IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.48/2022

PETITIONER : **(Accused)**	Mr. Ashwin Ashokrao Karokar,
...VERSUS...	
RESPONDENT : **(Complainant)**	Mr. Laxmikant Govind Joshi
WITH	
CRIMINAL WRIT PETITION NO.71/2022	
PETITIONER : **(Accused)**	Mr. Ashwin Ashokrao Karokar,
...VERSUS...	
RESPONDENT : **(Complainant)**	Mr. Laxmikant Govind Joshi
Mr. Madhur A. Deo, Advocate for petitioner	
Mr. Bhushan Mohta, Advocate for respondent	

CORAM : AVINASH G. GHAROTE, J.

Judgment reserved on : 06/05/2022
Judgment pronounced on : 07/07/2022

J U D G M E N T

1. Heard Mr. Madhur Deo, learned Counsel for the petitioner and Mr. Bhushan Mohta, learned Counsel for the respondent. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the rival parties.

2. The petitions raise two interesting questions :

(i) Whether the provisions of Section 143-A of the Negotiable Instruments Act, 1881, which empower the Court to direct payment of interim compensation are mandatory or directory and

(ii) In case it is held that the same is directory, whether the Court has to record reasons for determining the quantum of interim compensation to be awarded as contemplated by Section 143-A (2) of the Negotiable Instruments Act, 1881 ?

3. The facts in the instant matter, indicate that the respondent/Complainant filed proceedings under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as the "N.I. Act"), in respect of two cheques one for Rs.15,00,000/- and the

other for Rs.5,00,000/- issued by the petitioner in favour of the respondent which when presented were dishonoured for insufficient funds in the account of the petitioner resulting in the above proceedings, in which, an application under Section 143-A of the N.I. Act came to be filed. The learned Judicial Magistrate First Class (JMFC), Saoner by two impugned orders both dated 26/11/2021, granted the applications and directed the petitioner/accused to pay 20% of the cheque amount to the complainant as an interim compensation within 60 days from the date of the said order.

4. Mr. Deo, learned counsel for the petitioner/accused contends, on the facts of the matter that the learned JMFC misconstrued the provision of Section 143-A of the N.I. Act, to be mandatory in nature, which according to him it is not, and therefore, erred in passing the impugned orders. He contends, that Section 143-A of the N.I. Act, is not mandatory and is directory, considering that Section 143-A(1) of the N.I. Act uses the word 'may' in the matter of directing an interim compensation to be paid. It is further contended, that use of the word "shall", as occurring in Section 143-A(2) of the N.I. Act, is also directory as it merely

indicates the limits, within which the interim compensation can be awarded by the Court, 20% of the cheque amount being the outer limit. It is also contended, that though the presumption under Section 139 of the N.I. Act, is attracted in a proceeding under Section 138 of the N.I. Act, however, that by itself, cannot be construed to indicate that the provisions of Section 143-A of the N.I. Act are mandatory in nature, for the reason that there would arise cases where the Court, even on a *prima facie* reading of the complaint may come to a conclusion that the presumption stood rebutted and in such cases, the question of directing interim compensation would not arise at all. He therefore submits, that in a given case, it would be permissible for the Court to even reject the application under Section 143-A of the N.I. Act for interim compensation.

4.1. Reliance for the above proposition is placed on ***L.G.R. Enterprises Vs. P.Anbazhagan, AIR Online 2019 Mad 801*** (para 6 and 8), which holds that the word "may", as occurring in Section 143-A(1) of the N.I. Act is discretionary. Reliance is also placed on ***Ajay Vinodchandra Shah Vs. State of Maharashtra and another,***

2019 (4) Mh.L.J. 705, in which it is held that Section 143-A(1) of the N.I. Act leaves it to the discretion of the Court to pass an order of interim compensation upto the ceiling limit of 20% of the cheque amount.

4.2. Further reliance is placed upon ***K. Ranjithkumar Vs. K. Mathivanan, AIR Online 2021 Mad 2542***, which reiterates the position in ***L.G.R. Enterprises*** (supra). Reliance is also placed upon ***JSB Cargo and Freight Forwarder Pvt. Ltd. and Others Vs. State and Another, 2021 SCC Online Del 5425***, wherein a learned Single Judge after considering ***Surinder Singh Deswal Alias Colonel S.S. Deswal and Others Vs. Virender Gandhi and another, (2020) 2 SCC 514***, ***L.G.R. Enterprises*** (supra) and ***Ajay Vinodchandra Shah*** (supra), held that the provisions of Section 143-A(1) of the N.I. Act, were directory and not mandatory (para 62). Further reliance is also placed upon ***Mr. D.L. Sadashiva Reddy S/o Late Lakshmana Reddy D Vs. Mr. V.G. Kona Reddy s/o Govinda Reddy Konareddy, Criminal Petition No.3904/2021, decided by the Karnataka High Court on 01.06.2021*** and the consequent ***SLP No.10151/2021 decided on 07.01.2022***, which holds that the power under Section 143-A(1) of

the N.I. Act is discretionary. Reliance is also placed upon ***G. J. Raja Vs. Tejraj Surana, 2019 (19) SCC 469*** to contend that the provisions of Section 143-A are directory.

4.3. In so far as the meaning of the words 'may' and 'shall', reliance is also placed upon ***The Official Liquidator Vs. Dharti Dhan (P) Ltd., AIR 1977 SC 740***, (paras 7 and 8), and ***State of Uttar Pradesh Vs. Jogendra Singh, AIR 1963 SC 1618*** (para 8).

4.4. In so far as the reading of the provision is concerned, reliance is placed upon ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. and others, 2003 (2) SCC 111***; on ***Haryana Financial Corporation and another Vs. Jagdamba Oil Mills and another, 2002 (3) SCC 496***; ***Mrs. Aparna A. Shah Vs. M/s Sheth Developers Pvt. Ltd. and others, AIR 2013 SC 3210***; ***B. Premanand and Ors Vs. Mohan Koikal and Ors, AIR 2011 SC 1925***; and ***Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd., Vs. Custodian of Vested Forests, Palghat and another, AIR 1990 SC 1747 ; Harbhajan Singh Vs. Press Council of India and others, AIR 2002 SC 1351*** (para 9) ; ***Padma Sundara Rao (Dead) and others Vs. State of T.N. and others, 2002 (3) SCC 533,***

(para 12); ***Commissioner of Income-tax, Orissa Vs. M/s. N. C. Budharaja and Company and another, 1993 AIR SCW 3317***, (para 13); ***D. Saibaba Vs. Bar Council of India and another, AIR 2003 SC 2502***, (para 17) ; ***S.S. Bola and others Vs. B. D. Sardana and others, AIR 1977 SC 3127*** (para 178); (viii) ***Mardia Chemicals Ltd. and others Vs. Union of India and others, 2004 (4) SCC 311*** (paras 55 to 64) and (ix) ***Kunhayammed and Others Vs State of Kerala and Another, (2000) 6 SCC 359*** (para 45).

