

(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1715 OF 2019

Abdul Hameed A. Kareem Sayyed
Age: 59 Yrs., occu. Agril.
R/o A/post Murum, Tq. Omerga,
District Osmanabad.

= PETITIONER
(orig.accused)

VERSUS

Pramod Vishwanath Patil
Age:39 Yrs., occu.Agril.
R/o A/post Ekurga,Tq.Omerga,
District Osmanabad

= RESPONDENT
(orig.Complainant)

Mr.DS Mali, Advocate for Petitioner;
Mr.GJ Kore, Advocate for Respondent.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 2nd March, 2020.

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith
by consent of parties.

2. Present petition has been filed by the
original accused, invoking constitutional powers of
this Court, under Article 227 of Constitution of
India, challenging order dated 29.8.2019 passed
below Exh.35 in SCC No.614/2017, whereby the said
application filed by present Respondent/original

(2)

complainant, under Section 143A of The Negotiable Instruments Act (for short, N.I. Act), has been allowed. The learned Trial Judge failed to consider that Section 143A of the N.I. Act has been subsequently amended w.e.f. 1.9.2018. It could not have been made effective retrospectively and the legal position on this point is not *res integra*. He relied on the decision in the case of G.J.Raja Vs. Tejraj Surana – Laws (SC)-2019-7-131, wherein it has been observed in para 24 thus, -

“(24) In the ultimate analysis, we hold [Section 143A](#) to be prospective in operation and that the provisions of said [Section 143A](#) 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 143A](#) in the statute book. Consequently, the orders passed by the Trial Court as well as the High Court are required to be set aside. The money deposited by the Appellant, pursuant to the interim direction passed by this Court, shall be returned to the Appellant along with interest accrued thereon within two weeks from the date of this order.”

3. Per contra, learned Advocate appearing for the respondent supported the reasons given by the learned JMFC and submitted that the object,

(3)

with which the said amendment has been brought into force, is required to be considered.

4. When the facts are clear so also the legal position has been clarified by the Hon'ble Apex court then definitely it is binding on this court. As aforesaid, the complaint alleging that the petitioner has committed the offence punishable under Section 138 of the N.I. Act was filed by the present respondent on 28.11.2017. Process came to be issued against the accused on 24.1.2018. Section 143A of the N.I. Act came into effect w.e.f. 1.9.2018. Therefore, the decision in the case of G.J.Raja (supra), which has been thereafter followed in Surinder Singh Deswal Col. S.S.Deswal and Ors. Vs.Virender Gandhi and Anr.(Criminal Appeal No.1936-1963 of 2019 (decided by Apex court on 8.1.2020), is applicable in the present case. Since the applicability of Section 143A of the N.I. Act is prospective only, the learned trial Judge erred in giving directions to the accused to pay 20% of the original cheque amount as interim compensation to the complainant. The application at Exh. 35 ought to have been dismissed on this

(4)

ground. When the provision itself was not in existence and could not have been made applicable retrospectively to the accused and the impugned order has been passed, definitely a case is made out to invoke the constitutional powers of this court under Article 227 of the Constitution of India to set aside the said order.

5. In the result, following order, -

ORDER

- i. The impugned order dated 29.8.2019 passed below Exh.35 in SCC No.614/2017 by learned Judicial Magistrate First Class, Omerga, District Osmanabad, is hereby set aside.
- ii. The said application at Exh. 35 stands rejected.
- iii. Rule is made absolute in the aforesaid terms.

(SMT. VIBHA KANKANWADI, J.)

BDV