

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.514 OF 2021
WITH CRIMINAL APPLICATION NO.515 OF 2021

CHAKRADHAR SAHEBRAO KOLHE
VERSUS
SHAKUNTALA W/O. SHASHIKANT PHATAK

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Advocate for Applicant : Mr. A. S. Sawant
Advocate for Respondents : Mr. R. S. Deshmukh, Senior
Advocate a/w Ms. R. R. Jaiswal i/by Mr. D. V. Tele

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CORAM : R.M. JOSHI, J

DATE : AUGUST 09, 2023

PER COURT :

1. These applications take exception to the orders dated 26.02.2020 passed by learned JMFC, Kallam, Osmanabad in S.C.C. Nos. 627/2018 & 628/2018 directing the accused to pay compensation @ 20% amount of the cheque in exercise of powers under Section 143(A) of the Negotiable Instruments Act (for short 'NI Act').

2. Learned Counsel for the Applicant has relied upon the judgment of this Court in case of Ashwin Ashokrao Karokar Vs. laxmikant Govind Joshi, 2022 (5) Mh.L.J. (Cri) 646 wherein it is held that powers of Section 143(A) of NI Act are directory and not mandatory. It is however held with direction that the

Court has to record reason 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.

3. Learned Senior Counsel for the Respondent/original complainant opposed the said contention by submitting that the present Applicant is the habitual offender and number of cases are pending against him for the offence punishable under Section 138 of NI Act. Reference is also made to the orders passed by this Court in connection with the other crimes recorded against him.

4. There cannot be any dispute about the fact that it is the discretion of the learned JMFC to pass order of deposit of compensation to the extent of 20% of cheque amount. As rightly held by the learned Single Judge of this Court that provision of Section 143-A is not mandatory but directory in nature. A bare perusal of the said section also abundantly makes it clear that the Court trying an offence punishable under Section 138 of NI Act 'may' pass order of interim compensation

@ 20%. Unless reason is required to be recorded for the grant of compensation, it would become a mandatory provision. The order of compensation cannot be passed on the premise that there is presumption in favour of negotiable instrument under Sections 118 and 139 of NI Act.

5. Needless to say that there could numerous reasons for grant of interim compensation, an exhaustive list of which cannot be given but by way of illustration it can be said that in the cases where there is material to suggest contract between parties or transaction is in nature of commercial transaction, any specific defence taken by accused in reply to statutory notice of dishnour of cheque etc. However, for the purpose of determining the quantum of interim compensation there has to be reason recorded for doing so.

6. It is sought to be argued before this Court that this is a case of commercial transaction wherein there was supply of diesel and against the repayment of the said same, cheques were issued. The Respondent/Original Complainant may be justified in

making said arguments, however, since no reasons are recorded by the learned trial Court while quantifying amount of compensation, this Court cannot supplant said reasons. Therefore, only option left with Court is to relegate back the applications before learned trial Court for decision afresh. Hence, impugned orders are set aside to the extent of quantum of compensation only.

7. Having regard to the facts and circumstances of the case, these are the fit cases for grant of compensation, however for the purpose of determination of quantum of compensation, applications are relegated back. Parties are directed to appear before the trial Court on 28.08.2023. Learned trial Court to hear the arguments of both sides and decide quantum of interim compensation within the period of one month from today. The trial Court to decide the applications on the basis of material available on record.

(R.M. JOSHI, J.)

Malani