

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.2252 OF 2022

Jayesh Shyam Seernani & Ors. ... Petitioners
V/s.
Arun R. Pathak & Anr. ... Respondents

**WITH
WRIT PETITION NO.2273 OF 2022**

Jayesh Shyam Seernani & Ors. ... Petitioners
V/s.
Meenu Ajay Pathak & Anr. ... Respondents

**WITH
WRIT PETITION NO.2272 OF 2022**

Jayesh Shyam Seernani & Ors. ... Petitioners
V/s.
Sindhumati R. Pathak & Anr. ... Respondents

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Mr. Rahulo Chauhan i/by Mr. Tapan Thatte for the
petitioners in all three WPs.

Mr. Sachin Mhatre with Ms. Ishita Kamath & Ms.
Vaishnavi Mudras i/by Mhatre Law Associates for
respondent no.1 in all three WPs.

Mr. A.R. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 11, 2022

PC.:

1. De-tag Criminal Writ Petition Nos.2609 of 2022 and 2610 of
2022.

2. Since the issue involved and the facts are similar, all the writ petitions are being disposed of by this common order.
3. The writ petitions arise out of complaints under section 138 of the Negotiable Instruments Act, 1881 (hereafter “NI Act”, for short). Three (3) cheques arising out of same transactions were issued by the petitioners in favour of respondent no.1. The said cheques being dishonored, three (3) complaints were filed before the learned Magistrate. In all three (3) complaints, the learned Magistrate issued process. On the applications filed by the respondent no.1 under section 143-A of the NI Act, the learned Magistrate directed the petitioner to deposit 20% of the cheque amount. The said orders are subject matters of challenge in these writ petitions.
4. Learned advocate for the petitioners *inter alia* submitted that absolutely no reasons are assigned to show application of mind for exercise of discretion on the quantum of amount of 20%. In absence of reasons to show application of mind, the order directing deposit of 20% of the cheque amount is unsustainable.
5. Learned advocate for respondent no.1 submitted that the learned Magistrate has recorded a finding that the petitioners have not brought on record sufficient documentary or other evidence to substantiate these defects and, therefore, he submitted that the reasons are sufficient to show application of mind by the learned Magistrate on the point of exercise of discretion in directing deposit of 20% of the amount of cheque.

6. Having considered the submissions of both sides and considering the scheme of section 143-A read with section 148 of the NI Act, it appears that the learned Magistrate has been conferred discretion to grant compensation from 1% to 20% of the cheque amount. The said discretion needs to be exercised on the basis of material placed by the complainant on record. The accused is entitled to show to the learned Magistrate, on the basis of the material produced by the complainant at the time of issuance of process, that the amount less than 20% needs to be directed to be paid by the accused. The application of mind on the point of exercise of discretion has to be on the basis of the reasons in the order. There is no need to give detailed reasons for direction to pay the amount under section 143-A but reasons to show application of mind on the point of exercise of discretion are necessary.

7. Giving of reasons assumes importance in view of the reply filed by the petitioners stating that from the averments of complaint itself, the rate of interest charged is unconscionable. Whether it is correct or not is for the learned Magistrate to consider and whether the said factor is relevant for the purpose of exercising discretion under section 143-A needs to be left with the learned Magistrate to be decided at the time of exercise of discretion under section 143(A).

8. In the facts of the case, I do not find any reason as to why the learned Magistrate has exercised discretion in directing the accused to pay an amount of 20% of the cheque amount. In that view of the matter, it is necessary to remand the matter back to the learned Magistrate to take into consideration the submissions

made by the petitioners.

9. In that view of the matter, the impugned orders dated 13th May 2022 in C.C. Nos. 1559/2020, 1556/2020, and 1557/2020 passed by the learned Metropolitan Magistrate, 43rd Court at Borivali are quashed and set aside.

10. Considering the facts of the case, the learned Magistrate shall decide the application below Exhibit 6 afresh within one (1) month of the parties appearing before the learned Magistrate. The parties shall appear before the learned Magistrate on 21st November 2022.

11. All three writ petitions stand disposed of in above terms. No costs.

(AMIT BORKAR, J.)