5. Mr. Bhushan Mohta, learned counsel for the respondent opposes the petitions and submits, that the amendment to the provisions to the N. I. Act was effected on 2nd August 2018, by way of a Notification published in the official gazette and it came into effect on 1st September, 2018. Inviting my attention to the statement of object and reasons, he submits that the purpose for enacting the Section 143-A and 148 of the N.I. Act, was to obviate, the delay as occasioned in the decision of the matters of Section 138 of the N.I. Act. He submits that use of the word 'may', does not mean that the provision is discretionary by relying upon ***Bachahan Devi and another Vs. Nagar Nigam, Gorakhpur and another, 2008 (12) SCC***

372 (paras 31 to 33) ;***Dilip K. Basu Vs. State of West Bengal and Ors, 2015 (8) SCC 744*** (para 9); ***Surinder Singh Deswal @ Col. S. S. Deswal and others Vs. Virender Gandhi and another, 2019 (11) SCC 341***.

5.1. Further reliance is placed upon, (i) ***Rajesh Soni s/o Shri P. R. Soni Vs. Mukesh Verma s/o Late Shri J. P. Verma, CRMP No.562 of 2021, decided on 30/06/2021*** by the learned Single Judge of Chhattisgarh High Court, holding that Section 143-A(1) is mandatory in nature (para 19) and ***Modi Cements Vs. Kuchil Kumar Nandi, 1988 (3) SCC 249***, which dilates upon the reasons and objects and the purpose behind enacting Section 138 of the N. I. Act; (ii) ***Deewan Singh and others Vs. Rajendra PD. Ardevi and others, 2007 (10) SCC 528*** (paras 32 to 35, 43 and 44) ; (iii) ***State of Uttar Pradesh Vs. Jogendra Singh, AIR 1963 SC 1618***, (para 8) ; *(iv)* ***State (Delhi Admn.) Vs. I. K. Nangia and another, 1980 (1) SCC 258*** (para 15); ***State of Uttar Pradesh and others Vs. Babu Ram Upadhya, AIR 1961 SC 751*** (para 28 and 29); (v) ***Municipal Corporation of Delhi Vs. Gurnam Kaur, 1989 (1) SCC 101***, (paras 11 and 12)*;* (vi) ***Hyder Consulting (UK) Limited Vs. Governor State of Orissa***, (paras 46 and

50); (vii) ***State of U.P. and another Vs. Synthetics and Chemicals Ltd. and another, 1991 (4) SCC 139***, (paras 39 to 41) and (viii) ***Frederic Guilder Julius Vs. The Right Rev. the Lord Bishop of Oxford 1880 (V) AC 214.***

5.2. It is contended that ***Ajay Vinodchandra Shah Vs. State of Maharashtra and another, 2019 (4) Mh.L.J. 705*** (also relied by Mr. Deo, learned counsel), does not consider whether Section 143-A is mandatory or directory not does not dilate upon the expression "may" and "shall", and therefore, is of no assistance in deciding the issue in question. (this judgment has been considered by the Delhi High Court in ***JSB Cargo and Freight Forwarder Pvt. Ltd.*** (supra) page no.59 paras 39 to 43).

5.3. Mr. Bhushan Mohta, learned Counsel for the respondent, therefore contends that the use of expression 'may', in Section 143 (A) of the N.I. Act since it is coupled with an obligation upon the Court to award interim compensation, necessarily makes it mandatory and not directory. In the written notes of arguments

placed by him on record, a tabular chart has been given, which it would be appropriate to reproduce as under:-

1.	*Things empowered to be done.*	*Advance compensation under Section 143 A of Negotiable Instrument Act, 1881.*
2.	*Something in object for which it is to be done.*	*Object of insertion of Section 143A to strengthen the credibility of cheque and help trade and commerce, speedily disposal of matter.*
3.	*Something in condition under which it is to be done.*	*The accused should plead not guilty or upon framing of charge.*
4.	*Something in the title of person or persons for whose benefit the power is to be exercised.*	*The complainant of Section 138 proceeding.*

5.4. ***Surinder Singh Deswal*** (supra), according to the learned Counsel Mr. Bhushan Mohta, while interpreting the provisions of Section 148 of the N.I. Act, therefore, has held that the word "may" as occurring therein has to be read as "shall" considering that the said provision made it a duty of the Court to direct deposit of such sum which shall be minimum of 25% of the fine or compensation awarded by the Trial Court in an appeal filed

by the drawer against conviction under Section 138 of the N.I. Act and not to so direct would be an exception for which reasons will have to be recorded.

5.5. Learned Counsel Mr. Mohta, also submits that ***JSB Cargo and Freight Forwarder Pvt. Ltd.*** (supra) upon which reliance is placed by Mr. Deo, learned Counsel for the petitioner, according to Mr. Mohata, does not consider ***Frederic Guilder Julius; Bachan Devi*** and ***D.K. Basu*** (supra) and therefore, cannot be considered to be laying down the correct position.

5.6. He further submits that the impugned order indicates the application of mind by the learned Trial Court, to the provisions of Section 143-A of the N.I. Act and the judgment of the Hon'ble Apex Court in ***Surinder Singh Deswal*** (supra) and has rightly been passed.

5.7. Further reliance is placed upon ***Anant H. Ulahalkar and another Vs. Chief Election Commissioner and others, 2017 (1) Mh.L.J. 431***, in which, while interpreting Section 9 (1) - A of the

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, rules of interpretation have been laid down (paras 30, 36, 37 and 38).

