IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40106-2025

Gulab Singh

...Petitioner

Versus

Anil Kumar and another

...Respondents

1.	**Date when Order was reserved**	**23.12.2025**
2.	**Date of Pronouncement of Order**	**30.01.2026**
3.	**Date of uploading Order**	**30.01.2026**
4.	**Whether operative part or full Order is pronounced**	**FULL**
5.	**Delay, if any, in pronouncing of full order, and reasons thereof**	**NOT APPLICABLE**

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. H.S. Randhawa, Advocate,
Amicus Curiae.

Mr. Mohan Singla, Advocate,
for the petitioner.

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SANJAY VASHISTH, J.

1. Petitioner – Gulab Singh has filed the instant petition, under Section 528 of BNSS, 2023, for quashing/setting aside impugned order dated 08.04.2025 (Annexure P-4), passed by the Court of learned Sub Divisional Judicial Magistrate, Tohana, District Fatehabad, in Criminal Complaint No. NACT-214-2023 (Annexure P-1), titled as “Anil Kumar v. Gulab Singh and another”, allowing the application under Section 143-A of the Negotiable Instruments Act, 1881 (for short, ‘the NI Act’), filed by respondent No. 1/complainant, and directing the petitioner to pay interim compensation to the tune of 20% of the cheque amount.

2. Brief facts of the present case are that respondent No. 1/complainant filed a complaint under Section 138 of the NI Act, by asserting that he is carrying the business of commission agent under the name and style of M/s Mansa Ram Anil Kumar Commission Agent at Shop No. 14-B, New Anaj Mandi, Tohana, District Fatehabad. Complainant and petitioner were well known to each other and having friendly relations for the last about 17 years. It is alleged that the petitioner had been taking money from the complainant from time to time on interest @ 12% per annum. On 28.10.2020 and 15.05.2021, complainant transferred amount of Rs. 7,08,000, and Rs. 4,00,000/-, respectively, on 15.05.2021 in the bank account of the petitioner through RTGS, on credit basis. Other than this, the petitioner also took cash amount from the complainant after signing in the account books. When complainant made several requests to the petitioner to discharge his legal liability, then the petitioner issued a cheque No. 000023, dated 05.07.2023 from joint account No. 50100196382268 of HDFC Bank Branch, Jakhal, which account pertains to the petitioner and his wife – Jasvir Kaur (accused No. 2/respondent No. 2 herein). When the said cheque was presented to the bank, the same was returned on 06.07.2023, with endorsement "**Paper not received**". On the assurance given by the petitioner, the said cheque was again presented to the bank after three days for encashment. This time also it was again dishonoured on 12.07.2023, due to **"Funds Insufficient"**.

After filing of the complaint dated 19.08.2023 (Annexure P-1), Trial Court took cognizance and ordered summoning of the petitioner/accused to face trial for an offence punishable under Section 138 of the NI Act. Thereafter, an application, dated 25.09.2024 (Annexure P-2), under Section 143-A of the NI Act, was filed by respondent No. 1/complainant seeking interim compensation.

Reply, dated 24.02.2025 (Annexure P-3), to the said application was filed by the petitioner, by taking the following stand:-

> *"1. That complaint of the complainant is based on the account books entries in the cash book and all the cash entries reflected therein are forged, fabricated and interpolated, written to harass and humiliate the respondent and to burden him with the cost of litigation and as such without proving the liability, the respondent can not be burdened with the amount of 20% as compensation as per the application of the complainant.*
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> *2. That the original cheque which is on the file has filled without any authorisation of the respondent and also for an amount which was never due against the complainant and the same is written for an amount which was never agreed between the complainant and the respondent and the signature on the cheque is in black ink whereas the body writing of the cheque is in blue ink which shows that the cheque's body writing has been filled by the complainant or his agent which amounts to material alteration as the same was not done with the common intention or permission of the respondent which makes the cheque void u/s 87 of the N.I. Act. It is pertinent to mention here that the respondent never took the amounts mentioned against the name of the respondent and the entries are forged and fabricated.*
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> *3. That as such the respondent can not be burdened to deposit 20% of a void cheque and granting compensation u/s 143 A at this stage will seriously prejudice the interests of the accused.*
>
> *4. That keeping in view the above-mentioned submissions the present case is a strong case of trial and needs investigation and this fact can be ascertained only after leading evidence."*

Thereupon, after hearing counsel for the parties and noticing the provisions of Section 143-A of the NI Act, learned Trial Court allowed the said application, vide impugned order dated 08.04.2025 (Annexure P-4), and directed the petitioner/accused to pay 20% of the cheque amount as interim compensation to the complainant.

