

Sr. No.109

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

CRM-M-27511-2019

Date of decision:02.07.2019

Tanuja

.....Petitioner

versus

Vinod Kumar

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Gaurav Tyagi, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Present petition has been filed seeking setting aside the Order dated 04.04.2019(Annexure P-2) passed by the Judicial Magistrate Ist Class, Karnal in Complaint under Section 138 of Negotiable Instruments Act (herein after referred to as 'the Act') dated 07.08.2018(Annexure P-3) directing the petitioner to deposit 10% of the cheque amount to be paid as interim compensation.

Learned counsel for the petitioner has submitted that the complaint under Section 138 of the Act in the case was filed way back on 07.08.2018(Annexure P-3). During the pendency of the trial, the Trial Court has passed the impugned Order dated 04.04.2019(Annexure P-2), exercising powers under Section 143-A of the Act, whereby the petitioner has been directed to pay 10% of the cheque amount as interim compensation to the complainant. It is submitted that Section 143-A of the Act was introduced, for the first time, on 02.08.2018 but w.e.f 01.09.2018. Since a provision of 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. In the present case, the amendment Act has not been prescribed by the legislature to be retrospective in operation. Hence, the provision of Section 143-A of the Act could not have been used by the Trial Court against the petitioners, 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 this Court vide judgment dated 04.04.2019 rendered in another case i.e. ***CRR No.9872-2018(O&M) titled as M/s Ginni Garments and another vs. M/s Sethi Garments.*** In that case, it has been held that since 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 in retrospectivity, to the cases which were pending on the date of coming into force of the amendment.

In view of the above, the present petition is allowed. Order dated 04.04.2019(Annexure P-2) impugned in the present petition is set aside.

2nd July, 2019

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*