



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

CRIMINAL WRIT PETITION (WP) NO. 473 OF 2023

Ramkisan S/o. Goverdhandas Bhutada

.Vs.

Nishant Multi State Co-op. Credit Society Ltd., Akola

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr Sanket Joshi, Advocate for the petitioner

Mr Raunak Kurani, Adv. h/f. Mr A. B. Patil, Advocate for the respondent

CORAM : ANIL S. KILOR, J.

DATED : MARCH 04, 2025.

In the proceeding filed by the respondent/ complainant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N. I. Act') against the petitioner/respondent on return of the cheque of Rs.10,00,000/- (Rupees Ten Lakhs only), allegedly issued by the petitioner, the respondent moved an application Exh.15 for issuing directions to the petitioner to pay 20% of the cheque amount as an interim compensation in terms of Section 143-A of the N.I.Act. The petitioner, by filing reply to the said application Exh.15, raised a ground that the dispute is of civil nature and it is a loan transaction.

2. The learned Judicial Magistrate First Class, (Court No. 3) Khamgaon, after hearing both the parties, passed the order, which is impugned in the present petition, dated 21.04.2023, directing the petitioner to deposit Rs.1,00,000/-

(Rupees One Lakh only) within 60 days towards interim compensation to the extent of 10% of the cheque amount.

3. The learned counsel for the petitioner submits that the learned trial Court, without recording any reasons and satisfaction to exercise the discretion under Section 143-A of the N. I. Act, passed the order and directed to pay the interim compensation to the extent of 10% of the cheque amount. He, therefore, submits that since the order is devoid of any reasons, it is not sustainable in the eyes of law. To buttress his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of *Rakesh Ranjan Shrivastava ..v/s. State of Jharkhand and another*¹.

4. On the other hand, the learned counsel for the respondent submits that the learned trial Court has rightly exercised the discretion and directed the petitioner to pay interim compensation to the extent of 10% of the cheque amount. He submits that since the petitioner is not disputing his signature over the cheque in question, there is a presumption in favour of the complainant. He, therefore, submits that since there is no merit in the present writ petition, this Court may not entertain the petition and dismiss the same.

5. In the above-referred backdrop, having gone

¹ (2024) 4 SCC 419

through the record, relevant provisions and the judgment of the Hon'ble Supreme Court of India in the case of *Rakesh Ranjan* (supra), I am of the opinion that this matter needs to be remitted back to the trial Court for the reasons stated hereinbelow. The Hon'ble Supreme Court of India in the case of *Rakesh Ranjan*(supra), after considering the various authorities, reiterated the law with regard to the payment of interim compensation under Section 143-A in para No. 27, which reads thus:

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

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

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

27.3. The broad parameters for exercising the discretion under Section 143-A area as follows:

27.3.1. 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.

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

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

compensation.

27.3.4. 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.

27.3.5. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.”

6. From the above referred observations of the Hon'ble Supreme Court of India it is evident that before issuing any direction under Section 143-A of the N.I. Act to pay interim compensation, the Court has to record brief reasons indicating considerations of all relevant factors. Furthermore, the Court has to evaluate the merits of the case made out by the complainant and the merits of the defence. The Court is also required to record the findings as regards the *prima facie* case, if any, made out by the complainant and further to apply its mind to the quantum of interim compensation.

7. Having gone through the impugned order, it is evident that without recording brief reasons, considering all relevant factors and further without observing that there is a *prima facie* case made out by the respondent, the impugned order came to be passed.

8. Thus, I am of the opinion that the order needs to be quashed and set aside and the matter needs to be remitted back to the learned Judicial Magistrate First Class, Khamgaon for reconsideration of application Exh. 15. Accordingly, I pass the following order:

ORDER

- i. The writ petition is partly allowed.
- ii. The order dated 21.04.2023 passed by learned Judicial Magistrate First Class, Khamgaon, in SCC No. 1986 of 2019 is hereby quashed and set aside.
- iii. Application Exh. 15 in SCC No. 1986 of 2019 is hereby remanded back to the learned Judicial Magistrate First Class, Khamgaon to decide the same afresh after hearing both the parties and after taking into consideration the law laid down by the Hon'ble Hon'ble Supreme Court of India in the case of *Rakesh Ranjan* (supra)
- iv. The criminal writ petition stands **disposed of**, accordingly.

(ANIL S. KILOR, J.)