

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1080 OF 2019

Uttam s/o Nagorao Hattiambire,
Age 55 years, Occupation Business,
R/o udyogratna Kalyan nagar,
Parbhani Tq. Dist. Parbhani.

**...Petitioner.
(Orig.Accused)**

VERSUS

Sartajsingh s/o Arjunsingh Chahel,
Age 52 years, Occupation Service,
R/o Sangvi Bk. Nanded,
Through His Power of Attorney Holder
Harvindersingh s/o Bahadursing Ratan
Age 55 years, Occupation Business,
R/o Sangvi Bk. Nanded Tq.Dist.Nanded.

**...Respondent.
(Orig.Complainant)**

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Advocate for Petitioner : Mr. P. N. Kalani.
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CORAM : SMT.VIBHA KANKANWADI. J.

DATE : 16-12-2019.

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent, heard finally.
2. Notice was issued to the respondent – original complainant, it has been returned with remark that, when the notice was tried to be

served by the police, the respondent was out of station and his son was present in the house. At that time, in presence of the police, the son had contacted the respondent on phone and gave him the intimation about the notice. Respondent asked the police person to give the copy of the notice to his son, the son also gave his consent, and it was promised that the respondent would be informed about the notice, and therefore, the notice was served through the son. In view of Section 64 of the Code of Criminal Procedure, this has to be accepted as proper service.

3. In view of the notice, the respondent has not appeared, and therefore, the matter is heard in his absence.

4. Learned advocate Mr. P. N. Kalani appearing for the petitioner submitted that, the petitioner is facing trial before the learned Judicial Magistrate, First Class, 3rd Court, Nanded, on the basis of private complaint lodged by respondent – original complainant for the offence punishable under Section 138 of the Negotiable Instruments Act bearing Summary Criminal Case No.795 of 2012. The complaint was filed in the year 2012 and during the pendency of the said complaint, application has been filed at Exhibit 31 by the complainant to direct the accused to deposit 20 % of the amount of

the disputed cheque in the Court in view of Section 143-A Negotiable Instruments Act. Though specific say was filed that, the said section is not retrospective yet the learned Magistrate has allowed the said application and directed the accused to deposit interim compensation of 10 % of the disputed cheque to the complainant by order dated 27-03-2019. In fact, this order is passed in ignorance of the law. The petitioner was not liable to pay the said amount. He is in fact challenging that there was any legally enforceable debt against him on the date of the cheque. He, therefore, prayed for setting aside the said order.

5. At the outset from the order that has been passed below Exhibit 31, it can be seen that the said application was given under Section 143-A of the Negotiable Instruments Act. Though specific point was argued on behalf of the accused that the amendment by which Section 143-A of the Negotiable Instruments Act was enacted, cannot be said to be retrospective in effect but prospective in effect. The learned Magistrate considered the said provision as mandatory and it was stated that the said amendment is procedural in nature, and does not affect the substantive part of the Act. This appears to be in ignorance of the decision by the Hon'ble Apex Court in *G. J.*

Raja v. Tejraj Surana reported in (2019 Cri.L.J. (4267)). Section 143-A (5) of Negotiable Instruments Act was inserted in the statute book with effect from 01-09-2018 by Amendment Act 20 of 2018. In *G. J. Raja's Case (Supra)* it has specifically held in paragraph 24 that,

"24. In the ultimate analysis, we hold Section 143-A to be prospective in operation and that the provisions of said Section 143-A can be applied or invoked only in cases where the offence under Section 138 of the Act was committed after the introduction of said Section 143-A in the statute book."

6. Thus when the Hon'ble Supreme Court has given its verdict on the point that the operation of Section 143-A of the Negotiable Instruments Act is prospective in nature and it will not be applicable to the pending cases, the learned magistrate ought not to have given such direction. The order which has been given in ignorance of the decision of the Supreme Court, in which the law has been explained, cannot be allowed to sustain. Hence, the powers of this Court under Article 227 of the Constitution of India deserves to be exercised in this case. Writ petition therefore stands allowed. The order passed by the learned Magistrate below Exhibit 31 in Summary

Criminal Case No.795 of 2012, dated 27-03-2019 stands set aside.
The said application stands rejected. Petition is disposed of
accordingly. Rule is made absolute in above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.