

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

123

CRM-M-7430-2020

Date of decision: 19.02.2020

Jatin Chawla

.....Petitioner

Versus

Rakesh Jindal

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Simranjeet Singh Sarwara, Advocate
for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner-accused has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of order dated 18.12.2019 passed by learned Judicial Magistrate Ist Class, Patiala in complaint case No. 5017 of 2018 titled as Rakesh Jindal versus Jatin Chawla filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I.Act') whereby the petitioner-accused was directed to pay interim compensation to the tune of 20% of the cheque amount to the complainant.

2. Briefly stated the facts giving rise to the filing of the present petition are that the respondent filed above said complaint alleging that pursuant to his admission of legal liability on 06.05.2018, the petitioner-accused entered into a compromise dated 27.05.2018 undertaking to make payment of Rs. 18 lakhs and issued six post dated cheques in discharge of legal liability. On presentation cheque No. 767712 dated 25.07.2018 drawn for an amount of Rs. 3 lakhs on SBI, YPS Branch Patiala was dishonoured with remarks 'Funds Insufficient'

vide memo dated 09.08.2018. The respondent-complainant served legal notice dated 29.08.2018 but the petitioner-accused failed to make payment within the stipulated period of 15 days from the date of receipt of the notice. Preliminary evidence of the complainant was recorded and the petitioner-accused was summoned to face trial. The respondent-complainant filed application under Section 143-A of the N.I Act which was opposed by the petitioner-accused on the ground of inapplicability of Section 143-A of the N.I. Act. The application was allowed by learned Judicial Magistrate Ist Class, Patiala vide impugned order dated 18.12.2019. Feeling aggrieved, the accused has filed the present petition.

3. In view of the nature of relief claimed and the facts and circumstances of the case issuance of notice to the respondent-complainant is considered to be unnecessary and is dispensed with.

4. I have heard learned Counsel for the petitioner and gone through the record.

5. Learned Counsel for the petitioner has argued that Section 143A of the N.I. Act is not retrospective and is not applicable to cheque in the present case which was dishonoured on 09.08.2018. The impugned order suffers from material illegality and the same may be set aside.

6. Section 143-A of the N.I. Act was inserted by the Negotiable Instruments (Amendment) Act, 2018 (20 of 2018) w.e.f. 01.09.2018 and the same reads as under:

“143A. 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 days 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.”

7. In ***G.J.Raja versus Tejraj Surana (SC) : 2019 (3) R.C.R***

(Criminal) 959, Hon'ble Supreme Court observed as under:

“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.”

8. In the present case the cheque was dishonoured vide memo

dated 09.08.2018 on which the respondent-complainant served legal

notice dated 29.08.2018 and the offence under Section 138 of the N.I.Act was committed after 01.09.2018 on non-payment of the amount of the cheque within 15 days from receipt of the above said legal notice. Since the offence was committed after 01.09.2018, Section 148-A of the N.I Act is applicable to the case and the order passed by the learned Judicial Magistrate Ist Class, Patiala does not suffer from any illegality so as to warrant interference in exercise of jurisdiction under Section 482 of the Cr.P.C.

In view of the above, the petition is dismissed.

19.02.2020

Rajeev (rvs)

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No