6. In rebuttal, Mr. Madhur Deo, learned Counsel for the petitioner submits that though ***JSB Cargo and Freight Forwarder Pvt. Ltd.*** (supra) does not consider ***Frederic Guilder Julius; Bachan Devi and D.K. Basu*** (supra), it however considers ***Mohan Singh and others Vs. International Airport Authority of India and others, (1997) 9 SCC 132*** and ***State of U.P. Vs. Baburam Upadhya, AIR 1967 SC 151***, both of which dilate upon the use of the word "shall" or "may".

6.1. He further places reliance upon Section 357 of the Cr. P.C., which empowers the Court to pass an order to pay compensation in addition to imposing sentence of fine or sentence, for which reliance has been placed on ***Ankush Shivaji Gaikwad Vs. State of Maharashtra (2013) 6 SCC 770*** (paras 45 to 66), to contend that where there is a duty cast upon the Court to apply its mind only then in that contingency the provision could be said to be mandatory

and not otherwise. It is contended that Section 143-A of the N.I. Act does not cast any such duty upon the Court and therefore, cannot be held to be mandatory in nature. The only requirement cast by Section 143-A is to consider whether there is requirement as spelt out from the facts of each case for grant of compensation and not to order award of deposit in each and every case.

6.2. He further contends that non-compliance of any order which may be made under Section 143-A (1) of the N.I. Act does not visit the accused with any penal consequences except for what is enumerated in Sub Section 5 of Section 143-A of the N.I. Act, which is merely a form of execution of the order and nothing else, otherwise the legislature would have provided for consequence for non-compliance with the order, such as cancellation of bail or any such consequences.

6.3. It is further contended that the impugned order does not disclose any application of mind but has been passed merely considering that it was the duty of the Court to do so and therefore cannot be sustained.

6.4. Reliance is also placed upon ***Smt. Vijaya w/o Shiddalingayya Hiremath (Vijaya d/o Shadaksharappa) Vs. Shekharappa s/o Shivappa Madinur***, ***Criminal Petition No.100261/2022, decided on 17/2/2022***, by a learned Single Judge of the Karnataka High Court, holding Section 143-A of the N.I. Act to be directory.

7. The principles of interpretation as are spelt out from the various judicial precedents relied upon by the learned Counsels are as follows :

(i). In ***S.S. Bola and others*** (supra) it was held that the objects and reasons of a statute are to be looked into as an extrinsic aid to find out legislative intent, only when the meaning of the statute by its ordinary language is obscure or ambiguous.

(ii). ***Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd.*** (supra) holds that Judicial interpretation of given words in one statute cannot extend to same words in another statute and the Court should listen attentively towards what the legislature does not say.

(iii). In ***Commissioner of Income-tax, Orissa*** (supra) it was held that it is not the job of the Court to rewrite a section or

substitute words for actual words used in the name of giving effect to supposed underlying object.

(iv). In ***Padma Sundara Rao (Dead) and others*** (supra) it was held that Courts cannot read into a statutory provision which is clear and ambiguous.

(v). ***Harbhajan Singh*** (supra) holds that intention of legislature has to be gathered from the word used.

(vi). ***Haryana Financial Corporation and another*** (supra) holds that judgments of the Court cannot be read as statutes;

(vii). In ***Bhavnagar University*** (supra) it was held that a decision is an authority for which it is decides and not what can logically be deduced therefrom.

(viii). ***D. Saibaba*** (supra) holds that the Court should bear in mind the consequences of alternative construction.

(ix). ***B. Premanand and Ors.*** (supra) holds that literal construction is the thumb rule and it is only in case where a literal interpretation would lead to absurdity then only any other mode of interpretation, including a purposive one, can be resorted to;

(x). ***Mrs. Aparna A. Shah*** (supra) holds that a penal provision has to be interpreted strictly;

(xi). ***Ankush Shivaji Gaikwad*** (supra) holds that where there is a duty cast upon the Court to apply its mind only then in that contingency the provision could be said to be mandatory and not otherwise.

(xii). ***Modi Cements*** (supra) dilates upon the reasons and objects and the purpose behind enacting Section 138 of the N.I. Act, which is to promote the efficacy of banking operations and to ensure credibility in transacting business through cheques.

(xiii). ***Hyder Consulting (UK) Ltd.*** (supra) in respect of the subsidiary rules of interpretation, holds that the same words appearing in same section of the same statute must be given same meaning unless there is anything to indicate contrary, which principle may be rebutted by making reference to context in which words which are used and word may be understood in different sense, if context so requires.

(xiv). ***Gurnam Kaur*** (supra) by the Hon'ble Apex Court dilates on what is a *ratio decidendi* and obiter in a judgment and when a judgment can be considered as *per incuriam* or *sub silentio*, while

Synthetics and Chemicals Ltd. (supra) dilates on the point that a decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141 of the Constitution.

(xv). Synthetics and Chemicals Ltd. (supra) dilates upon what could be considered as a binding precedent.

7.1. In so far as the interpretation of the word 'may', is concerned, the following judgments dilate upon the same :

- ***Frederic Guilder Julius*** (supra) is on the expression "it shall be lawful" (pg. 222) and though it is held that the expression being according to their natural meaning permissive or enabling words only, however, if the words are coupled with a duty which requires the person in whom the power is reposed in case there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, the same, shall become obligatory and mandatory.

(ii) ***Jogendra Singh*** (supra), dilates on the issue as to when "may" can be construed as "shall" and holds that there is no doubt that the word "may" generally does not mean "must" or "shall", but the word "may" is capable of meaning "must" or "shall" in the light of the context and where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command.

(iii) ***Dharti Dhan (P) Ltd.*** (supra) holds that "may" would mean 'shall" if there is power coupled with duty to exercise power and where the power is wide enough to cover both acceptance and refusal, the power is discretionary.

(iv) ***I. K. Nangia*** (supra) holds that where the statute provides for a contingency of non-compliance with the provisions, that is one of the factors which has to be considered in construing whether the provision is mandatory or directory and interpretation which would sub-serve the object and purpose of the enactment has to be allotted.

(v) ***Mohan Singh*** (supra) holds that use of the word 'shall', or 'may', is not always decisive and depends on conferment of power.

(vi) ***Deewan Singh*** (supra) holds that where power is conferred upon a public authority coupled with discretion the word "may" which denotes discretion should be construed to mean a command.

