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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 1523/2020 & CRL.M.A. 8143/2020**

PURSHOTTAM MAHESHWARI HUF

.....Petitioner

Through: Mr.Manish Kaushik & Mr.Mishal Johari,
Advocates.

Versus

SATISH KUMAR

.....Respondent

Through: Mr.Fanish K Jain & Mr. Deepanshu
Garg, Advocates.

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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20.07.2020

(hearing through Video Conferencing)

Vide the present petition, the prayers made are to the effect:-

“(a) allow the present Petition and thereby direct deposit and release of 40% of awarded compensation as interim compensation in favour of Petitioner in Criminal Appeal NO. 159/2019, titled Satish Kumar Versus P. Maheshwari HUF pending before District and Sessions Judge, Saket District Court, Delhi.

(ii) Pass any other order (s) or relief (s), within this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be passed accordingly.”

The petitioner has submitted to the effect that the respondent

had been convicted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1888 and that the learned Appellate Court vide order dated 19.03.2019 directed the respondent no.2 to deposit a sum of Rs.15 lakhs before the learned Trial Court within a month from the date 19.03.2019. The petitioner submits that the interim compensation that has been directed to be deposited, ought to be allowed to be released to the petitioner, in as much as, even if subsequently the petitioner is held not entitled to the same, the petitioner would have to repay the same with interest in terms of the law itself and that the petitioner thus, submits that the release of the interim compensation may be granted.

During the course of the submissions that have been made on behalf of the petitioner, *inter alia* it is sought to be submitted that the provisions of Section 148(1) of the Negotiable Instruments Act, 1888 as amended have not been acted upon. It is further sought to be submitted on behalf of the petitioner that in terms of Section 148(1) of the Negotiable Instruments Act, 1888, the minimum deposit of the amount to be directed by the Appellate Court is 20% of the fine/compensation awarded by the learned Trial Court which the Appellate Court ought to have directed in an appeal filed by the drawer against conviction under Section 138 of the Negotiable Instruments Act, 1888 and that the said amount in terms of Section 148(1) of the Negotiable Instruments Act, 1888 would have to be in addition to any interim compensation made by the appellant under Section 143A of the said enactment.

It has been submitted on behalf of the respondent no.2 during the course of the submissions made that the application that the petitioner had filed before the learned Trial Court was only one under Section 143A of the Negotiable Instruments Act, 1888 (as amended) and that there was no such application under Section 148 of the amended Negotiable

Instruments Act, 1888 filed, which is borne out to be correct on a bare perusal of the application, copy of which has been placed on record as Annexure A1 to the petition.

During the course of submissions, it is further sought to be submitted on behalf of the petitioner that the provisions of Section 143A of the Negotiable Instruments Act, 1888 are retrospectively applicable in relation to which, on behalf of the respondent, learned counsel for the respondent has vehemently opposed the said submission submitting to the effect that in view of the verdict of the Hon'ble Supreme Court in "***G.J. RAJA Versus TEJRAJ SURANA***" 2019 LAWPACK(SC) 62739, it has categorically been observed vide observations in paragraph 22 of the said verdict to the effect that the applicability of Section 143A of the Act must be held to be prospective in nature and confined to cases where offences were committed after the introduction of Section 143A, in order to force an accused to pay such interim compensation. In as much as, it has been sought to be submitted on behalf of the petitioner through the record that the notice issued in terms of Section 138 of the Negotiable Instruments Act, 1888 was dated 16.01.2016 which is incorporated into Negotiable Instruments Act, 1888 with Section 143A of the said enactment having been inserted on 01.09.2018, in terms of the verdict of the Hon'ble Supreme Court in "***G.J. RAJA Versus TEJRAJ SURANA***" (supra), it is apparent that the provisions of Section 143A of the Negotiable Instruments Act, 1888 cannot have any retrospective operation.

The said contention of the respondent in relation to the non-retrospective application of Section 143A of the Negotiable Instruments Act, 1888 has undoubtedly to be accepted in view of the verdict of the Hon'ble Supreme Court in "***G.J. RAJA Versus TEJRAJ SURANA***" (supra) as referred to hereinabove.

As regards the provisions of Section 148 of the Negotiable Instruments Act, 1888 as also amended that came into force w.e.f. 01.09.2018, however, the very verdict in ***“G.J. RAJA Versus TEJRAJ SURANA”*** (supra) itself adverts to the verdict of the Hon’ble Supreme Court in ***“Surinder Singh Deswal and Ors. vs. Virender Gandhi, (2019) 8 SCALE 445”*** wherein it has been observed to the effect that the provisions of Section 148 of the Negotiable Instruments Act, 1888 relate to appellate proceedings, are retrospectively applicable and thus, in view thereof, in as much as, as observed hereinabove, the application annexed to the present petition as Annexure A1 filed by the petitioner was only under Section 143A of the Negotiable Instruments Act, 2018, learned counsel for the petitioner seeks to withdraw the present petition seeking liberty to seek redressal before the learned Trial Court by filing a fresh application under Section 148 of the amended Negotiable Instruments Act, 2018 brought into force w.e.f. 01.09.2018 both in relation to the applicability thereof or exercise of discretion in terms of Section 148(1) of the said enactment qua the quantum of the amount to be deposited in terms of Section 148(1) being a minimum of 20%.

The petition is thus dismissed as withdrawn with liberty granted, as prayed.

Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial that may take place before the learned Appellate Court vide an application under Section 148 of the Negotiable Instruments Act, 1888, if any is filed, and whatever submissions have been sought to be urged on behalf of the respondent through the pleadings on the record of the present petition, the same be made by the respondent before the Appellate Court.

The Appellate Court in the event of the filing of such an application under Section 148 of the Negotiable Instruments Act, 1888, shall dispose of the same within a period of 45 days of the receipt thereof.

Copy of this order be sent to the learned District and Sessions Judge (South) to ensure that the application, if any, under Section 148 of the Negotiable Instruments Act, 1888 filed by the petitioner is disposed of as directed hereinabove within a period of 45 days on filing of the same.

The petition is disposed of accordingly.

ANU MALHOTRA, J

JULY 20, 2020
'neha chopra'