



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

CRIMINAL WRIT PETITION NO. 1068 OF 2024

Manoj Abhimanyu Patil
Age 42 years, Occu: Business,
R/o 15/144, Bhagyoday, CHSB,
Cabin Road, Rahul Estate,
Ambaranth (East), Dist. Thane

... **Petitioner**

VERSUS

M/s Mansi Labour Suppliers
Proprietor: Dipak Abhimanyu Patil,
Age 39 years, Occu: Business,
R/o Kekat Nimbhora,
Taluka Jamner District Jalgaon

... **Respondent**

Mr. S. S. Bora, Advocate for the Petitioner,
Mr. Vinod P. Patil, Advocate for the Respondent

CORAM : Y. G. KHOBRADE, J.

RESERVED ON : 31.01.2025

PRONOUNCED ON : 05.02.2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of both the parties heard finally.
2. By the present Petition under Article 226 of the Constitution of India r/w Section 482 of the Criminal Procedure Code, 1973, the Petitioner takes exception to the judgment dated 22.04.2024 passed by the learned Additional Sessions Judge-4, Jalgaon in Criminal Revision Application No. 113/2023, whereby affirmed the order passed by the learned Judicial

Magistrate First Class, Jamner, below Exh. 19 on 25.09.2023 in S. C. C. No. 739/2022.

3. The Petitioner is the original accused and Respondent is the original complainant in Summary Criminal Case No. 739/2022. (For the sake of brevity, parties to the present petition hereinafter be referred in their original capacity as “accused ” and “complainant”).

4. Shri Dipak Abhimanyu Patil, the Proprietor of the Complainant firm and accused Shri Manoj Abhimanyu Patil are real brothers. By profession, the accused is Tax Consultant since 2006. On 22.02.2017, the Investment Agreement & Memorandum of Understanding was executed between the accused and Complainant. As per the memorandum of understanding, the accused offered monthly 10% profit to the complainant. The complainant invested an amount of Rs.26,54,500/- with the accused. Initially, till 21.03.2018 profit amount was disbursed in favour of the complainant but thereafter, no profit was disbursed. Therefore, total amount of Rs.1,59,27,000/- were outstanding against the accused. On repeated demands, the accused issued a cheque of Rs.50 lakhs bearing No. 128664, dated 26.09.2022, drawn on IDBI Bank, Balaji Market, Pachora Road, Jamner Branch from account No.0659104000101639 in favour of the complainant with assurance that said cheque would be honoured. Accordingly, on 27.09.2022, the

complainant presented said cheque for encashment with his Banker HDFC, Jamner Branch. However, the said cheque was returned unpaid with cheque return memo dated 28.09.2022 on ground that “payment of cheque stopped by the drawer.” Therefore, on 30.09.2022, the complainant issued mandatory notice under section 138 of the Negotiable Instruments Act (for short, NI Act), and called upon the accused to comply with the notice. However, the accused issued reply and denied contents of notice. Therefore, the complainant filed SCC No.739/2022 for the offence punishable under section 138 of the NI Act.

5. After service of summons, the petitioner/accused duly appeared in the matter. Thereafter, the complainant filed Exh. 19 an application under Section 143-A of the NI Act and prayed for issuance of directions against the accused to pay 20% interim compensation of the cheque amount to him. On 25.09.2023, the learned Judicial Magistrate First Class, Jamner passed an order below Exh.19 and directed the petitioner/accused to pay Rs.10 lakhs to the complainant towards interim compensation under Section 143-A of the NI Act within a period of 60 days and in case the accused is acquitted, the complainant would be liable to repay amount of interim compensation with interest at the bank rate as published by the Reserve Bank of India for the relevant financial year.

6. Being aggrieved by the said order, the accused invoked jurisdiction

under section 397 of the Criminal Procedure Code by filing Criminal Revision Application No. 113/2023. On 22.04.2024, the learned Additional Sessions Judge-4, Jalgaon passed the impugned order and affirmed the order date 25-09-2023 passed by the learned Judicial Magistrate below Exh.19 holding that, the Court is bound to presume correctness of debt and contents of the negotiable instruments as well as fact that the holder of the cheque received the same towards payment of debt or other legal liabilities. Therefore, considering the nature of transaction and cheque was issued towards discharge of legal liability, the order directing payment of interim compensation of 20% of cheque amount provided under section 143 of the NIA Act is proper. Being aggrieved by the said order, the accused has invoked the jurisdiction of this Court.

7. I have heard Shri Bora, the learned counsel for the petitioner/accused and Mr. Vinod Patil, the learned counsel appearing for the respondent/complainant. With the assistance of both parties, I have gone through the petition paper book and material placed on record.

