

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA  
ON THE 17<sup>th</sup> OF MAY, 2024  
MISCELLANEOUS CRIMINAL CASE No. 14683 of 2024**

**BETWEEN:-**

**KRISHNA KUMAR GUPTA S/O ROHANI PRASAD  
GUPTA, AGED ABOUT 45 YEARS, R/O SAI  
COLONY GHANGHARI NAKA, THANA UMARIA,  
DISTRICT UMARIA (MADHYA PRADESH)**

.....APPLICANT

*(BY SHRI KRISHNA ROHADA - ADVOCATE )*

**AND**

**ASHOK KUMAR DWIVEDI S/O DWARIKA  
PRASAD, AGED ABOUT 65 YEARS, R/O  
SUBHASHGANJ NAKA, THANA UMARIA,  
DISTRICT UMARIA (MADHYA PRADESH)**

.....RESPONDENT

.....  
*This application coming on for admission this day, the court passed  
the following:*

**ORDER**

This application under Section 482 of Cr.P.C. has been filed against order dated 09.03.2024 passed by Third Additional Sessions Judge, Umaria in Criminal Revision No.13/2024 by which Revision filed against order dated 17.01.2024 passed by JMFC Umaria in SC NIA No.48/2021 has been dismissed and order passed the trial Court under Section 143-A of Negotiable Instruments Act by which applicant has been directed to pay 8% of cheque amount by way of interim compensation has been affirmed.

2. The counsel for applicant started his arguments by submitting that the Lawyer, who has been provided by the Legal Aid Services Authority, is not legally competent and because of his incompetency, applicant is suffering.

3. It is submitted by counsel for applicant that complainant has lodged a complaint under Section 138 of Negotiable Instruments Act on the allegations that after his retirement he had received Rs.22 Lakhs by way of retiral benefits and applicant was aware of the same. The complainant and applicant were good friends and accordingly, on the pretext that applicant is in dire need of money to run his business otherwise he would commit suicide, emotionally blackmailed the complainant and ultimately complainant gave an amount of Rs.15 Lakhs to applicant. However, when the money was demanded back by the complainant, then it was not repaid and ultimately, applicant gave a cheque of Rs.13 Lakhs with an assurance that remaining amount of Rs.2 Lakhs will be given in cash. When the cheque was presented in the Bank, the same was returned back on the ground of insufficient funds. Accordingly, complainant issued a statutory notice under Section 138 of Negotiable Instruments Act, which was duly replied by applicant through his counsel Yash Kumar Soni by alleging that blank signed cheque was stolen, which has been used by the complainant. Since the applicant did not repay the cheque amount, therefore, complainant filed his complaint under Section 138 of Negotiable Instruments Act and application under Section 143-A of Negotiable Instruments Act was also filed for grant of interim compensation.

4. A reply was submitted by applicant that applicant is on the verge of bankruptcy and he is not even in a position to engage a Lawyer and

thus, a Lawyer has been provided to him by Legal Aid Services Authority and therefore, it was prayed that looking to the financial condition of applicant, the trial Court should reject the application filed under Section 143-A of Negotiable Instruments Act.

5. The trial Court after considering the submissions made by counsel for parties, partially allowed the application and directed that applicant shall deposit 8% of cheque amount as per the provisions of Section 143-A of Negotiable Instruments Act. Being aggrieved by the said order, applicant also preferred an appeal, which too has been dismissed by impugned order dated 09.03.2024 passed by Third Additional Sessions Judge, Umaria in Criminal Revision No.13/2024. It is submitted by counsel for applicant that the Supreme Court in the case of **Rakesh Ranjan Shrivastava Vs. The State of Jharkhand And Another** decided on 15<sup>th</sup> March, 2024 in Criminal Appeal No.741/2024 has held that the provision of Section 143-A of Negotiable Instruments Act is discretionary in nature and has also laid down the broad parameters but the counsel for applicant, who has been provided by the Legal Aid Services Authority did not cite this judgment either before the trial Court or before the Revisional Court, therefore, the counsel provided by the Legal Aid Services Authority is legally incompetent. It is further submitted that since applicant is on the verge of bankruptcy, therefore, the trial Court should not have directed him to pay 8% of the cheque amount by way of interim compensation.

