

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 CRIMINAL WRIT PETITION NO.825 OF 2022

ABDUL LATIF SIKANDER SHAH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. G. R. Syed, Advocate for the petitioner
Mr. P. G. Borade, APP for the respondents/State

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 24th August, 2022

P. C.

1. The petitioner has challenged the order of interim compensation passed by the learned Judicial Magistrate First Class, Nandurbar in STCC No.412/2019.

2. Heard the learned counsel for the petitioner and the learned APP for the respondent/State.

3. The learned counsel for the petitioner invited my attention to the impugned order passed below Exh.27 in STCC No.412/2019 dated 11-05-2022 as well as copy of complaint (at Page No.10) in respect of dishonour of cheque.

He submits that in view of pleadings of the complainant it is difficult to accept the contention of the complainant that he had advanced hand loan of Rs.10,03,000/- to the present petitioner. He submitted that to advance such huge amount of hand loan, there must be some evidence. No such evidence is produced. The order of interim compensation passed by the learned Judicial Magistrate First Class, has caused injustice. It is burdensome to the petitioner to pay such 10% amount of the cheque. He, therefore, urges to quash and set aside the order passed by the learned Judicial Magistrate First Class dated 11-05-2022.

4. The learned APP for the respondents/State supported the impugned order.

5. Having regard to the submission of learned counsel for the petitioner and learned APP for the State, I have gone through the copy of complaint and copy of impugned order of interim compensation passed by the learned Judicial Magistrate First Class in STCC No. 412/2019. Section 143(A) of the N. I. Act, empowers the Magistrate to grant interim compensation. Its a judicial discretion of the

learned Magistrate to pass the order of interim compensation having regard to the facts of the case. Certainly the discretion must be used in a judicial manner and not by way of arbitrariness.

6. In the impugned order dated 11-05-2022, it is observed by the learned Magistrate that the complaint for dishonour of the cheque is filed by the complainant on 16-08-2019. The plea of the accused is recorded on 03-01-2022. It is also observed by the learned Magistrate that it may take time to have a decision on merits of the case. Accordingly by invoking the provision of Section 143-A of the N. I. Act, the learned Magistrate was pleased to award interim compensation and directed to pay 10% amount of the disputed cheque within 60 days.

7. Having regard to the reasoned order passed by the learned Magistrate, it is evident that the learned Magistrate has applied his judicial mind in a proper way.

8. The learned counsel for the petitioner has placed his reliance in the case of M/s JCB Cargo and Freight forwarder Pvt. Ltd and Ors

Vs State and Another in CLR.M.C. No. 2663/2021 dated 20-12-2021 of Delhi High Court. I have gone through the same. The facts of the cited case and case in hand are quite distinguishable. In the instant case, the Magistrate has passed reasoned order and that too after taking into consideration the facts of the case and conduct of the petitioner while conducting the trial as such citation relied upon is not helpful to the petitioner.

9. I do not find any error on the part of the learned Magistrate to allow the interim compensation. Whether the original complainant has capacity to advance such hand loan or not would be decided only after recording of evidence. At this stage, it may not be appropriate to touch the merits of the case.

10. Having regard to the above reasons, I do not find any merit in the petition. The petition must fail. The petition stands dismissed. No order as to costs.

[SHRIKANT D. KULKARNI, J.]