(vii) ***Dilip K. Basu*** (supra) holds that the use of the word "may" by itself is not determinative of the true nature of the power or the obligation conferred or created under the provision and in a given case, it could be construed as 'shall' thereby meaning mandatory nature of the provision.

(viii) ***Anant H. Ulahalkar*** (supra) while interpreting Section 9 (1) - A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, lays down rules of interpretation regarding the use of the words 'may' and 'shall'.

(ix) ***Kunhayammed*** (supra) speaks about the doctrine of merger, and lays down principles as to when the dismissal of a petition for special leave by the Hon'ble Apex Court would result in the judgment of the High Court being merged in its order/judgment and when it would not.

7.3. In the context of the word 'may', as used in Section 143-A(1) of the N.I. Act, there are diverse opinions expressed by the Courts in various judicial pronouncements.

The judgments which hold the word 'may', as occurring in Section 143-A(1) of the N.I. Act to be **directory** are as under :

(i). In ***L.G.R. Enterprises*** (supra) (para 6 & 8), the word "may", as occurring in Section 143-A(1) of the N.I. Act is held to empower the Court with a discretion to direct interim compensation and holds that it is not necessary that in all cases the Trial Court must necessarily direct the interim compensation to be paid and such direction should be given only on a case to case basis based upon the facts of each case.

(ii). In ***Ajay Vinodchandra Shah*** (supra), it has been held that Section 143-A(1) of the N.I. Act leaves it to the discretion of the Court to pass an order of interim compensation upto the ceiling limit of 20% of the cheque amount and a difference is found between the provisions of Section 143-A(1) and 148 of the N.I. Act (para 19).

(iii). ***K. Ranjithkumar*** (supra) reiterates the position in ***L.G.R. Enterprises*** (supra).

(iv). ***JSB Cargo and Freight Forwarder Pvt. Ltd*** (supra), wherein a learned Single Judge after considering ***Surinder Singh Deswal*** (supra); ***L.G.R. Enterprises*** (supra) and ***Ajay Vinodchandra Shah*** (supra), holds that the provisions of Section 143-A(1) of the N.I. Act, were directory and not mandatory (para 62).

(v). ***Mr. D.L. Sadashiva Reddy*** (supra) which holds that the power under Section 143-A(1) of the N.I. Act is discretionary. [SLP No. 10151/2021 decided on 07.01.2022, has been dismissed]

(vi). ***Vijaya Hiremath*** (supra) which holds the provision to be discretionary.

The judgments which hold the word 'may', as occurring in Section 143-A(1) of the N.I. Act to be **mandatory** are as under :

Rajesh Soni (supra) by the learned Single Judge of Chhattisgarh High Court, holding that Section 143-A(1) of the N.I. Act is mandatory in nature (para 19).

8. An independent analysis of the legal position and the relevant provisions disclose the following position :-

8.1. By the amending Act No.20 of 2018, the N.I. Act, was amended by inserting Section 143-A and 148 therein. The purpose for the amendments, as reflected from what has been stated in the objects and reasons in the amending Act, is as under :

> *"The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions.*
>
> ***2.*** *It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.*

> ***3.*** *It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely—*
>
> *(i) to insert a new section 143-A in the said Act to provide that the Court trying an offence under Section 138 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 to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and*
>
> *(ii) to insert a new section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial court.*
>
> ***4.*** *The Bill seeks to achieve the above objectives."*

The basic purpose for enacting Section 143-A of the N.I. Act thus appears to be to address the delay in decision of cheque dishonour cases and to discourage frivolous and unnecessary litigation.

8.2. To consider the nature, scope and ambit of Section 143-A of the N.I. Act, it is necessary to consider its language, for which the same is reproduced as under:

"143-A. ***Power to direct interim compensation****.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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 percent 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 (2 of 1974).

(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 (2 of 1974), shall be

reduced by the amount paid or recovered as interim compensation under this section."

8.3. In ***Bachahan Devi*** (supra) after considering the earlier judicial precedents on the point as to how the words 'may' and 'shall', occurring in a statute are to be interpreted and so also upon considering ***Fredric Guilder Julius*** (supra), it has been held that mere use of word 'may' or 'shall' is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the legislature and not by looking at the language in which the provision is clothed and for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue. It has also been held that where several statutes confer power on authorities and officers to be exercised by them at their discretion, though the power is in permissive language, such as, 'it may be lawful', 'it may be permissible', 'it may be open to do', etc. in certain circumstances,

however, if such power is 'coupled with duty' which must be exercised, the same therefor must be held to be mandatory. It has been held that the ultimate rule in construing auxiliary verbs like "may" and "shall" is to discover the legislative intent; and the use of the words "may" and "shall" is not decisive of its discretion or mandate. The use of the words "may" and "shall" may help the Courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect. The Courts have further to consider the subject-matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed, and where the legislature uses two words 'may' and 'shall' in two different parts of the same provision *prima facie* it would appear that the legislature manifested its intention to make one part directory and another mandatory. But that by itself is not decisive. The power of Court to find out whether the provision is directory or mandatory remains unimpaired. The following paragraphs may be usefully quoted:

> ***"14.*** *"36. ... mere use of word 'may' or 'shall' is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the legislature and not by looking at the language in which the provision is clothed. And for*

finding out the legislative intent, the court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue.

37. Several statutes confer power on authorities and officers to be exercised by them at their discretion. The power is in permissive language, such as, 'it may be lawful', 'it may be permissible', 'it may be open to do', etc. In certain circumstances, however, such power is 'coupled with duty' and must be exercised.

----------"

It is thus obvious that to interpret the legal import of the word 'may', the Court has to consider various factors, namely, the object and the scheme of the Act, the context and background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word. The same proposition has been laid down in ***Dilip K. Basu*** (supra).

