

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 33 OF 2019****DATTATRAYA GADGIL,,****... Petitioner****Versus****HERCULANO WILLIAM FERNANDES AND
ANR.,****... Respondents**

Adv. Mr. Rohan Pandurang Desai for the Petitioner.

Adv. Mr. C. Fonseca for the Respondent no.1.

Mr. Pravin N. Faldessai, APP for Respondent no.2

Coram:- C. V. BHADANG, J.**Date:- 10th April 2019.****O R D E R:**

By this petition, the petitioner/accused is challenging the order dated 18/1/2019 passed by the learned Magistrate in Criminal Case No.287/NIA/2016/D. By the impugned order, the learned Magistrate has directed the petitioner to deposit 20% of the cheque amount, in accordance with Section 143-A of the Negotiable Instruments Act, 1881 (Act, for short).

2. Section 143-A of the N.I. Act was introduced by virtue of an amendment Act of 20 of 2018 w.e.f 1/9/2018, which read 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 per cent, 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 day 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.

3. It can thus be seen that as per the said section, 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, where the accused pleads not guilty,

(b) In any other case on framing of charge.

4. In the present case, the complaint is filed on 6/1/2017 and the particulars were explained on 25/9/2017 to which the petitioner, pleaded not guilty. The trial commenced on 5/3/2018 and the impugned order is passed on 5/1/2019.

5. Shri Desai, the learned counsel for the petitioner has submitted that Section 143-A would not apply retrospectively, particularly when the particulars were explained much prior to 1/9/2018, when Section 143-A was introduced by virtue of an amendment.

6. The learned counsel for the respondent has placed reliance on the decision of the Karnataka High Court in the case of **Sri V. Narasimha Murthy Vs. Sri Santosh J**, (Criminal Revision Petition No.425/2018, decided on 18/2/2019), in which the Karnataka High Court has held that the provisions would apply to all pending prosecutions. It is submitted that section 143-A would clearly apply in this case.

7. I have considered the circumstances and the submission made and I do not find that any case for interference is made out.

8. Section 143-A does not create any new right in favour of the complainant nor any new obligation or a liability against the accused. The existing provision indeed authorizes the Magistrate to grant compensation. All that section 143-A has done is to provide for payment of interim compensation which provision is in consonance with the statement of object and reasons of the amending Act. It is difficult to accept that the provision of section 143-A of the Act would not apply to pending prosecutions. Section 143-A of the Act is introduced with a view to address the issue of undue delay in the disposal of cases of dishonour of cheques, so as to provide relief to the payee of the dishonoured cheques and to discourage frivolous and dishonest litigation and to save time and money. In this regard I am in respectable agreement with the view taken by Karnataka High Court in the case of **Sri V. Narasimha**.

9. In such circumstances, the petition is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

Ap/

