IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

C.R.R. 2613 of 2019

Sri Nilkanta Kali

Vs.

V.T.R. Marketing.

For the Petitioner	**:** Mr. Uttam Kr. Bhattacharrya, Mr. K. Mitra.
For the Opposite Party	**:** Mr. Navanil De, Mr. R. Chakraborty, Mr. S. Ghosh, Mr. S. Dey.
Heard on	**:** 22.09.2022
Judgment on	**: 27.09.2022**

Shampa Dutt (Paul), J.:

The criminal revisional application has been preferred against order dated 13.12.2018 directing the petitioner to pay interim compensation under Section 143A of the Negotiable Instrument Act and order dated 02.08.2019 wherein prayer for review was rejected in CR Case no. 86 of 2018 under Section 138 of Negotiable Instrument Act.

The complainant/opposite party filed an application against the accused/petitioner under Section 138 of the N.I. Act, 1881 before the learned Chief Judicial Magistrate, Paschim Medinipur against the petitioner inter alia praying for granting relief as prayed for on the grounds as stated therein. The said application has been registered as C.R. Case No. 86 of 2018. Subsequently the said case has been transferred to the Ld. Court of Judicial Magistrate, 3rd Court, Paschim Medinipur for taking necessary steps for disposal thereof.

Mr. Uttam kumar Bhattacharrya, learned Counsel for the petitioner/accused submits that in course of day to day business the accused/petitioner issued an A/C payee cheque no. 401131 of Rs. 11,30,389/- drawn on Punjab National Bank, Gobardhanpur, Hour, District-Purba Medinipur in favour of the complainant, a partnership firm. The complainant deposited the said cheque but the same has been dishonoured for "funds insufficient" and was returned to the complainant vide Memo dated 29.12.2017.

Thereafter despite receipt of the Notice dated 10.01.2018 the accused did not take steps for payment of the said amount.

On 28.10.2018 the learned Judicial Magistrate started the proceedings against the accused/petitioner.

In the said case, by an order dated 13.12.2018 the accused was granted bail on the condition as stated therein.

By an order dated 13.12.2018 the Ld. Magistrate was also pleased to direct the complainant inter alia to pay the complainant an amount of Rs. 1,13,038/- as interim compensation as per Section 143A of the Negotiable Instruments (Amendment) Act, 2018 within Sixty day from 13.12.2018 as the accused pleaded "Not guilty" of the charge made against him.

It is the further case of the petitioner that the complainant had not filed any application praying for interim compensation under Section 143A of the N.I. Act, 2018. But the learned Magistrate passed the impugned order dated 13.12.2018.

It is further submitted by the learned lawyer for the petitioner that the said interim payment of compensation as per Section 143A is applicable in respect of the cases filed after the date of the said N.I. Amendment Act, 2018 came into force but the cases which are filed before the date of effect of the said Amendment Act, 2018 will not come under the operation of the said Section 143A and as such the impugned order dated 13.12.2018 is not in accordance with law and the said provision of Section 143A of the N.I. Act is not applicable in criminal case no. 86 of 2018 as the said case was filed prior to the coming into force of the said provision of the Act and as such the impugned order is liable to be quashed and set aside.

The petitioner then filed an application dated 17.04.2019 under Section 362 of the Cr.P.C. praying for recall/review of the order dated 13.12.2018.

The learned Magistrate vide his order dated 02.08.2019 on hearing both sides rejected the said application on the ground that the Court could not alter or review its order under Section 362 Cr.P.C.

A criminal revision case no. 565 of 2019 was then filed before the learned District and Sessions Judge, Paschim Medinipur against the said order. The said revision was not admitted by the said Court and as such the petitioner has approached this Court praying for setting aside the said orders and quashing of the same.

The learned lawyer for the petitioner has relied upon the ruling cited in ***G. J. Raja vs. Tejraj Surana in Criminal Appeal no. 1160 of 2019 (arising out of Special Leave Petition (Criminal) No. 3342 of 2019) dated 30.07.2019*** in support of his contention.

The learned lawyer for the opposite party has fairly submitted that the petitioner's submission and prayer before this Court is in accordance with law and further submits that necessary orders may be passed as deemed fit and proper by this Court and the matter may be sent back for resumption of trial by the learned Magistrate in accordance with law.