For ready reference, order dated 08.04.2025 is reproduced as under:-

> *" This order of mine shall dispose of an application filed by the applicant/complainant for directing the accused to deposit 20% of the cheque amount.*
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> *2. Learned counsel for the applicant/complainant has argued that accused in discharge of his liability issued cheque bearing no. 000023 dated 05.07.2023 amounting to Rs. 26,00,000/-. Therefore, the complainant is entitled to compensation to the extent of 20% of the cheque amount as per the new amendment in N.I. Act.*
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> *3. On the other hand, learned counsel for the respondent/accused has vehemently argued that the present application is not maintainable. He further argued that the present application has been filed only to linger on the proceedings of the present case and entries in the account books are forged and fabricated. He has further argued that signature on the cheque is in black ink, whereas the body writing of the cheque is in blue ink which shows that the cheque's body writing has been filled by the complainant or his agent which amounts to material alteration as the same was not done with permission of the respondent/accused which makes the cheque void under Section 87 of the N.I. Act. He has further argued that no legal liability is outstanding against the respondent/accused. So, there is no any necessity to deposit 20% of the cheque amount. It is, therefore, prayed that the application may kindly be dismissed with heavy costs.*
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> *4. Arguments heard. The application in hand is filed by the applicant/complainant to claim the compensation in view of Section 143- A of N.I.Act enacted by N.I. (Amendment Act 2018), which envisages as under:*

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 compensation1 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 percent 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.

From the perusal of this Section, it is clear that Section 143-A gives a discretionary power to the Trial court, to award compensation as word "may" is used. However, this court is conscious of the fact that discretionary power is to be used judicially.

> *5. From the perusal of the case file, it is prima facie clear that the amount of Rs. 26,00,000/- was/is pending against the accused and accused issued cheque bearing no. 000023 dated 05.07.2023 for a sum of Rs.26,00,000/- in order to discharge his legal liability, which was dishonoured on presentation due to "Funds Insufficient" on dated 12.07.2023. Therefore, in view of the aforesaid discussion,* ***the application in hand is hereby allowed.*** *The accused is directed to pay 20% of cheque amount as compensation to the complainant. The observations made in the present order will not effect upon merits of case of either of the party."*

3. Learned counsel for the petitioner submitted that the learned Trial Court has passed the impugned order in a mechanical manner, without application of judicious mind. In reply to the application, the petitioner specifically disputed that the cheque in question was never filled by the petitioner and the entries therein were made by using multiple pens of different colour ink, thereby rendering the said cheque void.

Learned counsel also argued that Section 143-A of the NI Act is discretionary and not mandatory, as the word "may" cannot be read as "shall.", and the learned Courts below failed to appreciate the facts in the right perspective and imposed the condition to deposit 20% of the cheque amount and such a condition is illegal, arbitrary and in violation of the law as laid down by the Hon'ble Supreme Court in the case of **Rakesh Ranjan Shrivastava v. State of Jharkhand and another, Law Finder Doc Id # 2521128 : (2024) 4 SCC 419**, because while exercising such power specific reasons are required to be recorded, which are lacking in the impugned order. Thus, prayed for setting aside of the impugned order dated 08.04.2025 (Annexure P-4).

4. When this petition came up for consideration on 17.11.2025, the Co-ordinate Bench of this Court appointed Mr. H.S. Randhawa, Advocate (Enrl. No. P/1444/2011) as as *Amicus Curiae,* to assist the Court on behalf of the respondents.

