

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**24 CRIMINAL WRIT PETITION NO.1578 OF 2022
SHIVAJI KANHU BANSODE
VERSUS
RAJENDRA ASHRU JARANGE**

**25 CRIMINAL WRIT PETITION NO.1579 OF 2022
SHIVAJI KANHU BANSODE
VERSUS
RADHAKISAN ASHRU JARANGE**

**26 CRIMINAL WRIT PETITION NO.1580 OF 2022
SHIVAJI KANHU BANSODE
VERSUS
AMOL DILIP NIKALJE**

**27 CRIMINAL WRIT PETITION NO.1581 OF 2022
SHIVAJI KANHU BANSODE
VERSUS
TULSHIRAM GOPINATH KALE**

Mr.Sushant B. Choudhari, Advocate for the petitioner.

**CORAM : KISHORE C. SANT, J.
DATED : 12.12.2022**

PC :-

01. Heard learned Advocate for the petitioner. These petitions are challenging the order passed by the learned Judicial Magistrate, First Class, Shirur Kasar dated 25.02.2022 directing the petitioner to deposit 20% of the cheque amount under section 143(A) of the Negotiable Instruments Act, 1981 within 60 days from the date of order.

02. The petitioner is resident of Pondul and the school Raje Chhatrapati Shivaji Prathamik, Madhyamik and Ucchya Madhyamik Vidhyalaya is at Koradgaon, Tal. Pathardi, Dist. Ahmednagar, where he used to visit only occasionally to look after the affairs of the society. For day-to-day affairs he relied upon employees of the society. For payment etc. he had kept some blank signed cheques in the school. It is specific case of the petitioner that the address shown of this petitioner in the complaint is imaginary. There is no school like Jay Malhar Mukbadhir Shikshan Sanstha, Koradgaon. However, by showing that address of this petitioner, notices were issued on the said address. The record is created to show that the notices are refused, complaints came to be filed. On receipt of complaints, learned JMFC, Shirur Kasar issued process by order dated 05.10.2020. The petitioner appeared in the complaints. The respondents, thereafter, filed application under section 143(A) of the Negotiable Instruments Act. The petitioner submitted his say stating that there is no liability upon the petitioner to pay the amount. The petitioner is ready to appear on each date and would give his evidence at the earliest. His financial condition is not well and he has no source to pay the amount of 20% of the cheque. The petitioner is deceived, as signed cheques

have been used by the respondents during the period when this petitioner could not visit the school frequently due to Covid pandemic. The petitioner submits that inspite of this, without properly considering his case, the learned Trial Court has allowed the applications and directed to deposit 20% of the cheque amount, under section 143(A) of the Negotiable Instruments Act. The petitioner submits that this order is excessive. The learned Court below ought to have considered that there is no liability to pay the amount to the respondents. The Court ought to have considered that the blank cheques have been used by the complainants/respondents.

03. Learned Advocate for the petitioner relied upon judgment in the case of Mohammed Farooque Shahdat Vs. Kantaben G. Savalia & Ors., 2007 ALL MR (Cri) 1952, in which it was held that when the incorrect address was given and the notices were returned with endorsement “Not known, returned to sender” cannot be said to have been wrongly refused or returned by the postal authorities. By holding this, acquittal was recorded.

04. Another judgment he relied is in the case of Shri Jagannath Natha Tamahane Vs. M/s. Sai Constructions & Anr., 2009 ALL MR (Cri) 1178. In this

case also the demand notice was sent on incorrect address and it was held that presumption that the said notice was served will not be in favour of the complainant.

05. In both these cases, the judgment is delivered after holding a trial. In the present case, evidence is yet to be started. Whether address is correct or incorrect is necessarily a question of fact to be proved in the Trial. Said question cannot be gone into at this stage.

06. Learned Advocate further relied upon judgment of Nagpur Bench of this Court in the case of Mr.Ashwin Ashokrao Karokar Vs. Mr. Laxmikant Govind Joshi, (Cr.W.P. No.48 pf 2022) with connected petition, in which it is held that provision of section 143(A) is merely directory and not mandatory. In para 10 of the said judgment, various judgments are considered. However, in the said case, observations in the case of Mr. D.L. Sadashiva Reddys/o. Late Lakshmana Reddy Vs. Mr. V.G. Kona Reddy s/o. Govinda Reddy Konareddy,SLP No.10151 of 2021 is quoted as below :-

“Though the power under Section 143A of the Negotiable Instruments Act is discretionary power, we having considered the

matter on merits, find that the direction to deposit 20% of the amount is perfectly justified. As such, in the facts and circumstances of the case, we do not find any ground to interfere with the order impugned in this petition. Accordingly, the special leave petition stands dismissed.”

. Thus, in that case, it is held that the direction to deposit 20% of the amount is perfectly justified and the Hon’ble Apex Court did not interfere with the impugned order.

07. Thus, ultimately what needs to be seen is that – whether the Court has rightly exercised its power or not. There is no dispute that section 143-A of the Negotiable Instruments Act confers power upon the Court to direct the accused to deposit 20% of the cheque amount. The only requirement is that the Court has to record reasons for determining the quantum of interim compensation, if it comes to the conclusion based upon the facts of the case which deserves award of interim compensation. In the present petitions it does appear that the Court has passed order by considering the judgment delivered by the Hon’ble Apex Court in **Criminal Appeal No.1160 of 2019 in the case of G.J. Raja Vs. Tejraj Surana**. Para 24 of the said judgment is reproduced below :-

“In the ultimate analysis, we hold Section 143A to be prospective in operation and that the provisions of said Section 143A can be applied or invoked only in cases where the offence under Section 138 of the act was committed after the introduction of said Section 143A in the statute book. Consequently, the order passed by the Trial Court as well as the High Court are required to be set aside. The money deposited by the Appellant, pursuant to the interim direction passed by this Court, shall be returned to be Appellant along with interest accrued thereon within two weeks from the date of this order.”

08. Thus, this Court does not find that the Trial Court has committed any mistake or illegality while passing the impugned orders. No case is made out to call for interference at the hands of this Court. Hence, the writ petitions are dismissed.

[KISHORE C. SANT, J.]