

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

CRIMINAL APPLICATION (APL) 510 OF 2019

(Govind s/o. Gulabrao Ambulkar..vs.. Dilip s/o. Onkarrao Paithankar)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri P.R. Agrawal, counsel for appellant.

CORAM: ROHIT B. DEO, J.

DATE: 18th JUNE, 2019.

The applicant – who is facing prosecution under section 138 of the Negotiable Instruments Act, 1881(Act) is invoking the inherent powers of this Court under section 482 of the Code of Criminal Procedure being aggrieved by the order dated 19.3.2019 rendered by the Judicial Magistrate First Class (Court-5), Amravati in Summary Criminal Case 5457 of 2015 vide which the applicant is directed to pay interim compensation of 20% to the complainant under section 143-A of the Act.

2. It is not in dispute that the complaint is instituted prior to the coming into force of the 2018 Amendment Act which brought on the statute book section 143-A w.e.f. 1.9.2018.

3. The plea is recorded on 20.9.2017.

4. The complainant preferred an application dated 4.1.2019 seeking direction to pay interim maintenance under section 143-A of the Act.

5. The applicant – accused filed reply contending that since the plea is recorded on 20.9.2017, section 143-A

is not applicable.

6. The learned Magistrate reasoned that although the particulars are recorded on 20.9.2017, the case did not proceed further and that the complainant did not lead evidence. The learned Magistrate held that the stage for granting interim compensation has not “lapsed”. The reasoning can be found in paragraph 3 of the order impugned which reads thus:

“3. It is accepted that the stage for granting of interim compensation accrues at the stage when accused does not plead guilty to the particulars recorded against him. In the present case, however, though particulars are recorded on 20.9.2017, the case is not proceeded further. That means the complainant has not led his evidence. The evidence filed by the complainant is at the time of verification of the complainant. As the stage of filing evidence that is recording chief of the complainant has not begun, the stage for granting interim compensation has not been lapsed. The amendment Act for granting interim compensation is a beneficially legislation in the interest of complainant. The amendment Act is incorporated to expedite the trial. And therefore fullest benefit of such legislation has to be given in the favour of the complainant. Inview thereof, the application is liable to be allowed”.

Shri P.R. Agrawal, the learned counsel for the applicant would submit that since the stage of recording the particulars is over, power under section 143-A was not available to the learned Magistrate. The submission is noted only for rejection. There is nothing in the statutory scheme to indicate that the power under section 143-A can not be exercised after the stage of recording of plea. The reference

to recording of plea in Summons Case and framing of charge in Warrant Case is found in the statutory scheme since once the plea is recorded or the charge is framed, as the case may be, it becomes clear that the trial will have to be conducted. It would be then, that the Magistrate will have to exercise the power under section 143-A of the Act. However, the reference to the aforesaid stages would not mean that the Magistrate is precluded from exercising power under section 143-A after recording of the plea or framing of the charge, as the case may be.

7. Shri P.R. Agrawal then contends that section 143-A creates new obligations which are substantive in nature and the provision can not be given retrospective effect. Shri P.R. Agrawal would submit that such a view is taken by the Punjab & Haryana High Court and in the petition for Special Leave to Appeal preferred against the said decision the Hon'ble Supreme Court has issued notice vide order 15.4.2019.

8. It may be noted that after the issuance of notice by the Hon'ble Supreme Court in the petition for Special Leave to Appeal challenging the decision of the Punjab & Haryana High Court, the Hon'ble Supreme Court decided Criminal Appeal 917-944 of 2019 (*Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virender Gandhi*) by judgment dated 29.5.2019. The issue which fell for consideration was whether section 148 of the Act is retrospective. Section 143-A which empowers the learned Magistrate to direct payment of interim compensation and

section 148 which empowers the appellate Court order deposit such sum which shall be minimum of 20% of the fine or compensation awarded by the trial Court are introduced by the 2018 Amendment Act. In paragraph 8.1 of the decision in *Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virender Gandhi*, the Hon'ble Apex Court articulates thus:

*8.1. Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused – appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the accused – appellant has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 1.9.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in the cases of *Garikapatti Veeraya (supra)* and *Videocon International Limited (supra)*, relied upon by the learned senior counsel appearing on behalf of the appellants shall*

not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion 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 No. 20/2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended.

The Hon'ble Supreme Court has held that section 148 of the Act as amended shall be applicable even in a case where the criminal complaints for the offence punishable under section 138 of the Act were filed prior to the Amendment Act.

9. The jurisprudential logic which is the basis for the view taken by the Hon'ble Apex Court while considering the retrospective effect of section 148 of the Act would apply with equal vigor to section 143-A. It may be further noted that in ***Ajay Vinodchandra Shah & Ors v. The State of Maharashtra*** (Cr.W.P.Nos. 258,259,260 of 2019-decided

on 14.3.2019) this Court has rejected the contention that the provisions of section 143-A of the Act would not apply if the complaint is filed before 1.9.2018. Since the contention raised by Shri P.R. Agrawal is negated by this Court, and in view of the decision of the Hon'ble Apex Court in *Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virender Gandhi* albeit taken while considering section 148 of the Act, I am not inclined to interfere with the order impugned. No case is made out for exercise of inherent powers.

The application is dismissed with no order as to costs.

JUDGE