



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO.556 OF 2024

1. Maa Roshani Trading Company,
Prop. Kailash S/o Ajabrao Kakde,
Aged about 45 years, Occ: Business,
R/o Yashwant Colony, Opposite New
Arts College, Bachelor Road, Wardha
Tah. And Dist. Wardha.
2. Kailash s/o Ajabrao Kakde
Aged about 45 years, Occ: Business,
R/o Yashwant Colony, Opposite New
Arts College, Bachelor Road, Wardha
Tah. And Dist. Wardha.

...Applicants

(Orig. Accused)

...V E R S U S...

Shri Ajay S/o Lakshmanrao Dhanve,
Aged about 46 years, Occ. Business,
Prop. M/s Dhanve Sons and Traders,
R/o Pande Layout, in front of Bhoyar
College, Amravati Road, Nachangaon,
Tah. Deoli, Dist. Wardha.

...Non-applicant

(Orig. Complainant)

Ms A.R. Sharma, Advocate for Applicants.
Shri G.B. Sawal, Advocate for Non-applicant.

CORAM :- M.W. CHANDWANI, J.

DATE :- 01/04/2025

ORAL JUDGMENT:

1. **Rule.** Rule made returnable forthwith. With the consent
of parties the matter is taken up for final hearing.

2. The case in hand is squarely covered by the decision of the Supreme Court in the case of ***Rakesh Ranjan Shrivastava Vs. The State of Jharkhand and another***¹, wherein the Supreme Court in para 19 has held as under:

“19. Subject to what is held earlier, the main conclusions can be summarised as follows:

a. The exercise of power under sub-section (1) of Section 143A is discretionary. The provision is directory and not mandatory. The word “may” used in the provision cannot be construed as “shall.”

b. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.

c. The broad parameters for exercising the discretion under Section 143A are as follows:

i. 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. The financial distress of the accused can also be a consideration.

ii. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.

iii. If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.

iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.

v. There could be several other relevant factors in the

¹ 2024 INSC 205

peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.”

3. In the present case, the learned JMFC, Pulgaon has opined in the impugned order that reason is not a *sine qua non* while deciding the application for direction to pay interim compensation under Section 143A of the Negotiable Instruments Act, 1881. It has also been observed by the trial Court that making any observations as to the defence of the accused may cause prejudice the accused as well as may not be acceptable to be considered at this stage. These observations are clearly against the observations made by the Supreme Court in para 19(c)(i) of *Rakesh's* case (supra), wherein it has been held that the power under Section 143A for direction to pay interim compensation is discretionary. 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 reply to the application. Therefore, the Court has to apply its mind and evaluate the merits of the case and the plausible defence of the accused and give a *prima facie* opinion which has not been done in this case. The order passed by the learned JMFC is erroneous and is required to be set aside. Hence, the application is partly allowed.

4. The impugned order below Exh.25 in S.C.C. No.70/2021 dated 12.12.2023 passed by the learned JMFC, Pulgaon is hereby set aside.

5. The learned JMFC, Pulgaon is directed to reconsider the application filed by the non-applicant in light of the observations made in the decision of the Supreme Court in the case of *Rakesh* (supra).

6. In the above terms, the application stands disposed of.

JUDGE

Wagh