5. During course of hearing on 23.12.2025, Mr. H.S. Randhawa, learned *Amicus Curiae* pointed out before this Court that the issue involved in the present petition is in regard to grant of interim compensation under Section 143-A of the NI Act, i.e. during pendency of the complaint.

6. Assisting the Court, learned *Amicus* also submitted that Section 143-A of the NI Act is discretionary and not mandatory, as the word "may" cannot be read as "shall.", and the learned Court below failed to appreciate the facts in the right perspective and imposed the condition to deposit 20% of the cheque amount. Further, the Trial Court has also not considered the mandate of law laid down by the Hon'ble Supreme Court in the case of **Rakesh Ranjan Shrivastava (supra)**.

Learned *Amicus,* thus, submitted that the matter can be remanded back to the learned Trial Court for decision afresh in the light of the mandate of law laid down by the Hon'ble Apex Court in the case of **Rakesh Ranjan Shrivastava (supra)**.

7. I have heard learned counsel for the petitioner as well as learned *Amicus Curiae*, and also gone through the material available on record.

8. In the case of **Rakesh Ranjan Shrivastava (supra)**, the primary issue which came up for consideration before the Hon'ble Apex

Court was that whether the provision of sub-section (1) of Section 143A of the NI Act, which provides for the grant of interim compensation, is 'directory' or 'mandatory', and if it is held to be a 'directory provision', what are factors to be considered while exercising under sub-section (1) of Section 143A of the NI Act.

9. After noticing factual matrix of the said case; provisions of Section 143A of the NI Act; and rival contentions of the parties, in para No. 19(a) of the judgment, it has been held by the Hon'ble Apex Court that '*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".*

10. As regards the factors to be considered while exercising 'discretion', in para No. 16 of the judgment in **Rakesh Ranjan Shrivastava's case (supra)**, it has been observed as under:-

> *"16. 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."*

11. Further, in para No. 19(b) it has been held that *"while deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors."*

12. Finally, in para No. 19(c) of the judgment, the Hon'ble Apex Court laid down the broad parameters for exercising the discretion under Section 143A, which are reproduced as under:-

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

13. From reading of the impugned order, in light of the law laid down by the Hon'ble Apex Court in the case of **Rakesh Ranjan Shrivastava (supra)**, this Court finds that the pleas raised by the petitioner in reply to the application in regard to the difference in ink while filling the columns of the cheque in question, and the forged entries of the ledger book, has not been examined deeply or, if noticed, has not been appreciated by the learned Court below, by recording reasons. According to the judgement of the Hon'ble Apex Court in the case of **Rakesh Ranjan Shrivastava (supra)**, while dealing with the application under Section 143-A of the NI Act, the Court has to *prima facie* evaluate the merits of the case by taking note of the version of the complainant and also the defence pleaded by the accused in its reply to the application. While considering so, presumption under Section 139 of the NI Act is of no consequence.

Undoubtedly, in view of the plea raised by the petitioner, case of the complainant regarding bouncing of the cheque, amounting to Rs. 26,00,000/-, requires thorough investigation during trial, i.e. whether the entries as alleged by the petitioner are forged or actual. Moreover, in view of the judgement of the Hon'ble Apex Court in the case of **Rakesh Ranjan Shrivastava (supra)**, all these aspects need to be confirmed by the Trial Court while deciding the application under Section 143-A of the NI Act.

14. As a result of above discussion, impugned order dated 08.04.2025 (Annexure P-4), passed by learned Sub Divisional Judicial Magistrate, Tohana, District Fatehabad, in Criminal Complaint No.

NACT-214-2023, is set aside. Learned Trial Court is directed to re-decide the application under Section 143-A of the NI Act afresh, after following the mandate of law laid down by the Hon'ble Apex Court in the case of **Rakesh Ranjan Shrivastava (supra)**.

Registry is directed to transmit a copy of this order to the learned Trial Court forthwith, for compliance.

15. This petition stands **disposed of** in the above terms.

(SANJAY VASHISTH)
JUDGE

January 30, 2026
Pkapoor

Whether Speaking/Reasoned: **YES/~~NO~~**
Whether Reportable: **YES/~~NO~~**