

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

CRIMINAL WRIT PETITION NO. 371 OF 2022

Vrushali w/o Risi Lahoti,
aged about 45 years, Occ. Housewife,
R/o. Shree Ambe Society,
beside Poonam Mall,
Wardhaman Nagar, Nagpur 440008.

... **PETITIONER**

VERSUS

Karan Mohan Batra, aged about
28 years, Occ. Business, R/o. Plot
No. 96, Neta Ji Nagar, behind
Gujarati Colony, Nagpur -
440008.

... **RESPONDENT**

Mr. M. K. Thakkar, Advocate for petitioner.
Mr. K. M. Batra, Advocate for respondent.

CORAM : **VINAY JOSHI, J.**
DATE OF JUDGMENT : **14.07.2022.**

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.

3. The petitioner raises a challenge to the order dated 22.04.2022 passed by the Trial Court in SCC No. 31668/2019, whereby the petitioner (accused) has been directed to deposit 20% of the cheque amount in terms of Section 143-A of the Negotiable Instruments Act ('N.I.Act').

4. The challenge is two fold that the Trial Court without considering the reply has passed the impugned order and secondly, the Trial Court erred in holding that the provision of Section 143-A of the N.I. Act is of mandatory nature. The other side resisted the contentions by stating that the provision itself is mandatory and in case of acquittal, the mechanism is provided for refund of the amount.

5. It is matter of record that the respondent (complainant) has filed application under Section 143-A of the N. I. Act on 06.03.2021 seeking necessary directions. The record indicates that the petitioner (accused) has resisted said application by filing reply (Exh.11) dated 09.09.2021. The copy of order-sheet indicates that on 09.09.2021, reply was filed as well as both sides were heard on the application. In the said backdrop, the Trial Court has passed the order after six months from the hearing stating that neither petitioner (accused) has filed reply nor he advanced arguments. Apparently, there is total non-application of mind as already the petitioner (accused) has filed reply

as well as his learned counsel has argued the matter as per note-sheet. Besides that, though the arguments were heard on 09.09.2021, the impugned order has been passed after six months. It is factually incorrect that accused has not resisted said application. In the fitness of things, it is appropriate that the learned Magistrate should consider the reply and after hearing both sides, shall pass appropriate order in accordance with law.

6. In view of above, petition stands allowed. The impugned order dated 22.04.2022 is hereby quashed and set aside. Both parties shall appear before the Trial Court on the scheduled date of the case. The learned Magistrate shall decide the application afresh after hearing both sides within one week from the date of hearing on the application.

7. Petition stands disposed of in above terms.

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(VINAY JOSHI, J.)