

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-17633 of 2022
Date of Decision:- 28.04.2022**

Gura Singh

....Petitioner

Vs.

Gagandeep Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Nikhil K Vashisht, Advocate
for the petitioner.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner seeking quashing of the order dated 05.04.2021 (Annexure P-1) passed by Ld. CJM, Faridkot, in criminal complaint/NACT-888/2019, dated 4.10.2017, Gagandeep Singh Vs. Gura Singh, to the extent whereby the said Court directed the petitioner to pay interim compensation to the respondent to the tune of 20% of the cheque amount, as per the provisions of Section 143(A) of Negotiable Instruments Act.

The brief facts of the case are that respondent Gagandeep Singh has filed aforesaid criminal complaint against the present petitioner under Section 138 of Negotiable Instruments Act. On the completion of preliminary evidence, the petitioner was summoned and

he appeared before the Trial Court and was granted bail. The Trial Court on 5th April, 2021 passed the following order:-

“Present: Sh. GS Brar, Advocate counsel for complainant.

*Accused on bail with counsel Sh. JS Dhillon,
Advocate.*

As per the latest provision by insertion of Section 143(A) of Negotiable Instrument Act, as the accused is to pay interim compensation to the complainant to the tune of 20% of the cheque amount. Hence, in view of the said statutory provision, accused is directed to pay interim compensation of 20% of cheque amount within period of 60 days to complainant.

Heard on arguments on the notice of accusation. A prima facie case is being made out against the accused for the commission of offences punishable under Section 138 of Negotiable Instrument Act. Accordingly, notice of accusation has been served upon the accused, for the same to which, the accused pleaded not guilty and claimed trial. Now, case is adjourned to 26.05.2021 for evidence of the complainant.

Dated: 5.4.2021

Sd/-

JMIC/Faridkot/”

The petitioner has not challenged the aforesaid order to the extent whereby notice of accusation was served upon him. However, he being aggrieved of the order passed by the trial Court under Section 143(A) of Negotiable Instruments Act, the petitioner has filed the present petition.

The counsel for the petitioner contended that the impugned order whereby the petitioner has been directed to pay interim compensation to the complainant as per the provisions of Section 143(A) of Negotiable Instruments Act, is totally illegal, being passed in mechanical manner without application of mind. The counsel further contended that recently Delhi High Court in *CRL.MC 2663 of 2021 M/s Jsb Cargo and Freight Forwarder Pvt. Ltd Vs. State and another, decided on 20.12.2021*, held that provision of Section 143(A) Negotiable Instruments Act, essentially is directory and cannot be termed as mandatory in nature. The counsel further contended that it appears that the trial Court gave the impugned direction, having the impression that the aforesaid provision is mandatory in nature. The counsel further contended that the impugned order to the extent stated above is liable to be set aside.

I have considered the submissions made by counsel for the petitioner.

This Court is of the view that the present petition can be disposed of without issuing any notice to the opposite party, for the reasons stated herein below.

Admittedly, the Delhi High Court in *M/s Jsbs Cargo (supra)* remitted the matter to trial Court after holding that provision of Section 143(A) of Negotiable Instruments Act, is only directory in nature. Even the Karnataka High Court in Criminal Petition No.100261/2022 *Vijaya Vs. Shekharappa and another decided 17.02.2022 reported in 2022 Live Law (Kar) 82*, has also taken similar view.

Admittedly, no opportunity was given to the petitioner to file his response, before passing of the impugned order despite the fact that he had not pleaded guilty to the notice of accusation served upon him under Section 138 of Negotiable Instruments Act. From the perusal of impugned order, it appears that the Trial Court granted interim compensation under Section 143(A) of Negotiable Instruments Act just in a routine manner and there is no application of mind as to why the said compensation has to be awarded. The Trial Court misread Section 143(A) of Negotiable Instruments Act and treated the said provision as mandatory in nature, whereas the legal position is otherwise as has been discussed above.

In light of the above, the impugned order to the extent it has been challenged is liable to be set aside being non-speaking and contrary to settled position of law as detailed above.

Consequently, the present petition is hereby allowed and the impugned order dated 05.04.2021 to the extent stated above, is hereby set aside and the matter is remanded back to learned Trial Court to dispose of the matter regarding grant of interim compensation to the complainant/respondent under Section 143A, in accordance with law within one month of the receipt of certified copy of this order.

28.04.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No