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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 72 OF 2022

JEET EVENT CLASSIC MOBILE
NOVALITY, THR., KUMAR RATHOD ... PETITIONER
VS
SHETYE SMART LINKS, THR.,
DATTARAM SHETYE ... RESPONDENT

Mr. Shivam Fadte, Advocate for the Petitioner.

Mr. Sahil Deshp Prabhu, Advocate for the Respondent.

CORAM: G.S. KULKARNI, J.

DATED: 10 OCTOBER 2022

ORAL ORDER.

1. This Petition assails an order dated 10 June 2022 passed by the learned Judicial Magistrate First Class, Mapusa, whereby an application filed by the respondent under Section 143-A of the Negotiable Instruments Act, 1881 (NI Act, for short) was allowed by directing the petitioner to deposit an interim compensation of Rs.2 lakhs being 20% of the cheque amount as dishonoured, which is the subject matter of the proceedings.

2. The principal ground of assail is that the provisions of Section 143-A of the NI Act would not be applicable to the proceedings as the complaint was filed in March 2018 and the provisions of Section 143-A of the NI Act were brought into force by the amendment Act with effect from 1 September 2018. It is contended that the said provision has a prospective operation and could not have been retrospectively applied in passing such an order. In support of such contention, reliance is placed on the decision of the Supreme Court in **G.J. Raja Vs. Tejraj Surana**¹, wherein the Supreme Court by applying the doctrine of *lex prospicit non respicit* held that, Section 143-A of the NI Act is applicable prospectively and would be confined to cases where offence is committed after the introduction of Section 143-A, in order to force an accused to pay the interim compensation.

3. Having heard the learned Counsel for the parties, in my opinion, there is much substance raised on behalf of the petitioner that the learned Trial Judge could not have passed the impugned order, directing interim compensation to be paid by the accused in terms of Section 143-A of the NI Act, for the reason, that the

¹ (2019) 19 SCC 469

complaint itself was made prior to the said provision being brought into force.

4. Reliance placed in the decision of **G.J. Raja Vs. Tejraj Surana** (supra) is apposite as the Supreme Court has clearly held that Section 143-A is prospective in nature. The observations of the Supreme Court in that regard are seen in paragraphs 13, 21, 22 and 23, which read thus:

“13. In the present case, the complaint was lodged in the year 2016 that is to say, the act constituting an offence had occurred by 2016 whereas, the concerned provision viz. Section 143-A of the Act was inserted in the statute book with effect from 01.09.2018. The question that arises therefore is whether Section 143-A of the Act is retrospective in operation and can be invoked in cases where the offences punishable under Section 138 of the Act were committed much prior to the introduction of Section 143-A. We are concerned in the present case only with the issue regarding applicability of said Section 143-A to offences under Section 138 of the Act, committed before the insertion of said Section 143-A.

21. In our view, the applicability of Section 143-A 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

143-A, in order to force an accused to pay such interim compensation.

*22. We must, however, advert to a decision of this Court in **Surinder Singh Deswal and Ors. vs. Virender Gandhi**² 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 143-A 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 143-A 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 143-A of the Act. Therefore, the decision of this Court in **Surinder Singh Deswal** stands on a different footing.*

23. In the ultimate analysis, we hold Section 143-A to be prospective in operation and that the provisions of said Section 143-A 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 143-A 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."

5. Learned Counsel for the respondent would not dispute the above legal position. His only contention is that the trial, which has been stayed, ought to now proceed.

6. In the aforesaid circumstances, the Petition is required to be allowed. Accordingly, the Petition is allowed in terms of prayer clause (a), which reads thus:

"a) Grant a writ of certiorari or writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned order dated 10.06.2022 passed by the learned Judicial Magistrate First Class 'D' Court at Mapusa in Criminal Case No. OA/203/NIA/2018/D and consequently dismiss the said application filed by

the respondent under Section 143-A as being not maintainable.”

7. The parties are directed to appear before the learned Trial Court on **17 October 2022** so that the learned Trial Judge can fix a date for the trial to commence.

8. All contentions of the parties on the merits of the matter are expressly kept open.

9. Disposed of.

G.S. KULKARNI, J.

VAIGANKAR
ESHA SAINATH

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