

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 615 OF 2022

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| <p>1. Akriti Constructions a proprietary concern
of Sanjay S/o Rawalchand Sahani,</p> <p>2. Sanjay S/o Rawalchand Sahani
Aged 62 years, Occupation Business
Prop. of Akriti Constructions,</p> <p>Both 1 and 2 at 15-A, Clark Town,
Jai Kranti Society, Anand Sai Marg,
Kadbi Chowk, Nagpur – 440004</p> | } | .. Petitioners |
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Versus

Madanmohan S/o Tolaram Daga, Aged about 66 years, Occ. Prop. of M/s. Daga Investments And Consultants, R/o Karmanya, 12-A Dandige Layout, Shankar Nagar, Nagpur – 440010 through his constituted attorney - Rahul S/o Madanmohan Daga, aged about 34 years, R/o Karmanya, 12-A, Dandige Layout, Shankar Nagar, Nagpur – 440010	}	.. Respondent
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Mr. R. M. Sharma, Advocate for petitioners.
Mr. B. N. Mohta, Advocate for respondent.

CORAM : ANIL S. KILOR J.

DATED : 09/11/2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by the consent of the learned counsel appearing for the parties.

(2) The challenge is raised to the order below Exh.16 dated 10/06/2022, allowing the application and directing the accused to pay 20% for the disputed cheque amount to the complainant within 60 days from the date of the order, passed by the 12th Additional Chief Judicial Magistrate, Nagpur in S.C.C. No.5483 of 2020, in this writ petition filed under Article 226 and 227 of the Constitution of India.

(3) I have heard the learned counsel for the respective parties. The only ground raised by the learned counsel for the petitioner is that no reasonings are given by the learned trial Court while directing the petitioner to pay 20% for the disputed cheque amount.

(4) It is submitted that recently this coordinate Bench of this Court in a case of **Mr.Ashwin Ashokrao Karokar vs. Mr. Laxmikant Govind Joshi in Criminal Writ Petition No.48 of 2022** Judgment dated

07/07/2022 has held that power to direct to pay 20% of the disputed cheque amount by the accused to the complainant is directory and the trial Court while exercising discretion can issue such direction, however, as it is discretionary, the Court shall record the reasons for exercise of such discretion.

(5) It is further submitted that in view of the judgment of the coordinate Bench of this Court in the case of Mr.Ashwin Karokar (supra) the matter must be remanded back for fresh consideration.

(6) The learned counsel for the respondent/complainant is not disputing that the trial Court has not given any reasons for exercise of such discretion while directing to pay 20% of the disputed cheque amount.

(7) I have gone through the judgment of the coordinate Bench of this Court in the case of Mr.Ashwin Karokar (supra), wherein this Court has held thus :-

“11. The exercise of any discretion conferred upon a Court, must be for reasons to be spell out, indicating application of mind by the Court to the facts available before it in the application of the law to such facts. There are multitude of judicial pronouncements in this regard,

which indicate the necessity for spelling out reasons in orders/judgments, which need not quote here. This is more so for the reason that reasons are the heart of an order/judgment and unless reasons are spelt out in the order/judgment, neither the litigant nor the Court before whom a challenge is laid to the exercise of such discretion, would be able to fathom what weighed with the Court passing the order/judgment to hold one way or another, and thus make the exercise of discretion, to be struck down for non-application of mind and thus any order exercising or refusing to exercise discretion to award interim compensation will have to spell out the reasons for exercise of such exercise.

12. *Thus, my answers to the above two questions are as under :*

<i>(i) Whether the provisions of Section 143-A of the Negotiable Instruments Act, 1881, which empower the Court to direct payment of interim compensation are mandatory or directory and</i>	<i>The provisions of Section 143-A of the N.I. Act are directory and not mandatory.</i>
<i>(ii) In case it is held that the same is directory, whether the Court has to record reasons for determining the quantum of interim compensation to be awarded as contemplated by Section 143-A (2) of the Negotiable Instruments Act, 1881 ?</i>	<i>The Court has to record reasons for determining the quantum of interim compensation, if it comes to the conclusion based upon the fact position availing, that it is a case which deserves award of interim compensation, which can be anywhere upto 20% of the cheque amount.”</i>

(8) In the light of the above referred observations made by this Court and after going through the impugned order, I have no

hesitation to hold that the impugned order dated 10/06/2022, is liable to be quashed and set aside for want of reasons. Accordingly I pass the following order :-

1. The Criminal Writ Petition is allowed.
2. The order below Exh.16 dated 10/06/2022, passed by the 12th Additional Chief Judicial Magistrate, Nagpur in S.C.C. No.5483 of 2020 is hereby quashed and set aside.
3. The matter is remanded back to the learned trial Court for decision afresh on Exh.16.
4. The trial Court shall decide the application Exh.16 expeditiously.

[ANIL S. KILOR J.]

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