour of the complainant.

Hence it is

ORDERED

that the petition under hearing is allowed on contest.

The accused are hereby directed to deposit Rs.20,000/- i.e. 10% of the cheque amount before the court within 60 days from the date of this order failing of which the same shall be recovered as per sec.421 of CrPC.

It is further ordered that if after completion of trial the accused persons are acquitted then the complainant / petitioner shall be bound to repay the aforesaid amount with interest at the bank rate as published by Reserve Bank of India, prevalent at the beginning of the relevant financial year withing sixty days from the date of order of acquittal.

Thus the petition is hereby disposed off.

To 12.9.25 for evidence.

Typed & Printed by me,

**(Pratigya Pradhan)
J.M, 3rd Court, Barrackpore**

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