



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

CRIMINAL WRIT PETITION NO. 65 OF 2024

Shri Amit Ramesh Swami,
Age 28 Years, Occu.: Service,
R/o. Flat No.202, Akshardhara "A"
Apartment, Opposite to HDFC Bank,
Upnagar Branch, Nashik – 422 006.

.... **PETITIONER.**

// VERSUS //

Shri. Shrikrushna Sanjeev Musane,
Age : 31 Years, Occu. : Advocate
R/o. Santosh Guntiwar, behind B.P.C.L.
Petrol Pump, Sindewahi, Tah. Sindewahi,
District : Chandrapur – 441 222.

.... **RESPONDENT.**

Shri A.S.Nandimath, Advocate for Petitioner.
Shri Shrikrushna S. Musane, Respondent in Person.

CORAM : ANIL S. KILOR, J.

DATE OF RESERVING THE JUDGMENT : 21/02/2025

DATE OF PRONOUNCING THE JUDGMENT : 10/06/2025

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. By way of present writ petition filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, a prayer is made to quash and set aside the proceedings bearing Summary Criminal Case No. 46 of 2023 pending on the file of learned Judicial Magistrate First Class, Sindewahi, District : Chandrapur. A prayer is also made for quashing of order dated 24/11/2023 directing the petitioner to pay 20% of the cheque amount i.e. Rs.1,60,000/- to the complainant.

4. The respondent is the complainant in Summary Criminal Case No.46 of 2023 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the N.I. Act”). In the said proceedings an application for grant of interim compensation was filed under Section 143-A by the respondent, which came to be allowed on 24/11/2023, the same is under challenge in this writ petition.

5. The grounds raised by the petitioner are that the learned Magistrate has considered the application under Section 143-A of the N.I. Act as mandatory and further failed to consider whether the claim made by the respondent is against the ‘legally enforceable liability’. It is

submitted that any cheque issued towards any illegal, immoral or against any public policy, the amount towards the same cannot be considered as legally enforceable liability. To substantiate this argument, the learned counsel for the petitioner has relied upon the judgment of the Karnataka High Court in the case of *R. Parimala Bai ..vs.. Bhaskar Narasimhaiah*, reported in **2018 SCC OnLine Kar 3989** and a judgment of the Delhi High Court in the case of *Virendra Singh ..vs.. Laxmi Narain*, reported in **2006 SCC OnLine Del 1328**.

6. The respondent appeared in person and strongly opposed the petition.

7. In light of the rival submissions, I have perused the record and the impugned order.

8. This Court in Criminal **Writ Petition No.48 of 2022** (*Ashwin Karokar ..vs.. Laxmikant Joshi*) vide judgment dated 07/07/2022, while observing that Section 143-A of the N.I. Act is not mandatory, has held thus :

“9.3. It is further material to note that the power to direct interim compensation under Section 143-A of the N.I. Act, can be equated with the provisions as contained in Order XXXVIII Rule 5 of the C.P.C., which confers a power upon the Court to direct the defendant to furnish security in such sum as may be specified, during the pendency of the suit, which provision is directory in nature and the use of the power is discretionary.

9.4. Section 143-A of the N.I. Act, though enacted with an intent to ensure speedy disposal of the proceeding pending under Section 138 of the N.I. Act, the said intent, insofar as Section 143-A of the N.I. Act is concerned, does not make the provision mandatory, as what is conferred upon the Court by virtue of the said provision is a discretion to direct interim compensation and no right is created in the complainant under it, to demand the entitlement to compensation. 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 [see : B.R. Upadhyaya and Anant H. Ulahalkar (supra)]

9.5 In a general sense word “may” is enabling or discretionary. In order to construe it as mandatory it has to be coupled with a duty to act [see: Federic Guilder Julius (supra)]. In juxtaposition to the language of Section 148 of the N.I. Act, which in view of the fact, that it is applicable at the appellate stage after the liability, regarding compensation/fine has been crystallized, in which context, the provision directs the Appellate Court, to order deposit of such sum which shall be a minimum of 20% of the fine or

compensation, as awarded by the Trial Court, Section 143-A of the N.I. Act, on the other hand, does not cast any such duty or obligation upon the Court trying the offence to, in all cases, order deposit of an amount upto 20% of the cheque amount in the Court, as Section 143-A (2) of the N.I. Act, confers a discretion upon the Court to direct the deposit of the sum not exceeding 20% of the cheque amount as an interim compensation.