8.4. In ***Anant H. Ulahalkar*** (supra) the Full bench of the Bombay High Court [after considering ***Babu Ram Upadhya*** (supra)] has laid down the following tests for determining whether a provision is directory or mandatory :

"*36. Some of the well known tests to determine whether a provision is mandatory or directory are as follows:*

(i) The use of expressions like "shall" or "may" are not conclusive and regard must he had to the true intent of the legislation. However, use of expressions like "shall" or "should" or "must' by the legislature at least prima facie, indicates mandatory nature. Similarly, the use of expressions like "may" or "as nearly as may be" by the legislature, at least prima facie indicates directory nature. State of U.P. vs. B.R. Upadhya, AIR 1961 SC 751;

(ii) The circumstance that the statute itself provides consequences of breach or noncompliance, normally suggests a mandatory nature; Maqbool Ahmad v. Onkar Pratap Narain Singh, AIR 1935 PC 85, p. 88, Manilal Shah v. Sardar Mahmad, AIR 1954 SC 349;

(iii) A provision couched in negative form, generally suggests mandatory nature; Affirmative words, simplicitor, generally suggest directory nature; M. Pentiah v. Muddla, AIR 1961 SC 1107; Dharamdeo Rai v. Ramnagina Rai, (1972) 1 SCC 460;

(iv) A procedural rule, should ordinarily, not be construed as mandatory, If a provision relates to performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time, who have no control over the performance of the duty, such provision should be treated as directory; Dattatraya Moreshwar (supra);

(v) If a statute confers a concession or privilege and prescribes a mode of acquiring it, the mode so prescribed must be adopted as even affirmative words in such cases are construed imperative; Edward Ramia Ltd. v. African Woods Ltd., 1960 (1) ALL ER 627;

(vi) Where a provision prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as mandatory one;

(vii) Provisions which impose private duties or obligations upon private parties are ordinarily to be regarded as mandatory; Kedamath Jute Mfg, Co. Ltd. v. Commercial Tax Officer, AIR 1966 SC 12;
(viii) If exceptions, exemptions or concessions are granted by a statute subject to fulfillment of certain conditions, then such conditions must be mandatorily fulfilled. Subject to fulfillment of conditions, the provision may be liberally construed;
(ix) The nature, design and consequences which would follow from construing the provision as "mandatory" or "directory". Where construction of a provision as directory will render the provision or significant parts otiose, redundant or a surplusage. The principle is that the legislature does not use words in vain; and
(x) Where the construction of a provision as mandatory would result in absurdity, which could never have been intended by the legislature, the provision can be construed as directory."

8.5. In ***Surinder Singh Deswal*** (supra), while considering the provisions of Section 148 of the N.I. Act, in light of the above aims and objects, for its enactment, and whether the said provision was prospective or retrospective, it was held that Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to Amendment Act 20 of 2018 i.e. prior to 1/9/2018.

Insofar as the issue as to whether the same was mandatory or directory, considering the use of the word 'may', as occurring therein the Hon'ble Apex Court, held as under:

> *"8. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the NI Act as amended, the appellate court "may" order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court and the word used is not "shall" and therefore the discretion is vested with the first appellate court to direct the appellant-accused to deposit such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of Section 148 of the NI Act as amended is concerned, considering the amended Section 148 of the NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the NI Act, though it is true that in the amended Section 148 of the NI Act, the word used is "may", it is generally to be construed as a "rule" or "shall" and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned. Therefore amended Section 148 of the NI Act confers power upon the appellate court to pass an order pending appeal to direct the appellant-accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the appellant-accused under Section 389 CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the NI Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be*

> *deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant. Therefore, if amended Section 148 of the NI Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the NI Act, but also Section 138 of the NI Act. The Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonour of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, Parliament has thought it fit to amend Section 148 of the NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the NI Act and also Section 138 of the NI Act."*

8.6. In ***G. J. Raja*** (supra), the Hon'ble Apex Court, while considering the issue as to whether Section 143-A of the N.I. Act, was retrospective or prospective, by applying the principles as culled out in ***Hitendra Vishnu Thakur Vs. State of Maharashtra (1994) 4 SCC 602*** which are as under :

> *"(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary*

> *intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.*
>
> *(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.*
>
> *(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.*
>
> *(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.*
>
> *(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."*

held that fourth and fifth principles were apposite to the situation, and found as under :

> *"17. The provisions contained in Section 143-A have two dimensions. First, the Section creates a liability in that an accused can be ordered to pay over up to 20% of the cheque amount to the complainant. Such an order can be passed while the complaint is not yet adjudicated upon and the guilt of the accused has not yet been determined. Secondly, it makes available the machinery for recovery, as if the interim compensation*

were arrears of land revenue. Thus, it not only creates a new disability or an obligation but also exposes the accused to coercive methods of recovery of such interim compensation through the machinery of the State as if the interim compensation represented arrears of land revenue. The coercive methods could also, as is evident from provision like Section 183 of the Maharashtra Land Revenue Code, in some cases result in arrest and detention of the accused.

19. It must be stated that prior to the insertion of Section 143-A in the Act there was no provision on the statute book whereunder even before the pronouncement of the guilt of an accused, or even before his conviction for the offence in question, he could be made to pay or deposit interim compensation. The imposition and consequential recovery of fine or compensation either through the modality of Section 421 of the Code or Section 357 of the Code could also arise only after the person was found guilty of an offence. That was the status of law which was sought to be changed by the introduction of Section 143-A in the Act. It now imposes a liability that even before the pronouncement of his guilt or order of conviction, the accused may, with the aid of State machinery for recovery of the money as arrears of land revenue, be forced to pay interim compensation. The person would, therefore, be subjected to a new disability or obligation. The situation is thus completely different from the one which arose for consideration in ESI Corpn. Case [ESI Corpn. v. Dwarka Nath Bhargwa, (1997) 7 SCC 131 : 1997 SCC (L&S) 1680] .

