



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

CRIMINAL WRIT PETITION NO. 606 OF 2025

Ajitsingh Raghbirsingh Nirh

.. Petitioner

Versus

M/s. S. D. Associates

Through Its Partners Vitthal Ganpat Shahane
and another

.. Respondents

Mr. Nikhil D. Jaiswal, Advocate for the Petitioner.

Mr. K. F. Shingare, Advocate for Respondent No. 1.

CORAM : KISHORE C. SANT, J.

DATE : 25th AUGUST, 2025.

PER COURT :-

. Heard the parties for some time.

2. The petitioner – original complainant has approached this Court challenging an order of rejection of his application filed under Section 421 of the Code of Criminal Procedure (for short “Cr.PC.”) in a proceeding under Section 138 of the Negotiable Instruments Act (for short “N.I. Act”). The petitioner herein filed a complaint against the respondents for non payment of amount of cheque in spite of demand. In the said criminal proceeding he

filed an application under Section 143-A of the N.I. Act directing the accused persons to pay interim compensation. The learned J.M.F.C. (Court No. 12), Aurangabad vide order dated 07.03.2022 allowed the application directing respondents to pay amount of Rs. 1,02,546/- (Rs. One Lakh Two Thousand Five Hundred Forty Six only) within 60 days. On failure to pay the amount within 60 days, the petitioner filed one more application seeking action under Section 421(1) (a) of the Cr.P.C. for issuance of warrant for recovery of the amount. The learned Trial Judge by impugned order rejected the said application.

3. The learned advocate for the petitioner argued that the learned Trial Judge has committed an error by holding that the amount of interim compensation is not amount of fine and therefore, the provisions of Section 421 of the Cr.P.C. are not available. He submits that, Section 143-A sub section (5) of the N.I. Act clearly states that, the amount of interim compensation is recoverable as amount of fine under Section 421 of the Cr.P.C.

4. The learned advocate for the petitioner relies upon the judgment of Division Bench of Patna High Court in the case of

Sunil Kumar Vs. The State of Bihar and Ors. in Civil Writ Jurisdiction Case No. 73/2022. In the said case, it is held that, Section 143-A sub section (5) of the N.I. Act specifically states that interim compensation payable under this section is recoverable as a fine under Section 421 of the Cr.P.C.

5. The learned advocate Mr. Shingare for respondent No. 1 vehemently opposes the petition. He submits that, the amount under Section 143-A of the N.I. Act is an amount of interim compensation and not a fine. Section 421 of the Cr.P.C. can be invoked only in cases where amount of fine is to be recovered. He submits that, in the present case, order under challenge is not an interlocutory order, but an intermediate order and in that view a revision is maintainable before the learned Sessions Court. Since revision is maintainable this Court need not exercise the jurisdiction under Article 227 of the Constitution of India. He thus prays for rejection of the petition. He relies upon the judgment in the case of **Girish Kumar Suneja Vs. C.B.I.** reported in **AIR 2017 SC 3620.**

6. So far as maintainability is concerned this Court finds that, the order in the present case does not decide the right of the parties and thus cannot be said to be an order determining the rights of the parties. This Court is therefore of the opinion that revision is not maintainable. Even otherwise, availability of alternative remedy is no ground to reject the writ petition. It is still open to the writ Court to entertain the writ petition.

7. Paragraph No. 18 of the judgment in the case of Sunil Kumar (*supra*) reads as under :

“18. We notice that section 143A of the NI Act under sub Section (5) specifically states that interim compensation payable under this Section is recoverable as a fine under Section 421 of the Code of Criminal Procedure. Section 421 (1) (b) provides for issuance of warrant to the Collector to realize amounts as arrears of land revenue from movable and immovable properties of said defaulter. Further, clause 3 of Schedule I of the Recovery Act as already extracted herein above states that any money realizable as arrear of land revenue by process authorized for said purpose shall be deemed a public demand under Section 3 of the Act.”

8. It is thus clear that, in view of Section 143-A sub section (5) of the N.I. Act, the amount of interim compensation is an amount of a fine. The petitioner therefore has rightly invoked the

provisions of Section 421 of the Cr.P.C. When the wording of Section 143-A sub section (5) of the N.I. Act is clear, there is no doubt that the amount is of fine. The application under Section 421 of the Cr.P.C. was not entertained. This Court finds that the learned Trial Judge has committed a mistake in recording that the amount of interim compensation cannot be recovered by way of fine.

9. Considering the above, this Court is convinced that the application under Section 421 of the Cr.P.C. ought to have been allowed. In view of the same, the application below Exh. 27 in S.C.C. No. 1746/2021 before the Court of learned J.M.F.C. (Court No. 11), Aurangabad stands allowed.

10. Criminal writ petition stands disposed of.

(KISHORE C. SANT, J.)

PS.B.