

Criminal Case No. OA /476/NIA/2022/C

CNR No. GASG02-003528-2022

ORDER BELOW EXHIBIT D-22

(Delivered on this 30th day of July, 2024)

This is an application seeking deposit of 20% of the cheque amount under section 143(A) of the Negotiable Instruments Act.

2. It is the case of the Complainant that the accused has pleaded not guilty in the matter and as such he is liable to pay interim compensation to the extent of 20% of the cheque amount.

3. The Learned Advocate for the accused has filed the reply at Exbt-D-24 and contended that complainant has filed the present false and frivolous complaint case under section 138 of NI Act against the accused person. Further that the accused is unemployed and unable to pay the said amount. Hence, prayed that the application be dismissed.

4. Perused Records. Heard arguments.

5. Section 143 A of NI Act reads as under:

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(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."

6. On perusal of the aforesaid provision it is seen that the provision connotes "May" and not shall and as such the provision cannot be construed to be mandatory and is discretionary in nature. Further the grant or otherwise of the interim compensation would depend on the facts and circumstances of each case. Each case ought to be weighed in light of its facts and evidence on record.

7. On perusal of the records of the case it is seen that, there exists a dispute in respect of the payment of the cheque amount wherein it is the contention of the Complainant that the cheque amount is not paid while that of the accused that the cheque was never issued by him.

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8. On perusal of records it is seen that though the accused alleges that false complaint is filed there is no police complaint made by the accused against the alleged false complaint or misuse of cheque nor the case of the accused that he replied to the legal demand notice.

9. No doubt that the relief under section 143A of the N.I. Act is a directory relief but in appropriate cases the discretion can be exercised by the court. In the present case at hand the cheque amount is a heavy amount and the trial in the matter is yet to begun, in the given circumstances, it would be appropriate to give some interim compensation to the complainant.

10. Thus, considering the overall facts and circumstances of the present case I find it appropriate to exercise the discretion in granting the interim compensation as prescribed under section 143A of the N.I. Act to the extent of 10% of the cheque amount.

11. Hence, I pass the following order:

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ORDER

The application at exhibit D-22 is allowed.

The accused to pay 10% of the cheque amount amounting to Rs. 25000/- within 60 days from the date of the order, as interim compensation.

Pronounced in the Open Court.

Margao

Dated: 30.07.2024

(Teisy Mascarenhas)
Judicial Magistrate First Class,
'C' Court, Margao.

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