Heard both sides in full. Perused the materials on record, including the orders under revision and the facts and circumstances of the case. Considered. Admittedly, the complaint case before the Trial Court was **filed on 14.02.2018 and the provision of Section 143A came into effect by the Act 20 of 2018 with effect from 01.09.2018.** The said amendment has been given prospective effect and thus not retrospective.

In this case the learned Magistrate by his order dated 13.12.2018, on examination of the accused under Section 251 of the Cr.P.C. wherein the accused/petitioner pleaded not guilty directed the trial to proceed in summary procedure. The Magistrate further directed that:-

"**As the accused has pleaded not guilty and claim to be tried, the accused is directed to pay to the complainant Rs. 1,13,038/- as interim compensation vide Section 143A of the Negotiable Instruments (Amendment Act, 2018) within sixty days from today**."

Vide order dated 02.08.2019 the learned Magistrate while rejecting the accused/petitioners petition under Section 362 Cr.P.C. passed an order as under:-

"Moreover, after passing of an order no Court can alter or review the same except to correct a clerical or arithmetical error vide Sec. 362 Cr.P.C.

In view of the above, the petition dated 17.04.2019 is rejected."

Section 143A of the Negotiable Instruments Act, 1881 lays down:-

> *"[**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 11974).*
>
> *(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.]"*

In ***G.J. Raja vs. Tejraj Surana,*** the Court considered the applicability of Section 143A of N.I. Act and while doing so, discussed the following judgments of the Court:-

(a) Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited (2015) 1 SCC1.

(b) Hitendra Vishnu Thakur and others vs. State of Maharashtra and others 3 (1994) 4 SCC 602.

(c) Employees' State Insurance Corporation vs. Dwarka Nath Bhargwa (1997) 7 SCC 131.

(d) Anil Kumar Goel vs. Kishan Chand Kaura (2007) 13 SCC 492.

And on considering all other circumstances the Court held:-

> *"In our view, the applicability of Section 143A of the Act must, therefore, 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.*
>
> *We must, however, advert to a decision of this Court in* ***Surinder Singh Deswal and Ors. vs. Virender Gandhi [(2019) 8 SCALE 445]*** *where Section 148 of the Act which was also introduced by the same Amendment Act 20 of 2018 from 01.09.2018 was held by this Court to be retrospective in operation. As against Section 143A of the Act which applies at the trial stage that is even before the pronouncement of guilt or order of conviction, Section 148 of the Act applies at the appellate stage where the accused is already found*

> *guilty of the offence under Section 138 of the Act. It may be stated that there is no provision in Section 148 of the Act which is similar to Sub-Section (5) of Section 143A of the Act. However, as a matter of fact, no such provision akin to sub-section (5) of Section 143A was required as Sections 421 and 357 of the Code, which apply post-conviction, are adequate to take care of such requirements. In that sense said Section 148 depends upon the existing machinery and principles already in existence and does not create any fresh disability of the nature similar to that created by Section 143A of the Act. Therefore, the decision of this Court in Surinder Singh Deswal stands on a different footing.*
>
> *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.....”*

Thus it appears from the provision under Section 143A of the N.I. Act that the said Section came into force on 01.09.2018 and admittedly the petition of complaint before the Trial Court was filed on 14.02.2018 that is much prior to the coming of effect Section 143A of the N.I. Act and the said provision being given prospective effect (thus not retrospective), it is clear that the learned Magistrate wrongly applied the provision of Section 143A in the present case and as such the said order dated 13.12.2018 under Section 143A of the N.I. Act in C.R. Case no. 86 of 2018 being not in accordance with law is liable to be quashed.

Accordingly, the order dated 02.08.2019 rejecting the prayer for review of order dated 13.12.2018 is also liable to be quashed. Considering the aforesaid facts and circumstances of the case, the relevant provision of law, the findings/view of the Supreme Court in the judgment discussed, and the materials on record, if the orders under revision are allowed to remain then the same would be abuse of process of Court and as such the said orders dated 13.12.2018 and 02.08.2019 in C.R. no. 86 of 2018 pending before the Ld. Magistrate, 3rd Court, Paschim Medinipur not being in accordance with law are hereby quashed and set aside.

Learned Magistrate to continue with the proceedings in C.R. Case No. 86 of 2018 and dispose of the same in accordance with law **within three months from the date of communication of this order**.

No order as to costs.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)