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RAKESH RANJAN SRIVASTAVA VS. STATE OF JHARKHAND AND ANOTHER (2024) 3 S.C.R.438; 2024 INSC 205; (2024) 4 SCC 419.**AUTHOR** – KANAK S. UPADHYAY, STUDENT AT M.K.E.S COLLEGE OF LAW**BEST CITATION** – KANAK S. UPADHYAY, RAKESH RANJAN SRIVASTAVA VS. STATE OF JHARKHAND AND ANOTHER (2024) 3 S.C.R.438; 2024 INSC 205; (2024) 4 SCC 419., *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (2) OF 2025, PG. 13-16, APIS – 3920 – 0001 & ISSN – 2583-2344.

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INTRODUCTION:

This case deals with the interpretation of Section 143A (1) of the Negotiable Instrument Act, 1881(N.I.Act), which is a significant provision that allows a Court to order interim compensation in cheque dishonor cases.⁴³ Earlier, there was no provision as to payment of compensation under the N.I.Act. Section 143A was inserted in the N.I.Act through Negotiable Instruments (Amendment) Act, 2018.⁴⁴Section 143A is prospective in nature and confined to cases where the offences were committed after the introduction of Section 143A in the statute books.⁴⁵ The central issue of this case is whether this provision is directory or mandatory. If it is held directory, what are the factors to be considered for exercising such powers. The Supreme Court ruled that the power to order interim compensation under Section 143A is discretionary, not mandatory. The Court emphasized that the word "may" cannot be construed as "shall," as such interpretation will be unjust and contrary to the well-settled concept of fairness and justice and it can manifest arbitrariness.



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⁴³ Section 143A of the Negotiable Instrument Act, 1881.

⁴⁴ Inserted by the Negotiable Instrument Act (Amendment) Act, 2018(Act No. 20 of 2018),Sec 2.

⁴⁵ G.J.Raja v. Tejraj Surana A.I.R. 2019 S.C. 2956

BENCH: Justice Abhay S. Oka and Justice Ujjal Bhuyan.

CASE NUMBER: Criminal Appeal No. 741 of 2024.

DATE OF JUDGEMENT: March 15, 2024.

CITATION: [2024] 3 S.C.R.438; 2024 INSC 205; (2024) 4 SCC 419.

PARTIES: Rakesh Ranjan Srivastava [Appellant], State of Jharkhand and Anr. [Respondent].

FACTS:

The 2nd respondent in the present case is the complainant in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881(N.I.Act).The complaint was filed in the Court of Chief Judicial Magistrate at Bokaro. The case in complaint was that the appellant (Rakesh Ranjan Srivastava) and the respondent formed various companies on different terms and conditions regarding profit sharing. On 23 September 2011, an appointment letter was issued by the appellant in his capacity as the Managing Director of the company M/s Thermotech Synergy Pvt. Ltd. and on behalf of a proprietary concern, M/s Tech Synergy, by which the post of Executive Director was offered to the respondent on consolidated salary of Rs. 1,00,000/- per month.

According to the respondent's case, M/s Thermotech Synergy was merged with another company - M/s Megatech Synergy Pvt. Ltd. It is alleged by the respondent that in August 2012, there was an agreement to pay him 50 per cent of the profit. One more partnership firm came into existence on 3rd June 2013, wherein the appellant, respondent, and Rahul Kumar were shown as partners. It is the case of the respondent that the appellant agreed to give a 50 per cent share in the profits of another company, Geotech Synergy Pvt. Ltd. It is alleged that the appellant did not pay the amounts due and payable to the respondent.

Therefore, a legal notice was issued to the appellant by the respondent. According to the case of the respondent, the appellant was liable to pay the total amount of Rs. 4,38,80,000/- to

the respondent, and in fact, a civil suit has been filed by the respondent in the Civil Court at Bokaro for recovery of the said amount. After that, on 13 July 2018, there was a meeting between parties at Ranchi when the appellant agreed to pay a sum of Rs. 4,25,00,000/- to the respondent, and two cheques in the sum of Rs. 2,20,00,000/- and 2,05,00,000/- dated 6 August,2018 and 19 September,2018 respectively were handed over to the respondent. As the first cheque in the sum of Rs. 2,20,00,000/- was dishonoured, a complaint was filed after the service of a statutory notice alleging the commission of an offence punishable under Section 138 of the N.I. Act on which the learned Magistrate took cognizance of the offence.

Application under Section 143A of the Negotiable Instrument Act, 1881.