8. Mr. Bora, the learned Counsel appearing for the accused canvassed that, the learned Additional Sessions Judge fail to consider that, the provision of Section 143A of the NI Act, 1881 is not mandatory but it the discretionary. In the process, the learned Additional Sessions Judge lost sight of the fact that the learned Magistrate had declined to exercise the

discretion for justifiable reasons. Secondly, the learned Additional Sessions Judge did not consider the question of the quantum of interim compensation to be awarded in a correct perspective and mechanically directed the accused to pay by way of interim compensation 20% of the amount covered by the cheques; the maximum which can be awarded under Section 143A of the NI Act, 1881. To bolster up the submissions that the provisions contained in Section 143A of the NI Act, 1881 are directory in nature and even when the Court comes to a conclusion that interim compensation is required to be awarded, the Court is enjoined to record reasons for determining the quantum of compensation to be so awarded. To buttress this submission, learned counsel appearing for the petitioner/accused placed reliance on case of ***Rakesh Ranjan Shrivastava-Vs- State of Jharkhand & Ors., (2024) 4 Supreme Court Cases 419.***

9. Per contra Mr. Vinod Patil, the learned counsel appearing for the complainant supported findings of the learned Additional Sessions Judge. It is canvassed that, both the Courts below concurrently held that, the petitioner/accused has not denied his signature on subject matter of the cheque. As per the provisions of Section 118 and 139 of the NI Act, presumption lies in favour of the complainant about the correctness of debt/consideration and issuance of negotiable instrument for discharge of legal liability. The accused can rebut the said presumption by conducting

cross examination of the complainant and other witness as well as by giving explanation while recording statements under section 313 of the Cr.PC and on examination defence witnesses.

10. It is further canvassed that, the overwhelming material placed on record indicate that, the accused had drawn the cheque towards discharge of legal liability. It is evident from the statement made on affidavit at Exh.19. The learned JMFC rightly exercised the discretion to award interim compensation lest the provisions contained in Section 143A of the NI Act. In support of this submission, the learned counsel appearing for the complainant placed reliance on ***Hiten P. Dalal vs. Bratindranath Banerjee ,AIR 2001 SUPREME COURT 3897***, wherein, nature of the presumptions envisaged by the provisions contained in Sections 118, 138 and 139 of the NI Act, 1881 is demonstrated.

11. The learned counsel for the complainant further canvassed that accused stopped the payment of cheque in question on ground that the said cheque was stolen and there is no legally recoverable debt but the complainant instituted a false complaint. Therefore, if the accused is acquitted, the complainant is liable to repay the said amount of interim compensation. Therefore, concurrent findings recorded by both courts below are just and proper, hence, prayed for dismissal of the petition

12. Section 143A of the NI Act, 1881 came to be inserted by the

Negotiable Instruments (Amendment) Act 20 of 2018. It reads as under:

"143A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant--

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent. of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section."

13. The Parliament, as is evident, was anxious to address the issue of undue delay in the disposal of the complaints for the offence punishable under Section 138 of the NI Act, 1881. It was experienced that unscrupulous drawers resorted to dilatory tactics to delay the disposal of the complaints under Section 138 of the NI Act, 1881 and thereby cause prejudice to the payee, who was deprived of the amount covered by the

cheque. The sanctity of the transaction through cheque was thus eroded. Therefore, as a measure to compensate the payee, the Parliament considered it appropriate to vest power in the Court to award interim compensation awaiting the adjudication of the guilt.

14. Evidently, the text of Section 143A(1) makes it clear that the power to award interim compensation is discretionary as the Parliament as used the word, "may". The factors which would weigh with the Court in awarding the interim compensation, though not spelled out by the text of the provisions contained in Section 143A yet are not difficult to discern. Prima facie compliance of statutory requirement to invoke Section 138 of the NI Act, 1881, prima facie merit of the case of the complainant; the nature of the underlying transaction; the nature of the defence, if any, put forth by the drawer; probability of dispelling the presumptions under Section 118 and 139 of the NI Act, 1881; the circumstances of the case; conduct of the parties and the capacity of the drawer to pay the interim compensation, if awarded, are few of the factors which are germane for the determination of an application for grant of interim compensation under Section 143A of the NI Act, 1881.

15. In case of ***Rakesh Shrivastava*** (*supra*) the Hon'ble Supreme Court considered the question as to whether the provisions contained in Section 143A of the NI Act, 1881 are directory or mandatory. After analysing the

provisions of Section 143A and comparing and contrasting the same with Section 148 of the NI Act, 1881, the Supreme Court ruled that the provisions under Section 143A will have to be held as a directory and not mandatory. And the word "may" used in Section 143A, cannot be construed or interpreted as "shall". Thus, the power under Sub-section (1) of Section 143A is discretionary. The Supreme Court enunciated as under:

"16. In the case of Section 143A, the power can be exercised even before the accused is held guilty. Sub-section (1) of Section 143A provides for passing a drastic order for payment of interim compensation against the accused in a complaint under Section 138, even before any adjudication is made on the guilt of the accused. The power can be exercised at the threshold even before the evidence is recorded. If the word 'may' is interpreted as 'shall', it will have drastic consequences as in every complaint under Section 138, the accused will have to pay interim compensation up to 20 per cent of the cheque amount. Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice. If such an interpretation is made, the provision may expose itself to the vice of manifest arbitrariness. The provision can be held to be violative of Article 14 of the Constitution. In a sense, sub-section (1) of Section 143A provides for penalising an accused even before his guilt is established. Considering the drastic consequences of exercising the power under Section 143A and that also before the finding of the guilt is recorded in the trial, the word "may" used in the provision cannot be construed as "shall". The provision will have to be held as a directory and not mandatory. Hence, we have no manner of doubt that the word "may" used in Section 143A, cannot be construed or interpreted as "shall". Therefore, the power under sub-section (1) of

Section 143A is discretionary."

