

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

941 CRIMINAL WRIT PETITION NO.784 OF 2019

Santosh Steel Traders
Through its Proprietor,
Satish s/o Nandlal Rathi
Age 52 years, Occu: Business
R/o Laxminarayan, Oil Mil Complex,
Near Amit Hotel, Jalna

... Petitioner

Versus

Shyamsundar s/o Rameshwar Loya
Age 50 years, Occu: Business,
R/o Sambhaji Nagar, Jalna
Tq. & Dist. Jalna

... Respondent

CRIMINAL WRIT PETITION NO.789 OF 2019

Santosh Steel Traders
Through its Proprietor,
Satish s/o Nandlal Rathi
Age 52 years, Occu: Business
R/o Laxminarayan, Oil Mil Complex,
Near Amit Hotel, Jalna

... Petitioner

Versus

Kailas s/o Rameshwar Loya
Age 49 years, Occu: Business,
R/o Sambhaji Nagar, Jalna
Tq. & Dist. Jalna

... Respondent

...

Advocate for Petitioners :Mr Chandak Raviraj R.
Advocate for Respondents:Mr. Gangakhedkar Shailendra S

CORAM : V. L. ACHLIYA, J.

DATE : 2nd August, 2019

JUDGMENT

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. Heard learned counsel for the petitioners and the respondents.

3. The challenge raised in the petitions confines to the legality of the orders dated 07.03.2019 passed in S.C.C. Nos. 321/2016 and 740/2016 by the learned J.M.F.C., Court No.2 Jalna.

4. By the impugned orders, the petitioner accused has been directed to pay 20% of the cheque amount as an interim compensation in terms of Section 143-A of the Negotiable Instruments Act. The orders are challenged on the ground that Section 143-A of the Negotiable Instruments Act, brought into force w.e.f. 01.09.2018, whereas the cause of action for filing complaints arose much prior to Section 143-A of the N.I. Act brought into force. It is pointed out that in the complaints itself, the complainants have mentioned that the cause of action for filing criminal complaint as S.T.C. No.740/2016 arose on 01.04.2016 and cause of action for filing criminal complaint as S.T.C.No. 321 of 2019 arose on 17.01.2016. In this background the learned counsel submits that the impugned orders passed by the learned Judge of trial Court are not sustainable in law and liable to be set aside. It is contended that Section 143-A of the N.I. Act is prospective in nature and can be applied only in cases where the offence under

section 138 of the N.I. Act committed after the introduction of Section 143-A in the Statute Book. In support of the submissions advanced, the learned counsel has referred and relied upon the decision of the Apex Court in the case of **G. J. Raja Vs. Tejraj Surana (Criminal Appeal No.1160 of 2019, arising out of Special Leave Petition (Criminal) No.3342 of 2019)**.

5. Learned counsel for the respondents conceded that in view of the judgment in the case **G. J. Raja (supra)**, the impugned orders are not sustainable in law.

6. In my view, the challenge raised in the petitions is squarely covered by the decision in the case of **G.J. Raja Vs. Tejraj Surana(supra)**, wherein the Apex Court has ruled that Section 143-A of the Negotiable Instruments Act is prospective in nature and the same can be applied only in those cases wherein the offence has been committed after the introduction of Section 143-A of the said Act. In para 22 and 24, the Apex Court has observed as under:

"22. 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 143A, in order to force

an accused to pay such interim compensation."

24. In the ultimate analysis, we hold section 143A to be prospective in operation and that the provisions of said Section 143A can be applied or invoked only in cases where the offence under Section 138 of the Act was committed after the introduction of the said Section 143A in the statute book. Consequently, the orders passed by the Trial Court as well as the High Court are required to be set aside. The money deposited by the Appellant, pursuant to the interim direction passed by this Court, shall be returned to the Appellant along with interest accrued thereon within two weeks from the date of this order.

7. In view of the legal position laid down in the case of **G.J. Raja Vs. Tejraj Surana(supra)**, the issue raised in these petitions no more remains *res integra*. The challenge raised in the petitions is squarely covered by decision in the case of **G.J. Raja Vs. Tejraj Surana(supra)**. Accordingly, the petitions are allowed in terms of prayer clause (B) in the respective petitions with no order as to costs.

8. Rule made absolute in above terms.

(V. L. ACHLIYA, J..)

JPC