

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

CRM(M) No.136/2022

c/w

CRM(M) No.139/2022

CRM(M) No.126/2022

MUBASHIR MANZOOR ...Petitioner(s)

Through: Mr. Asif Ahmad Bhat, Advocate.

Vs.

MUSHTAQ AHMAD WANI ...Respondent(s)

Through: None.

CORAM:HON'BLE MR. JUSTICE SANJAY DHAR,JUDGE

ORDER(ORAL)

15.07.2024

1. By this common order, the afore-numbered three petitions are proposed to be disposed of.
2. The petitioner through the medium of present petitions has challenged three separate orders dated 11.04.2022 passed by learned Chief Judicial, Srinagar, in three separate complaints, whereby interim compensation in terms of Section 143-A of Negotiable Instruments Act (for short "N I Act") to the extent of 20% of the cheque amount has been awarded in favour of the complainant/respondent.
3. Heard learned counsel for the petitioner and perused the record.

4. A perusal of the impugned order would reveal that the learned Magistrate, in all the above referred three cases, has awarded interim compensation to the extent of 20% of the cheque amount in favour of the respondent/complainant. However, it is not discernible from the contents of the order as to on what basis the learned Magistrate has proceeded to award the maximum amount of interim compensation under the provision of 143 A of N I Act.

5. It is settled law that the power to award interim compensation in terms of Section 143-A of N I Act is discretionary in nature. This discretion has to be exercised on the basis of valid reasons in the absence of which the exercise of discretion becomes arbitrary. The Supreme Court in ***Rakesh Ranjan Shrivastava Vs. State of Jharkhand and another***, (2024) 4 SCC 419, has categorically held that the direction to pay interim compensation can be issued only if the complainant makes out a prima facie case. The Supreme Court in the said case has laid down the parameters for grant of interim compensation. Para 27 of the said judgment is relevant to the context and the same is reproduced as under:

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 143A 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 143A, the Court must record brief reasons indicating consideration of all relevant factors.

27.3. The broad parameters for exercising the discretion under Section 143A are 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 enunciation of law laid down by the Supreme Court, it is clear that while deciding the quantum of interim compensation, a Magistrate has to apply his/her mind and he/she has to consider several factors, such as nature of transaction, the relationship if any between the accused and the complainant etc. In the instant case, bare perusal of the impugned order would show that the learned trial Magistrate has not assigned any reason much less a plausible reason for proceeding to award maximum amount of interim compensation i.e. 20% of the cheque amount against the petitioner. The learned Magistrate was expected to justify in order with reasons the quantum of interim compensation as the same can vary from 1% to 20% of the

cheque amount. The impugned order in the absence of such reason becomes unsustainable in law.

7. Apart from the above, in the instant cases, even the plea of the accused under Section 251 of the Cr. P. C has not been recorded before passing the impugned order. It is clear from the provisions contained in Section 143-A of the N. I. Act, that interim compensation can be awarded only in cases where the accused pleads not guilty to the accusation made in the complaint. In the instant cases, the plea of the accused was yet to be recorded but the learned Magistrate proceeded to pass the order of interim compensation in favour of the complainant, which is clearly in contravention of the provisions contained in Section 143-A of the N. I. Act. On this ground also, the impugned orders are not sustainable in law.

8. For the foregoing reasons, the petitions are allowed and the impugned orders are quashed. The learned Magistrate shall pass fresh orders on the application of the respondent under Section 143-A of the N. I. Act after taking into consideration the ratio the laid down by the Supreme Court in **Rakesh Ranjan Shrivastava's** case (supra) and after recording the plea of the accused.

9. Disposed of as above.

(Sanjay Dhar)
Judge

Srinagar
15.07.2024
"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No