21. In our view, the applicability of Section 143-A of the Act must, therefore, be held to be prospective in nature and confined to cases where offences were committed after the introduction of Section 143-A, in

> *order to force an accused to pay such interim compensation."*

While considering ***Surinder Singh Deswal*** (supra) it held as under :

> *"22. We must, however, advert to a decision of this Court in Surinder Singh Deswal v. Virender Gandhi [Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341 : (2019) 3 SCC (Cri) 461 : (2019) 3 SCC (Civ) 765 : (2019) 8 Scale 445] where Section 148 of the Act which was also introduced by the same Amendment Act 20 of 2018 from 1-9-2018 was held by this Court to be retrospective in operation. As against Section 143-A of the Act which applies at the trial stage that is even before the pronouncement of guilt or order of conviction, Section 148 of the Act applies at the appellate stage where the accused is already found guilty of the offence under Section 138 of the Act. It may be stated that there is no provision in Section 148 of the Act which is similar to sub-section (5) of Section 143-A of the Act. However, as a matter of fact, no such provision akin to sub-section (5) of Section 143-A was required as Sections 421 and 357 of the Code, which apply post-conviction, are adequate to take care of such requirements. In that sense said Section 148 depends upon the existing machinery and principles already in existence and does not create any fresh disability of the nature similar to that created by Section 143-A of the Act. Therefore, the decision of this Court in Surinder Singh Deswal [Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341 : (2019) 3 SCC (Cri) 461 : (2019)*
> *3 SCC (Civ) 765 : (2019) 8 Scale 445] stands on a different footing."*

9. Thus, in view of what has been held in ***G. J. Raja*** (supra) the following points of distinction between the provisions of Section 148 and Section 143-A of the N.I. Act, can be culled out as under :

Sr. No	***Section 148***	***Section 143-A***
1.	*Applies at the appellate stage, where the accused is already found guilty of the offence under Section 138 - i.e. post conviction.*	*Applies at the trial stage, i.e. even before the pronouncement of guilt or order of conviction*
2.	*Does not create any new disability/obligation/ liability to pay compensation. Liability is already created due to conviction by the Trial Court.*	*Creates a new disability or obligation/liability for the first time to pay interim compensation.*
3.	*Such liability is post conviction, where the accused is already held guilty of the offence.*	*Such disability or obligation / liability is during the course of Trial- i.e. pre-conviction, where the complaint is not yet adjudicated and guilt of the accused is yet to be determined.*
4.	*Merely permits the Appellate Court to order deposit of sums of 20% and above of the fine or compensation awarded by the Trial Court as the guilt stands already determined due to conviction.*	*Permits the Trial Court to award interim compensation upto 20% of the Cheque amount, without determination of the guilt of the accused.*
5.	*Such compensation/fine could be recoverable under*	*Introduces Section143-A(5), making the interim*

	Sections 421 and 357 of the Code, which apply post-conviction, and are adequate to take care of such requirements.	*compensation, recoverable, as if it were a fine under Section 421 Cr. P.C. thereby exposing the accused to coercive methods of recovery of such interim compensation through the machinery of the State as if the interim compensation represented arrears of land revenue. The coercive methods could also, as is evident from provision like Section 183 of the Maharashtra Land Revenue Code, which in some cases may result in arrest and detention of the accused, as under Section 183 of the Maharashtra Land Revenue Code, 1966, in case there be a default in payment of land revenue, the person concerned could be arrested and detained in custody for 10 days in the office of the Collector or of a Tahsildar unless the arrears of revenue which were due, were paid along with the penalty or interest and the cost of arrest and of the notice of demand as also the cost of his subsistence during detention.*
6.	*Does not create any fresh disability as in view of*	*Creates a fresh disability.*

	Section 357 and 421 of Cr.P.C. Section 148 depends upon the existing machinery already in existence.	

The difference was also noticed in ***Ajay Vinodchandra Shah*** (supra).

9.1. Taking into consideration the legal position as flowing from the judicial precedents, as stated above, it would thus be apparent that there are inherent differences between the provisions of Section148 and Section 143-A of the N.I. Act, due to which what has been held in respect of the word 'may', as occurring in Section 148 of the N.I. Act in ***Surinder Singh Deswal*** (supra), may not be true in respect of the word 'may', as occurring in Section 143-A(1) of the N.I. Act, specifically so when both these provisions operate in different arenas. The applicability of Section 148 of the N.I. Act is at the appellate stage, where right to the compensation/fine, if awarded by the Trial/Special Court, stands crystallized in favour of the complainant and thus there arises a duty in the Appellate Court to order the deposit of twenty percent of the fine or compensation awarded, whereas in proceedings under Section 138 of the N.I. Act, since the Court is still 'trying the offence', no right is crystallized in

favour of the complainant for any compensation/fine as in a given case, based upon the evidence which may come on record the Trial Court may dismiss the complaint itself or may do so even at an earlier stage, and thus there is no duty cast upon the Court trying the offence, to direct deposit upto 20% of the cheque amount, rather, what is conferred, would be a discretion, to be exercised by the Court trying the offence, based upon the fact position prevailing in each case and therefore in my considered opinion, there is no 'duty to act', upon the Court, spelt out by the provisions of Section 143-A of the N.I. Act, considering which ***Frederic Guilder Julius*** (supra); ***Jogendra Singh*** *(*supra*),* ***Deewan Singh*** (supra) and judgments taking a similar view would clearly not be applicable.

9.2. This is supplemented by the fact that from a plain reading of Section 143-A of the N.I. Act, it is clear that it is a provision enacted as an interim measure, during the pendency of the trial, when the guilt of the accused is still to be determined. The word 'may', thus used in Section 143-A (1) of the N.I. Act, has to be construed in light of the fact that the direction to award compensation, is at the trial stage and as an interim measure. The

fact that even in cases under Section 138 of the N.I. Act, the presumption under Section 139 of the N.I. Act, is not absolute, but is rebuttable, also has to be borne in mind. That apart, in a particular case, given the requirement of Section 138 of the N.I. Act, it may so happen that the complaint itself may not be maintainable, for the cheque not having been presented during the period of its validity; the notice not having been issued in the stipulated time; the complaint not having been filed within the time stipulated therefor; the debt may not be a legally enforceable debt or liability; the memo/advice regarding dishonor not having been placed on record etc. These are only some of the instances and do not cover the entire plethora of causes, which may make the complaint itself not maintainable. To direct the grant of interim compensation, in such cases, merely because of the existence of a cheque, by holding that doing so is mandatory, would not bejustifiable.

9.3. It is further material to note that the power to direct interim compensation under Section 143-A of the N.I. Act, can be equated with the provisions as contained in Order XXXVIII Rule 5 of the C.P.C., which confers a power upon the Court to direct the

defendant to furnish security in such sum as may be specified, during the pendency of the suit, which provision is directory in nature and the use of the power is discretionary.

