

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRM-M-7079-2019
Date of decision: 11.07.2019**

Krishan Kumar

...Petitioner

Versus

Ram Avtar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Rose Gupta, Advocate
for the petitioner.

None for respondent No. 1.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in the present petition, filed under Section 482 Cr.P.C., is for setting aside the order dated 05.02.2019 (Annexure P-2), passed by the Judicial Magistrate First Class, Hisar in complaint filed under Section 138 of the Negotiable Instruments Act (*for short 'the Act'*), vide which, the petitioner has been directed to deposit the 20% of the cheque amount as interim compensation.

Learned counsel for the petitioner has submitted that the complaint under Section 138 of the Act was filed on 10.10.2017 (Annexure P-1). During the pendency of the trial, the trial Court has passed the impugned order dated 05.02.2019 (Annexure P-2), exercising the powers under Section 143-A of the Act, whereby the petitioner has been directed to pay 20% of the cheque amount as interim compensation to the complainant.

Learned counsel for the petitioner submits that Section 143-A of the Act was introduced, for the first time, on 02.08.2018 but w.e.f. 01.09.2018 and since Section 143-A of the Act is meant to create a substantive liability against the accused, therefore, the said provision cannot be applied to the pending cases, because if it is so applied, then this would tantamount to giving retrospective effect to this provision. However, the substantial right of the petitioners cannot be affected retrospectively, unless the provision of law specifically so prescribes.

Learned counsel for the petitioner further submits that since there is no enabling provision that the amendment in Act has retrospective operation, the powers under Section 143-A of the Act could not have been exercised by the trial Court against the petitioner, in the pending trial.

The above point of law, raised by learned counsel for the petitioner, has already been considered in detail and decided by a Co-ordinate Bench of this Court in *M/s Ginni Garments and another vs. M/s Sethi Garments and another, 2019 (2) R.C.R. (Criminal) 833* which stands upheld by the Hon'ble Apex Court in *Surinder Singh Deswal @ Col. S. S. Deswal and others vs. Virender Gandhi, 2019 (3) R.C.R. (Criminal) 186*.

In the aforesaid case, it has been held that since the provision of Section 143-A of the Act has cast substantive obligation upon the accused, which has the effect of infringing upon the substantial right of the accused, therefore, this provision cannot be applied retrospectively to the cases which were pending on the date of coming into force of the amendment.

Therefore, in view of the aforesaid judgments rendered in *M/s Ginni Garments* and *Surinder Singh Deswal's cases (supra)*, the present petition is allowed and impugned order dated 05.02.2019 (Annexure P-2) is hereby set aside.

11.07.2019
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>