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**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**  
**BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.588 OF 2024**

Rajendra Gangadhar Waghmare

PETITIONER

VERSUS

Sambhaji Ramji Kagne

RESPONDENT

.....  
Mr. Dhananjay M. Shinde, Advocate for the petitioner  
.....

**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 2<sup>nd</sup> APRIL, 2024**

**ORDER :**

1. Petitioner is aggrieved by order passed by learned Additional Sessions Judge, Ahmedpur in Criminal Revision Application No. 14 of 2023, thereby confirming order dated 19<sup>th</sup> August, 2023 passed by learned Judicial Magistrate, First Class, Ahmedpur below Exhibit-17 in SCC No. 421 of 2022.

2. Petitioner is accused in SCC No. 421 of 2022 filed by respondent under section 138 of the Negotiable Instruments Act. It is the case of respondent - complainant that, he gave Rs.10,00,000/- by way of hand loan to petitioner in the month of January, 2020. When the said amount was demanded back by respondent - complainant, petitioner gave cheque No. 975128 of State Bank of India, Shankarnagar, Naigaon of Rs.10 lakh dated

3<sup>rd</sup> July, 2020. When the said cheque was deposited for encashment, same was returned to the complainant on 10<sup>th</sup> August, 2020 as the payment was stopped by drawer. Complainant thereafter issued statutory notice on 29<sup>th</sup> August, 2020 and second notice on 1<sup>st</sup> October, 2020. In spite of service of both the notices, petitioner failed to reply. Hence, respondent filed the complaint.

3. In response to the summons, petitioner appeared in the case. Complainant filed application Exhibit-17 seeking direction to petitioner under section 143-A of the Negotiable Instruments Act, for paying 20% interim compensation. Petitioner opposed the said application. Upon hearing the parties, Trial Court allowed the application and directed the petitioner to deposit 20% of the cheque amount as interim compensation, within 60 days.

4. Being aggrieved by the said order, petitioner unsuccessfully filed Criminal Revision Application No. 14 of 2023. Hence, this petition.

5. It is the case of the petitioner that he filed FIR against complainant under the Prevention of Corruption Act, which is pending in the Sessions Court, Kandhar. Therefore, there was no occasion for the petitioner to issue cheque to the complainant, as relations between him and complainant were not cordial. His two

cheques bearing No. 975128 and 975129 were misplaced in the year 2018 and he informed the said fact to the bank and both the cheques were barred from business transactions. Both the missing cheques were found by complainant and taking disadvantage of the same, he has filed false complaint against petitioner.

6. Heard learned advocate for the petitioner. Perused the memo of writ petition, annexures thereto and the impugned orders.

7. Learned advocate for petitioner assailed the impugned order by relying on decision of the Apex Court in ***“Rakesh Ranjan Shrivastava V/s State of Jharkhand and Another”*** passed in Criminal Appeal No. 741 of 2024, submitting that section 143A of the NI Act is directory and not mandatory and without considering plausible defence raised by the petitioner, Trial Court has erroneously exercised discretion in favour of complainant. According to him, unreasoned order is passed by the Trial Court, which is confirmed by the Revisional Court.

8. It is a matter of record that complaint is filed in the year 2022 and process is issued on 21<sup>st</sup> December, 2022. Petitioner - accused appeared before the Court on 30<sup>th</sup> January, 2023. Admittedly, the cheque bears signature of the petitioner -

accused and the cheque is dishonoured, as payment was stopped by the drawer. Presumption under section 139 of the NI Act, can be drawn in the present case. Considering these aspects and the fact that trial will take some time, learned Trial Judge is justified in taking into consideration the object behind amending section 143A. Defence raised by petitioner may be probable, but *prima facie*, it does not appear to be plausible. Petitioner will get an opportunity to prove his defence during trial.

9. In “**Rakesh Ranjay Shrivastava**” (*supra*), the Apex Court has held that provision of section 143 (A) of the Negotiable Instruments Act is directory and if the defence of accused is found to be *prima facie* plausible, Court may exercise discretion for refusing to grant interim compensation.

There cannot be any dispute about the said proposition. However, in this decision, the Apex Court has further observed :-

*“There could be several other factors in the facts of a given case, such as, the pendency of a civil suit etc. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all the relevant factors”*

10. In the present case, Trial Court has considered all the relevant factors and has rightly exercised discretion while passing a reasoned order. Revisional Court has confirmed the

order of Trial Court by giving reasons. No case is made out by petitioner to interfere in concurrent findings of facts recorded by both the courts, in exercise of extraordinary writ jurisdiction. Criminal writ petition, being devoid of merit, is dismissed.

**[NITIN B. SURYAWANSHI]**  
**JUDGE**

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