

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

CRM(M) No.144/2024

MUJEEB UL ASHRAF DAR ...Petitioner(s)

Through: Mr. Aatir Kawoosa, Advocate.

Vs.

MUSHTAQ AHMAD WANI ...Respondent(s)

Through: Mr. F. A. Waida, Advocate

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

ORDER(ORAL)

15.07.2024

1. The petitioner through the medium of present petition has challenged order dated 20.11.2023 passed by learned Judicial Magistrate 1st Class (1st Additional Munsiff), Srinagar, whereby interim compensation in terms of Section 143-A of Negotiable Instruments Act (for short "NI Act") to the extent of 20% of the cheque amount i.e. Rs.4.00 lacs has been awarded in favour of the complainant/respondent.

2. Heard learned counsel for the parties and perused the record.

3. A perusal of the impugned order would reveal that the learned Magistrate 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.

4. 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.

5. 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.

6. Accordingly, the petition is allowed and the impugned order is quashed. The learned Magistrate shall pass a fresh order on the application of the respondent under Section 143-A of N. I. Act after taking into consideration the ratio the laid down by the Supreme Court in **Rakesh Ranjan Shrivastava's** case (supra).

7. Disposed of as above.

(Sanjay Dhar)
Judge

Srinagar
15.07.2024
"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No