16. In the said case, the Supreme Court explicated factors to be considered while exercising the discretion under Section 143A. The observations in paragraphs 19 and 22 are material and hence extracted below:

When the court deals with an application under Section 143A of the N.I. Act, the Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application under sub-section (1) of Section 143A. The presumption under Section 139 of the N.I. Act, by itself, is no ground to direct the payment of interim compensation. The reason is that the presumption is rebuttable. The question of applying the presumption will arise at the trial. Only if the complainant makes out a prima facie case, a direction can be issued to pay interim compensation. At this stage, the fact that the accused is in financial distress can also be a consideration. Even if the Court concludes that a case is made out for grant of interim compensation, the Court will have to apply its mind to the quantum of interim compensation to be granted. Even at this stage, the Court will have to consider various factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant and the paying capacity of the accused. If the defence of the accused is found to be prima facie a plausible defence, the Court may exercise discretion in refusing to grant interim compensation. We may note that the factors required to be considered, which we have set out above, are not exhaustive. 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.

17. In the case of **Bajaj Constructions Vs. State of Maharashtra and others, (2024) ibclaw.in 530 HC**, the Coordinate Bench of this Court has observed that as per ratio laid down in case of **Rakesh Shrivastava** (supra), the Hon'ble Supreme Court has enunciated in clear and explicit terms that the presumption under Section 139 of the NI Act, 1881, by itself, is no ground to direct the payment of interim compensation. Even if the Court concludes that a case is made out for grant of interim compensation, the Court will have to apply its mind to the quantum of interim compensation to be granted.

18. Reverting back to the facts of the present case, the complainant specifically pleaded that in pursuance of the execution of Memorandum of Understanding dated 22.02.2017, the accused issued cheque of Rs.50 lakhs bearing No. 128664, dated 26.09.2022, drawn on IDBI Bank, Jamner Branch with understanding to deposit the same on the next date. Accordingly, on 27.09.2022, the complainant deposited the said cheque for encashment with his banker. The said cheque returned unpaid with cheque return memo dated 28.09.2022 that "payment stopped by the drawer". It is not in

dispute that, the accused is Tax Consultant by profession. It is alleged that, the accused is in habit to cheat people including relatives and his friends. The accused filed reply at Exh. 45. Defence of the accused is that, the cheque in question was stolen or it was lost and therefore, he had lodged a complaint with the police station but it is the probable defence of the accused which need not required to taken into consideration at the initial stage.

19. Therefore, considering the nature of transaction and issuance of cheque in question for discharging legal liability as well as considering defence of the accused, the learned JMFC directed the accused to pay 20% of cheque amount toward interim compensation under Section 143-A of the Negotiable Instruments Act and in case if accused is acquitted, the complainant would be liable to repay the said amount with interest at bank rate as may be publishes by the Reserve Bank of India for the relevant financial year.

20. On 22.04.2024, the learned Additional Sessions Judge passed the impugned order and affirmed order passed by the learned JMFC. The Additional Sessions Judge recorded findings that the accused made investment in Zulu Investment Company. The complainant invested Rs.28,03,000/- in the said company and received returns of Rs.32,32,000/-. The accused lodged a false

complaint regarding lost of cheque in question. So also, the accused also stopped payment of cheque in question. However, the accused has not denied his signature on the disputed cheque. Therefore, presumption lies in favour of the complainant under Section 118 and 139 of the NI Act about issuance of cheque towards discharging legal liabilities.

21. No doubt, as per the ratio laid down in case of ***Rakesh Ranjan Shrivastava***, cited *supra*, the Court required to prima facie evaluate the merits of the case made out by the complainant, merits of the defence pleaded by the accused and direction for payment of interim compensation can be issued only if the complainant makes out a prima facie case, so also, the Court will have to apply its mind to the quantum of interim compensation to be granted and also have to consider the nature of the transaction and the relationship between the accused and the complainant.

22. In case in hand, both the courts below have recorded concurrent findings about issuance of cheque in question for discharging legal liabilities. The complainant and accused are real brothers. As such, the memorandum of understanding executed between them on 22.02.2017 and the cheque in question appears to be issued in pursuance of said memorandum of understanding, which

certainly appears about issuance of cheque for discharging legal liabilities. Therefore, I do not find any substantial ground to interfere with the concurrent findings. Hence, the Criminal writ Petition deserves to be dismissed. Accordingly, it is dismissed.

23. Accordingly Rule is discharged.

24. The Criminal Application No.3411 of 2024 is accordingly disposed off.

(Y. G. KHOBRAGADE, J.)

JPChavan