

HIGH COURT OF PUNJAB AND HARYANA

Bench: Justice N.S.Shekhawat

Date of Decision: 30.11.2023

CRM M-47744 of 2022

Raman Kumar Arora

...Petitioner

Vs.

Tanu Bathla

...Respondent

Legislation:

Section 482 Cr.P.C.

Section 138, 143-A of the Negotiable Instruments Act, 1881

Subject: Judgment pertains to the quashing of an order related to a complaint filed under Section 138 of the Negotiable Instruments Act, 1881. The petitioner sought the quashing of the order directing the deposit of interim compensation and the subsequent dismissal of the revision petition.

Headnotes:

Petitioner's Request to Quash Order – Petitioner seeks to quash the order dated 06.09.2021 (Annexure P-4) passed by the Court of JMFC, SAS Nagar, District Court, Mohali in a complaint under Section 138 of the Negotiable Instruments Act 1881 – Also seeks to quash the impugned judgment dated 27.09.2022 (Annexure P-6) passed by the Court of Additional District and Sessions Judge, SAS Nagar – Allegations related to cheque payment. [Para 1-3]

Principles of Natural Justice and Discretionary Power – Petitioner contends that trial Court failed to adhere to the principles of natural justice and "audi alteram partem" – Discretionary power wrongly exercised without recording proper reasons – Misinterpretation of Section 143 of the Act – Revisional Court's oversight of peculiar facts – Impugned orders legally unsustainable. [Para 4]

Interim Compensation under Section 143-A – Trial Court's casual and routine grant of interim compensation – Lack of judicial mind and reasoning – Wide discretion to grant interim maintenance not exercised in accordance with law – Orders liable to be quashed. [Para 9-10]

Quashing of Impugned Orders – Impugned order dated 06.09.2023 (Annexure P-4) and judgment dated 27.09.2022 (Annexure P-6) quashed – Matter remanded back to the trial Court for reconsideration of interim compensation issue with a speaking order and opportunity for both parties – In accordance with the law. [Para 10]

Disposition of the Case – Case disposed of. [Para 11]

Referred Cases:

- CRM M-29424-2022 Vikas Vs. Jai Shree Balaji Electrical
- CRL.MC 2663 of 2021 M/s Jsb Cargo and Freight Forwarder Pvt. Ltd Vs. State and another, decided on 20.12.2021
- Nagpur Bench of Bombay High Court's case Ashwin Ashokrao Karokar was cited to support the view that Section 143A of the Act is discretionary and not mandatory.
- Dharampal & Anr. Vs. Om Parkash, 2022(2) RCR(Crl.) 621

Representing Advocates:

Mr. Karan Suneja, Advocate, represented the petitioner.

Mr. R.K. Chaudhary, Advocate, represented the respondent.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 06.09.2021 (Annexure P-4) passed by the Court of JMFC, SAS Nagar, District Court, Mohali in a complaint bearing No. NACT/90/2020 titled as “ **Tanu Bathla Vs. Raman Kumar Arora and another**”, whereby, the petitioner has been directed to deposit/pay 20% of the cheque amount, i.e., 1,00,000/- to the complainant within a period of 60 days. A further prayer has been made for quashing of the impugned judgment dated 27.09.2022(Annexure P-6) passed by the Court of Additional District and Sessions Judge, SAS Nagar, District Mohali, whereby, the revision petition filed by the present petitioner has also been ordered to be dismissed.
2. Learned counsel for the petitioner submits that in the present case, the complaint titled as “ **Tanu Bathla Vs. Raman Kumar Arora and another**”,

(Annexure P-1) was filed against the present petitioner and his wife by the respondent under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**').

3. Vide order dated 01.02.2020 (Annexure P-2), the present petitioner and his wife were ordered to be summoned for committing offence under Section 138 of the Act. After that, the notice of accusation was ordered to be served upon the petitioner and his wife by the trial Court. However, on 06.09.2021, the oral request made by the respondent was allowed and the petitioner/accused and his wife were directed to deposit/pay 20% of the cheque amount, i.e., Rs. 1,00,000/- to the complainant within a period of sixty days. The petitioner filed a revision petition before the Court of Additional District and Sessions Judge, Mohali and vide impugned judgment dated 27.09.2022 (Annexure P-6), the Court dismissed the revision petition filed by the present petitioners.
4. Learned counsel for the petitioner contends that the trial Court failed to adhere to the principles of natural justice as well as maxim “**audi alteram partem**” and no opportunity of hearing was granted to the petitioner by way of filing the reply/objection and discretionary power has been wrongly exercised by the trial Court. Still further, the law is well settled that while exercising such a discretionary power, the Court is bound to record reasonable, proper, specific and cogent reasons to support its decision. The Court had the discretion to grant interim compensation, which could vary from 1% to 20% and the discretion was not exercised in the manner known to law. Apart from that, the provisions under Section 143 of the Act have been misinterpreted as mandatory provisions of law and the impugned order has been passed in a hurry, without recording its satisfaction. Even, the revisional Court had clearly overlooked the peculiar facts and circumstances of the present case and the impugned orders are legally unsustainable.