9.6 to 9.8

9.9. It is further material to note that the legislature was aware of the provisions of Sections 138 to 147 of the N.I. Act, the purpose for which they were enacted, the delays which were being caused in the disposal of the proceedings, which is evident from the aims and object of the amending Act 20 of 2018, it was thus open for the legislature to have used an express language that in all cases under Section 138 of the N.I. Act, which were pending trial, the complainant was entitled to compensation upto 25% of the cheque amount. However, such express words, have not been used, though it was open for the Legislature to do so, which again indicates that the use of the word 'may', as occurring in Section 143-A(1) of the N.I. Act, was not mandatory but was directory and a discretion was conferred upon the Court, to either grant or not to grant interim compensation. The fact that a discretion was conferred upon the Court is further evident from the use of the expression 'shall not exceed' as occurring in Section 143-A(2) of the N.I. Act which again confers a discretion upon the Court 'trying the offence', to direct the grant of interim compensation anywhere between the range of 0 (zero) to 20 (twenty) % of the cheque amount, indicating that in a given case, it would be permissible for the Court, to even decline awarding of any interim compensation, of course, for reasons to be recorded. Thus, when the power is wide enough to cover both the grant and refusal to grant, the power would be discretionary [see Dharti Dhan (P)

Ltd. (supra)], as no absolute right has been conferred upon the complainant to claim interim compensation, but a discretion has been conferred upon the Court to so direct, the exercise of which discretion will depend upon the Court holding in favour of the complainant, depending upon whether a case was made out for the same or not, based upon the facts availing on record, in each case.

9.9 to 9.13 ...

9.14. The use of the expression ‘shall not exceed twenty per cent of the amount of the cheque’, as occurring in Section 143-A (2) of the N.I. Act, also does not make the provision mandatory, as the use of the word ‘shall’ in Section 143-A (2) has to be viewed in the background of the word ‘may’ as used in Section 143-A (1), which colors the content of the entire provision. The expression “shall not exceed twenty per cent” in Section 143-A (1) merely caps the limit of the discretion which the Special Court is permitted to exercise in the matter and nothing else. The word “shall” as used in the above expression does not transcend beyond the limits of discretion of the Special Court, in the matter of awarding interim compensation, which as already discussed above could be anywhere between 0% to 20% of the cheque amount.

9.15. The language of Section 143-A (1) of the N.I. Act is neither obscure, nor unambiguous as would reflect from a plain reading of the same and the intent of the legislature to make the provision directory is clearly reflected therefrom, which intent also serves the purpose for which it was enacted i.e. to avoid delays.

10. In my considered opinion, in view of the discussion above, it has to be held that Section 143-A of the N.I. Act, is discretionary and not mandatory and the view taken in L.G.R. Enterprises (supra) holding that the word “may”, as occurring in Section 143-A(1) of the N.I. Act empowers the Court with a discretion to direct interim compensation and it is not necessary that in all cases the trial Court must necessarily direct the interim

compensation to be paid and such direction should be given only on a case to case basis based upon the facts of each case, which is followed in K. Ranjithkumar (supra); in Ajay Vinodchandra Shah (supra) to the extent holding that Section 143-A(1) of the N.I. Act leaves it to the discretion of the Court to pass an order of interim compensation upto the ceiling limit of 20% of the cheque amount and a difference is found between the provisions of Section 143-A(1) and 148 of the N.I. Act, though Ajay Vinodchandra Shah (supra), it has been declared not to be a good law, in Surinder Singh Deswal (supra) only insofar as consequences of non-compliance of condition of suspension of sentence is concerned, as noticed in JSB Cargo and Freight Forwarder Pvt. Ltd (supra) and thus what is held therein would hold good, except to the extent as indicated in Surinder Singh Deswal (supra); JSB Cargo and Freight Forwarder Pvt. Ltd (supra) which holds that the provisions of Section 143-A(1) of the N.I. Act, are directory and not mandatory; G.K. Construction Company, Through its Owner Govind Katariya Vs. Balaji Makan Samagri Stores, Through its Proprietor Mallaram [S.B. Criminal Misc. (Pet.)No.189/2022] decided on 04/03/2022 by a learned Single Judge of the Rajasthan High Court at Jodhpur and D.L. Sadashiva Reddy (supra) which holds that the power under Section 143-A(1) of the N.I. Act is discretionary lay down the correct position. It is also material to note that D.L. Sadashiva Reddy (supra) was carried to the Hon'ble Apex Court vide S.L.P. No.10151/2021. ...”

However, in the present matter, the learned Magistrate has held that the said provision is mandatory and accordingly, interim compensation is directed to be paid.

9. It is settled law that whether there is any legally recoverable debt or not, that is a pure question of facts and essentially the defence of the accused which cannot be gone into at this stage. Therefore, the trial Court should decide the same at the appropriate stage.

10. However, considering that the learned Magistrate has wrongly held that the provisions of Section 143 of the N.I. Act are mandatory, I am of the opinion that the matter needs to be remanded back to the learned trial Court to reconsider the application under Section 143A of the N.I. Act.

11. Accordingly, I pass the following order :

- i) The Criminal Writ Petition is partly allowed.
- ii) The impugned order dated 24/11/2023 passed below Exh.38 by the Judicial Magistrate First Class, Sindewahi, District : Chandrapur in Summary Criminal Case No. 46 of 2023 is hereby quashed and set aside.
- iii) The matter is remanded back to the learned Judicial Magistrate First Class, Sindewahi, District : Chandrapur for reconsidering the application under Section 143A of the Negotiable Instruments Act, 1881.

- iv) The learned Magistrate shall make an endeavour to decide the matter as early as possible, on its own merits, after hearing both the parties.

Rule accordingly.

(ANIL S. KILOR, J)

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