

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Application (APL) No. 562 of 2021

M/s Vidarbha Energy & Infrastructure Private Limited and Others
Vs.
M/s Kyoto Merchandise Pvt. Ltd. and Another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Masood Shareef, Advocate for the applicants
Mr. Nitin Lalwani, Advocate for the respondent No.1
Ms. Shamsi Haidar, APP for the respondent No.2

CORAM : MANISH PITALE, J.

DATED : JULY 05, 2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this Application, the applicants have challenged orders passed by the Court of Judicial Magistrate First Class, Nagpur. By the order dated 08/07/2019, the Magistrate directed the applicants to deposit 20% of the cheque amount as interim compensation in terms of Section 143A of the Negotiable Instruments Act, 1881, within 60 days of the order. By the subsequent impugned order dated 31/03/2021, the Magistrate has rejected an application filed by the applicants seeking recall of the said order. The applicants had relied upon judgment of the

Hon'ble Supreme Court to contend that Section 143-A of the said Act would not be applicable to the facts of the present case.

3. The learned counsel for the applicants invited attention of this Court to judgment of the Hon'ble Supreme Court in the case of **G.J. Raja Vs. Tejraj Surana, Criminal Appeal No. 1160 of 2019, decided on 30/07/2019**. A copy of the judgment has been placed on record along with the Application and according to the learned counsel for the applicants, the ratio of the said judgment covers the position of law in favour of the applicants. It is submitted that Section 143A of the aforesaid Act added by amendment in the year 2018, would not apply to the present case. On this basis, it is submitted that the application deserves to be allowed.

4. Mr. Nitin Lalwani, learned counsel has entered appearance on behalf of respondent No.1. He fairly submits that the position of law is clearly laid down by the Hon'ble Supreme Court in the aforesaid judgment and that it covers the position in favour of the applicants herein.

5. Ms. Shamsi Haidar, learned APP appeared on behalf of the respondent No.2 – State.

6. Section 143-A was added by way of amendment to the said Act, pertaining to power to direct interim compensation. This was added by way of amendment w.e.f. 01/09/2018. There is no dispute about the fact that in the present case, the alleged offence under the said Act had taken place in the year 2012. On a question that arose before the Hon'ble Supreme Court as to the retrospective applicability of Section 143A of the said Act pertaining to offences committed prior to introduction of the said provision by way of amendment, the Hon'ble Supreme Court in the aforesaid judgment in the case of **G.J. Raja Vs. Tejjraj Surana** (supra), held as follows :

“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.”

7. Thus, it is abundantly clear that in terms of the law laid down by the Hon'ble Supreme Court, the impugned order dated 08/07/2019, passed by the Magistrate is unsustainable. Accordingly, it is set aside. Resultantly, subsequent impugned order dated

31/03/2021, also deserves to be set aside for the reason that the cause for filing the application for recall does not survive in the present case.

8. In view of the above, the present Application is allowed in terms of prayer clause (a).

9. Considering the fact that the Complaint under the provisions of the said Act was filed in the present case as far back as in the year 2012, the concerned Court is directed to dispose of the said Complaint as expeditiously as possible and in any case on or before 31/07/2022.

JUDGE

MP Deshpande