5. On the other hand, learned counsel for the respondent has supported both the orders Annexure P-4 and P-6 by submitting that the trial Court had rightly granted the interim compensation under Section 138 of the Act. However, he could not dispute the fact that the trial Court had not recorded any reasons, while awarding interim maintenance under the said provisions of law.

6. Before proceeding further, it would be appropriate to reproduce the impugned order dated 06.09.2021 (Annexure P-1), which is as under:-

“Upon notice, accused persons appeared in the Court. Heard. Finding a prima facie case, the notice of accusation under Section 138 of the Negotiable Instrument Act is framed against the accused persons, to which, they pleaded not guilty. Their plea have also been recorded. On oral request of complainant and as per provision under Section 143-A Negotiable Instrument Act, accused persons are directed to deposit/pay 20% of the cheque amount i.e. Rs.1,00,000/- to the complainant within 60 days. Now to come up on

05.10.2021 for DWs”.

7. I have heard learned counsel for the parties and perused the record.

8. This Court has held in CRM M-29424-2022 titled as

“Vikas Vs. Jai Shree Balaji Electrical” as under:-

“From a perusal of the impugned order, it appears that no application was moved by the respondent under Section 143A of the Act and no opportunity of hearing was given to the petitioner before passing the impugned order whereby the direction was given to the petitioner to pay the interim compensation in terms of Section 143A of the Act. It appears that the Trial Court granted interim compensation under Section 143A of the Act in a casual manner without application of mind, as to how the said compensation was calculated and awarded. It appears that the Trial Court misconstrued the said provision as mandatory in nature, whereas the legal position is just contrary, as has been discussed below. Hon’ble Delhi High Court in CRL.MC 2663 of 2021 M/s Jsb Cargo and Freight Forwarder Pvt. Ltd Vs. State and another, decided on 20.12.2021, held that provision of Section 143A Negotiable Instruments Act, essentially is directory and cannot be termed as mandatory

in nature. Even the Nagpur Bench of Bombay High Court also held in Ashwin Ashokrao Karokar's case (supra) that Section 143A of Negotiable Instruments Act, is discretionary and not mandatory.

Even the Coordinate Bench of this Court in Dharampal & Anr. Vs. Om Parkash, 2022(2) RCR(Crl.) 621 set aside the order passed by the learned trial Court under

Section 143A of the Act while observing that the discretion vested in the trial Magistrate is not to be exercised capriciously and arbitrarily. The exercise of discretion by the learned trial Magistrate has to be done in a thoughtful and sagacious manner”.

9. From the perusal of the impugned order dated 06.09.2021 (Annexure P-4) passed by the Court of Judicial Magistrate 1st Class, SAS Nagar, it is apparent that the trial Court had granted the interim compensation under Section 143-A of the Act in very casual and routine manner. Even, it is clear that there was no application of judicial mind by the trial Court. Even, no reasons have been recorded for granting 20% of the amount of the cheque in question as interim compensation. The Court had wide discretion to grant the interim maintenance, which could vary from 1% to 20% and the discretion had been exercised in a manner, which is alien to law and such arbitrary order is liable to be quashed.
10. In view of the above facts and circumstances and the settled position of law, the impugned order dated 06.09.2023 (Annexure P-4) passed by the Judicial Magistrate 1st Class, SAS Nagar and the impugned judgment dated 27.09.2022 (Annexure P-6) are ordered to be quashed. The matter is remanded back to the trial Court to reconsider the issue regarding the payment of interim compensation under Section 143-A of the Act afresh, by passing a speaking order, after granting opportunity of hearing to both the sides, in accordance with law.
11. Disposed off.
12. All pending applications, if any, are disposed off, accordingly.

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