



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Writ Petition No. 89 of 2023

Mr. Waman Kolte,
Aged about 50 years,
Occupation : Business,
R/o. Plot No. 309,
Behind Aradhya Jewellers,
Near Bal Gokulam Play School,
Ganesh Nagar, Nagpur.

... Petitioner

- VERSUS -

M/s. Krushna Enterprises,
Through partner,
Mr. Sanjay Tidke,
Aged about 50 years,
Occupation : Business,
R/o. 401, Mauli Niwas, 110,
Shivaji Nagar, Nagpur.

... Respondent

Mr. D. D. Dhanjode, Advocate for the petitioner
Ms. E. M. Wadodkar, Advocate for the respondent

CORAM : ANIL L. PANSARE J.

DATED : 11-10-2023

ORAL JUDGMENT

Rule. Rule made returnable forthwith. With consent, the petition is heard finally.

2. The challenge is to the order dated 4-1-2023 passed by the Additional Chief Judicial Magistrate (Special Court for Section 138 N.I. Act), Nagpur below Exhibit 12 in S.C.C. No. 131/2020, by which the

learned Magistrate has directed the petitioner/accused to deposit 10% of each cheque as interim compensation under Section 143-A of the Negotiable Instruments Act (N.I.Act).

3. The reason put forth is that Section 143-A of the N.I.Act empowers the Court to direct the accused to deposit 20% of the amount of cheque as interim compensation and, thus, the Magistrate has no other option but to allow the application. It is further held that the accused did not deny his signature over the disputed cheque.

4. Learned counsel for the petitioner has rightly pointed out that this order does not consider the law laid down by this Court in the case of *Ashwin Ashokrao Karokar Vs. Laxmikant Govind Joshi [(2023) 1 Mah LJ 147]* wherein in paragraph no. 43, the Court has observed that grant of interim compensation would be at the discretion of the Court based upon consideration of various factors, such as :
(a) whether the requirements of Section 138 of the N.I.Act, were fulfilled (b) whether the pleadings disclose the drawing of the presumption (c) whether the proceedings were within limitation and (d) whether prima facie a legal debt or liability was disclosed from the complaint or the notice of demand preceding it, and factors as such. The requirement of reasons to be assigned while considering the application under Section 143-A of the N.I. Act has been further

clarified by this Court in the judgment dated 21-9-2023 in case of ***Guljama Shah Jahir Shah Vs. Shri Sadguru Kaka Stone Crusher*** in ***Criminal Writ Petition No. 83/2023***.

5. Perusal of the impugned order indicates that the learned Magistrate has not considered the above rulings while awarding 10% of the cheque amount as interim compensation.

6. The contention of the respondent – complainant that the reason assigned by the Magistrate that accused did not deny his signature over the disputed cheque is sufficient to grant interim protection is contrary to law as laid down by this Court in the aforesaid judgments.

7. The impugned order is, therefore, not sustainable. Hence, following order.

ORDER

- (i) The petition is allowed.
- (ii) The order dated 4-1-2023 passed by the Additional Chief Judicial Magistrate (Special Court for Section 138 N.I. Act), Nagpur below Exhibit 12 in S.C.C. No. 131/2020 is quashed and set aside.
- (iii) The application, Exhibit 12 is restored on the file of Additional Chief Judicial Magistrate (Special Court for Section 138 N.I. Act),

Nagpur, who shall consider the same in accordance with the law laid down by this Court in aforesaid two judgments.

(iv) The parties to appear before the trial Court on the scheduled date.

(v) Rule is made absolute in above terms.

(Anil L. Pansare, J.)

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