9.4. Section 143-A of the N.I. Act, though enacted with an intent to ensure speedy disposal of the proceeding pending under Section 138 of the N.I. Act, the said intent, insofar as Section143-A of the N.I. Act is concerned, does not make the provision mandatory, as what is conferred upon the Court by virtue of the said provision is a discretion to direct interim compensation and no right is created in the complainant under it, to demand the entitlement to compensation. Grant of interim compensation, would be at the discretion of the Court, based upon consideration of various factors, such as (a) whether the requirements of Section 138 of the N.I. Act, were fulfilled (b) whether the pleadings disclose the drawing of the presumption (c) whether the proceedings were within limitation and (d) whether *prima facie* a legal debt or liability was disclosed from the complaint or the notice of demand preceding it, and factors as such [***see : B.R. Upadhya*** and ***Anant H. Ulahalkar*** (supra)].

9.5. In a general sense word "may" is enabling or discretionary. In order to construe it as mandatory it has to be coupled with a duty to act [***see: Federic Guilder Julius*** (supra)]. In juxtaposition to the language of Section 148 of the N.I. Act, which in view of the fact, that it is applicable at the appellate stage after the liability, regarding compensation/fine has been crystallized, in which context, the provision directs the Appellate Court, to order deposit of such sum which shall be a minimum of 20% of the fine or compensation, as awarded by the Trial Court, Section 143-A of the N.I. Act, on the other hand, does not cast any such duty or obligation upon the Court trying the offence to, in all cases, order deposit of an amount upto 20% of the cheque amount in the Court, as Section 143-A (2) of the N.I. Act, confers a discretion upon the Court to direct the deposit of the sum not exceeding 20% of the cheque amount as an interim compensation.

9.6. Whereas Section 148 (1) of the NI Act, uses the expression "-- such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court --", which indicates that the total sum, of which 20% is to be awarded,

already stands prejudged, there is no such prejudging at the stage of invocation/applicability of Section 143-A of the N.I. Act, as the trial is yet to be over, considering the use of the expression occurring in Section 143-A(1) of the N.I. Act " – the Court trying the offence --" and the language of Clause (a) and (b) of Section 143-A(1) of the N.I. Act, which indicates the stages at which such power could be exercised, viz: (a) in a summary trial or a summons case, when the accused pleads not guilty and (b) in any other case on framing of charge.

9.7. The word 'may' as used in Section 143-A (1) of the N.I. Act, cannot be read, in the contextual background of its user in Section 148 of the N.I. Act, as they are two different provisions, which operate in two totally different situations and at two different stages as discussed earlier and therefore what has been held in ***Hyder Consulting (UK) Ltd.*** (supra) would clearly not be applicable.

9.8. The word 'interim', by its very nature denotes something which is not final, impermanent; temporary; meanwhile; meantime; and would thus govern a situation, which considering the facts

prevailing and given the existence of the relevant factors, and the power to award interim compensation, would require the exercise of the discretion by the Court to ensure grant of some relief, if the circumstances so warrant, considering which, again it will have to be held that the power under Section 143-A of the N.I. Act, is discretionary.

9.9. It is further material to note that the legislature was aware of the provisions of Sections 138 to 147 of the N.I. Act, the purpose for which they were enacted, the delays which were being caused in the disposal of the proceedings, which is evident from the aims and object of the amending Act 20 of 2018, it was thus open for the legislature to have used an express language that in all cases under Section 138 of the N.I. Act, which were pending trial, the complainant was entitled to compensation upto 25% of the cheque amount. However, such express words, have not been used, though it was open for the Legislature to do so, which again indicates that the use of the word 'may', as occurring in Section 143-A(1) of the N.I. Act, was not mandatory but was directory and a discretion was conferred upon the Court, to either grant or not to grant interim

compensation. The fact that a discretion was conferred upon the Court is further evident from the use of the expression 'shall not exceed' as occurring in Section 143-A(2) of the N.I. Act which again confers a discretion upon the Court 'trying the offence', to direct the grant of interim compensation anywhere between the range of 0 (zero) to 20 (twenty) % of the cheque amount, indicating that in a given case, it would be permissible for the Court, to even decline awarding of any interim compensation, of course, for reasons to be recorded. Thus, when the power is wide enough to cover both the grant and refusal to grant, the power would be discretionary [see ***Dharti Dhan (P) Ltd.*** (supra)], as no absolute right has been conferred upon the complainant to claim interim compensation, but a discretion has been conferred upon the Court to so direct, the exercise of which discretion will depend upon the Court holding in favour of the complainant, depending upon whether a case was made out for the same or not, based upon the facts availing on record, in each case.

9.10. In the above context, it is equally material to note what has been held in ***Mardia Chemicals Ltd.*** (supra) wherein while

considering the condition of deposit of 75 % of the amount of demand notice before a proceeding could be entertained by the tribunal, while considering the power of the tribunal to waive or reduce the amount under the proviso to Section 17(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act", for short hereinafter) it has been held that since the proceedings under Section 17 of the SARFAESI Act are akin to proceedings like a suit in a Court of first instance, the condition of pre-deposit was bad rendering the remedy illusory and also for the reason that there was as yet at that stage no determination of the amount due. The proceedings before the Magistrate under Section 138 of the N.I. Act, are also proceedings in the Court of first instance, and thus the direction to deposit 20% of the cheque amount ought to be held as directory, as at that stage, there is as yet determination of the liability of the person issuing the cheque.

9.11. Even if Section 143-A (3) of the N.I. Act provides for a time limit of 60 days to pay the interim compensation extendable by 30 days, fixing a time limit for payment of interim compensation

would not render Section 143-A of the N.I. Act mandatory for in case the Special Court, chooses to exercise its discretion to award interim compensation, it cannot be said that the interim compensation would be payable at any time, at the choice of the accused, for which reason time restraints have been incorporated, otherwise the provision would have been ineffective.

9.12. Though Section 143-A (4) of the N.I. Act provides for repayment of the amount of interim compensation, upon acquittal of the accused, the said provision is in the nature of restitution, as once the complaint is dismissed by the acquittal of the accused or otherwise, for any other reason, the complainant becomes dis-entitled to the interim compensation awarded and thus there has to be a restitution. The provision for restitution as contained in Section 143-A(4) of the N.I. Act, does not add to the plea of the provision being of a mandatory nature. In fact the provision does not specify as to what would be the effect if the restitution is not made by the complainant within the time frame as stipulated therein and is silent as to what steps would have to be taken by the accused in that contingency or what remedy would be available to him, in such

a case, so that the amount of interim compensation could be restored back to the accused/s. In this respect, it may need a revisit by the legislature.