6. Considered the submissions made by counsel for applicant.

7. So far as the incompetency of a Lawyer is concerned, this Court cannot draw any presumption in that regard and this Court cannot hold that any Lawyer is incompetent. However, this is an allegation, which

was repeatedly made by counsel for applicant during the course of arguments.

8. In the considered opinion of this Court, the said act of the applicant in making allegations against his own counsel provided by Legal Aid Services Authority is nothing but a mud slinging out of frustration. The trial Court had partially allowed the application under Section 143-A of Negotiable Instruments Act on 17.01.2024. The Revisional Court decided the Revision on 09.03.2024, whereas the judgment on which applicant is placing reliance was pronounced by the Supreme Court on 15.03.2024 i.e. after the application was decided by the trial Court as well as by the Revisional Court. If the judgment was not pronounced by the time when the application and Revision were decided, then how applicant can make a wild allegation regarding legal competency of his counsel in a Court of law. It is clear that such wild and baseless allegations have been made without considering the fact that the judgment passed by the Supreme Court in the case of **Rakesh Ranjan Shrivastava (supra)** was pronounced only after the impugned orders were passed by the Courts below.

9. Accordingly, the counsel who was appearing before the trial Court as well as the Revisional Court is granted liberty that if he is so desire, then he can file a proceeding for defamation against applicant.

10. It is submitted by counsel for applicant that in paragraph 19 of the judgment passed in the case of **Rakesh Ranjan Shrivastava (supra)** the Hon'ble Supreme Court has laid down broad parameters for exercising the discretion.

11. Paragraph 19 of the judgment passed in the case of **Rakesh Ranjan Shrivastava (supra)** reads as under:

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

- a.** 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”.
- b.** While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.
- c.** The broad parameters for exercising the discretion under Section 143A are as follows:
  - 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.”

**28.** The appeal is partly allowed on the above terms.

**12.** In paragraph 19(c) (i) it has also been held by the Supreme Court that financial distress of the accused can also be a consideration for evaluating the merits of the case.

**13.** The applicant has not filed any document to show that he has become bankrupt or any proceedings for declaring him bankrupt are pending.

**14.** It is submitted that applicant has also received notices from the Bank with regard to non-payment of loan amount, which clearly shows that applicant has become bankrupt and accordingly, drew the attention of this Court to notice issued by the Bank under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

**15.** Merely because applicant is a defaulter in loan transaction is not sufficient to hold that he has become a bankrupt. On one hand applicant had claimed that he had a good business but it is his contention that after Covid-19, he has come to the verge of bankruptcy. As per notice issued under Section 13(2) of the Act, 2002, applicant had taken a loan of Rs. 24,90,000/- on 30.03.2018 and on the date of issuance of notice, he was in default of Rs.31,81,599/- and his account was declared NPA on 08.09.2023. The applicant has not filed any document to show that before Covid-19 pandemic he was regularly making payment of installments.

16. Thus, in absence of any document to show that applicant has become a bankrupt, it is difficult for this Court to give a finding that applicant has become a bankrupt and his financial condition is bad.

17. So far as the reasoning assigned by the trial Court is concerned, since, applicant has not filed a copy of the said order therefore, this Court is not in a position to ascertain as to whether the trial Court had rightly exercised its discretion by reducing the interim compensation from 20% to 8% or not but since the trial Court has awarded the interim compensation at the rate of 8% therefore, it is clear that the trial Court has considered the pleadings of parties and merits of the case in an appropriate manner.

18. Under these circumstances, this Court is of considered opinion that no case is made out warranting interference.

19. Application fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

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