Before the Court of the learned Magistrate, the respondent moved an application under Section 143A of the NI Act seeking a direction against the appellant to pay 20 per cent of the cheque amount as compensation. By the order dated 7th March 2020, the learned Judicial Magistrate allowed the application and directed the appellant to pay an interim compensation of Rs. 10,00,000/- to the respondent within 60 days. The Sessions Court affirmed the order of the learned Magistrate in a revision application. The said orders were subjected to a challenge before the High Court. The learned Judge of Jharkhand High Court dismissed the petition by the impugned judgment. Thus, these orders became the subject matter of challenge in the present criminal appeal.⁴⁶

ISSUES:

1. The issue involved in this case is whether the provision of subsection (1) of section 143-A of the Negotiable Instruments Act, 1881, which provides for the grant of interim compensation, is directory or mandatory.
2. If it is held to be a directory provision, the questions that arises is, what are the

⁴⁶ Rakesh Ranjan Srivastava vs. State of Jharkhand and Anr. (2024)3 S.C.R. 438

factors to be considered while exercising powers under sub-section (1) of Section 143-A of the NI Act.

JUDGEMENT:

The judgement of the Court was delivered by Justice Abhay S. Oka. The Court held that 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.” Further, it was held, while deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.

The Supreme Court has laid down the broad parameters for exercising the discretion under Section 143A, which are as follows:

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.
2. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.
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.
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.

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.

The Supreme Court observed that the Trial Court has passed an order of deposit of Rs.10,00,000/- without considering the issue of prima facie case and other relevant factors and that the sum of Rs.10,00,000/- represents less than 5 per cent of the cheque amount, and the direction has been issued to pay the amount without application of mind. Therefore, the court directed the Trial Court to consider the application for grant of interim compensation afresh and the amount of Rs. 10,00,000/- deposited by the appellant will continue to remain deposited with the Trial Court. Hence, the impugned orders were set aside and the appeal was partly allowed.⁴⁷

CRITICAL ANALYSIS:

The power under sub-section (1) of Section 143A is to direct the payment of interim compensation. The Court trying an offence under Section 138⁴⁸ may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case where he pleads not guilty or in any other case upon framing of charge. Interim compensation shall not exceed 20 percent of the Cheque amount. The interim compensation shall be paid within 60 days of the order with a further period not exceeding 30 days as maybe directed by the court on sufficient cause being shown by the drawer of the cheque. It may be noted here that under Section 259 of the Cr.PC⁴⁹ (Section 282 of BNSS)⁵⁰, the learned Magistrate has the discretion to convert a summons case into a warrant case. Only in a warrant case, there is a question of framing charge. Therefore,

⁴⁷ Rakesh Ranjan Srivastava vs. State of Jharkhand and Anr. (2024)3 S.C.R. 438

⁴⁸ Section 138, The Negotiable Instruments Act, 1881.

⁴⁹ Section 259 of Criminal Procedure Code, 1908 (Cr.PC).

⁵⁰ Section 282 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

clause (b) of sub-section (1) of Section 143A will apply only when the case is being tried as a warrant case. Under sub-section (5) of Section 143A, it is provided that the amount of interim compensation can be recovered as if it were a fine under Section 421 of the Cr.PC⁵¹(Section 461 of BNSS).⁵² Section 421 of the Cr.PC deals with the recovery of the fine imposed by a criminal court while passing the sentence.

In the case of Section 143A, the power can be exercised even before the accused is held guilty. Sub-section (1) of Section 143A provides for passing a drastic order for payment of interim compensation against the accused in a complaint under Section 138, even before any adjudication is made on the guilt of the accused and this power can be exercised at the threshold even before the evidence is recorded. If the word 'may' is interpreted as 'shall', it will have extremely drastic consequences in every complaint under Section 138, the accused will have to pay interim compensation up to 20 per cent of the cheque amount. Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice. If such an interpretation is made, the provision may expose itself to the vice of manifest arbitrariness. The provision was held to be violative of Article 14 of the Constitution.⁵³ In a sense, sub-section (1) of Section 143A provides for penalising an accused even before his guilt is established. Also, this section, makes available the machinery for recovery as if the interim compensation were arrears of the land revenue. Thus, it not only creates a new liability or an objection but also exposes the accused to coercive methods of recovery of such interim compensation through the machinery of the states if the interim compensation represented arrears of land revenue. The coercive method may also include arrest and detention of the accused.⁵⁴ Considering these factors, it has been emphasized that the word "may" used in

the provision cannot be construed as "shall". Therefore, the power under sub-section (1) of Section 143A is held to be discretionary and not mandatory

CONCLUSION:

Section 143A was held to be "Discretionary" and not "Mandatory". In other words, it is not obligatory on the Courts to grant the interim compensation. The judgement emphasizes that when the courts deals with an application under section 143A of the N.I.Act, the courts 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. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case. It is also clarified other factors must also be considered before granting interim compensation, such as plausibility of the defence and financial distress and several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc. The parameters stated above are not exhaustive because there could be several other relevant factors in the peculiar facts of a given case.

⁵¹ Section 421 of Criminal Procedure Code, 1908 (Cr.PC).

⁵² Section 461 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

⁵³ Article 14 of Constitution of India.

⁵⁴ R. N. Chaudhary, "Banking Laws", The Negotiable Instruments Act,1881(Section 143A).