

Ghuge

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

WRIT PETITION NO.4825 OF 2022

Surajkumar Babasaheb Bhate and Anr ... Petitioners

V/s.

Dipak Rangrao Pawar and Anr ... Respondents

Mr. Sukmar Ghanavat for the petitioner.

Mr. M.G. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 30, 2023

P.C.:

1. The challenge in this petition is to the order dated 3rd October, 2022 passed by Judicial Magistrate First Class, Kavathe-Mahankal in SCC No.376 of 2021 below Exhibit No.17 allowing application under Section 143-A of the Negotiable Instruments Act, 1881 directing the accused to deposit 10% of cheque amount towards interim compensation.

2. The petitioner is challenging mainly on the ground that the signed cheque in question was misplaced. Complainant committed theft of such cheque book and misused the cheques. According to him, the learned Magistrate has not held inquiry on these lines and therefore the impugned order is not sustainable.

3. Considering the scheme of Negotiable Instruments Act, 1881 and the object and the purpose of introduction of Section of Section 143-A, a inquiry under Section 143-A is summary. At this

stage, the Magistrate needs to *prima facie*, consider the nature of transaction and the averments in the complaint as to ascertain whether the averments are sufficient to constitute offence under Section 148 read with Section 138 of the Negotiable Instruments Act, 1881. The adjudication of the case about the theft of cheque book misplaced is not contemplated within the purview of inquiry under Section 143-A of the Negotiable Instruments Act, 1881 as it will be open for the petitioner to raise all such contentions during the trial. The legislature has taken care of rights of such accused by introducing protective clause in Section 143-A of the Negotiable Instruments Act, 1881, providing that such amount withdrawn under Section 143-A of the Negotiable Instruments Act, 1881 by the complainant shall be subject to the decision of the complaint. Ultimately if it is found that the accused was not liable to pay the amount or the offence was not proved, the complainant shall reimburse amount withdrawn along with interest at prevalent bank rate to the accused.

4. Therefore, in my opinion, the direction by Magistrate to pay 10% of cheque amounts towards interim compensation requires no interference.

5. The writ petition is, therefore, stands dismissed. No costs.

(AMIT BORKAR, J.)