9.13. The provision of Section 143-A (5) of the N.I. Act, which permits recovery of the interim compensation as a fine, under Section 421 of Cr.P.C., by itself would not make Section 143-A of the N.I. Act mandatory, as the same will come into picture only if interim compensation is awarded, and merely prescribes, what would be the mode of recovery in case, interim compensation is awarded. Even otherwise, the mode of recovery of any fine awarded in criminal proceedings has been prescribed in Section 421 of Cr.P.C. and what Section 143-A (5) of the N.I. Act does is merely make Section 421 of Cr.P.C. applicable which in any case, would have been applicable.

9.14. The use of the expression 'shall not exceed twenty per cent of the amount of the cheque", as occurring in Section 143-A (2) of the N.I. Act, also does not make the provision mandatory, as the use of the word 'shall' in Section 143-A (2) has to be viewed in the background of the word 'may' as used in Section 143-A (1), which

colors the content of the entire provision. The expression "shall not exceed twenty per cent" in Section 143-A (1) merely caps the limit of the discretion which the Special Court is permitted to exercise in the matter and nothing else. The word "shall" as used in the above expression does not transcend beyond the limits of discretion of the Special Court, in the matter of awarding interim compensation, which as already discussed above could be anywhere between 0% to 20% of the cheque amount.

9.15. The language of Section 143-A (1) of the N.I. Act is neither obscure, nor unambiguous as would reflect from a plain reading of the same and the intent of the legislature to make the provision directory is clearly reflected therefrom, which intent also serves the purpose for which it was enacted i.e. to avoid delays.

10. In my considered opinion, in view of the discussion above, it has to be held that Section 143-A of the N.I. Act, is discretionary and not mandatory and the view taken in ***L.G.R. Enterprises*** (supra) holding that the word "may", as occurring in Section 143-A(1) of the N.I. Act empowers the Court with a

discretion to direct interim compensation and it is not necessary that in all cases the trial Court must necessarily direct the interim compensation to be paid and such direction should be given only on a case to case basis based upon the facts of each case, which is followed in ***K. Ranjithkumar*** (supra); in ***Ajay Vinodchandra Shah*** (supra) to the extent holding that Section 143-A(1) of the N.I. Act leaves it to the discretion of the Court to pass an order of interim compensation upto the ceiling limit of 20% of the cheque amount and a difference is found between the provisions of Section 143-A(1) and 148 of the N.I. Act, though ***Ajay Vinodchandra Shah*** (supra), it has been declared not to be a good law, in ***Surinder Singh Deswal*** (supra) only insofar as consequences of non-compliance of condition of suspension of sentence is concerned, as noticed in ***JSB Cargo and Freight Forwarder Pvt. Ltd*** (supra) and thus what is held therein would hold good, except to the extent as indicated in ***Surinder Singh Deswal*** (supra); ***JSB Cargo and Freight Forwarder Pvt. Ltd*** (supra) which holds that the provisions of Section 143-A(1) of the N.I. Act, are directory and not mandatory; ***G.K. Construction Company, Through its Owner Govind Katariya Vs. Balaji Makan Samagri Stores, Through its Proprietor Mallaram [S.B. Criminal Misc. (Pet.)***

No.189/2022] decided on 04/03/2022 by a learned Single Judge of the Rajasthan High Court at Jodhpur and ***D.L. Sadashiva Reddy*** (supra) which holds that the power under Section 143-A(1) of the N.I. Act is discretionary lay down the correct position. It is also material to note that ***D.L. Sadashiva Reddy*** (supra) was carried to the Hon'ble Apex Court vide S.L.P. No.10151/2021 wherein while dismissing the same on 07/01/2022, it has been held as under :

> *"Though the power under Section 143A of the Negotiable Instruments Act is discretionary power, we, having considered the matter on merits, find that the direction to deposit 20% of the amount is perfectly justified. As such, in the facts and circumstances of the case, we do not find any ground to interfere with the order impugned in this petition. Accordingly, the special leave petition stands dismissed."*

10.1. With great humility, I am unable to agree with what has been held in ***Rajesh Soni*** (supra) by the learned Single Judge of Chhattisgarh High Court, holding that Section 143-A(1) is mandatory in nature (para 19) for the reason that the distinction between the intent and purpose of Section 143-A and Section 148 of

the N.I. Act as spelt from their language, has not been noticed by the learned Court.

11. The exercise of any discretion conferred upon a Court, must be for reasons to be spelt out, indicating application of mind by the Court to the facts available before it in the application of the law to such facts. There are multitude of judicial pronouncements in this regard, which indicate the necessity for spelling out reasons in orders/judgments, which need not quote here. This is more so for the reason that reasons are the heart of an order/judgment and unless reasons are spelt out in the order/judgment, neither the litigant nor the Court before whom a challenge is laid to the exercise of such discretion, would be able to fathom what weighed with the Court passing the order/judgment to hold one way or another, and thus make the exercise of discretion, to be struck down for non-application of mind and thus any order exercising or refusing to exercise discretion to award interim compensation will have to spell out the reasons for exercise of such exercise.

12. Thus, my answers to the above two questions are as under :

(i) Whether the provisions of Section 143-A of the Negotiable Instruments Act, 1881, which empower the Court to direct payment of interim compensation are mandatory or directory and	The provisions of Section 143-A of the N.I. Act are directory and not mandatory.
(ii) In case it is held that the same is directory, whether the Court has to record reasons for determining the quantum of interim compensation to be awarded as contemplated by Section 143-A (2) of the Negotiable Instruments Act, 1881 ?	The Court has to record reasons for determining the quantum of interim compensation, if it comes to the conclusion based upon the fact position availing, that it is a case which deserves award of interim compensation, which can be anywhere upto 20% of the cheque amount.

13. In view of the above, the impugned orders are hereby quashed and set aside and the matters are remanded back to the learned Special Court to decide the applications under Section 143-A of the N.I. Act afresh, in light of what has been held above.

14. Rule is made absolute in the above terms.

(AVINASH G. GHAROTE, J.)