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

**CRM-M-32880-2022 (O&M)
Date of Decision: 01.09.2022**

Shankar Dayal Sharma

......Petitioner

Vs.

Rahul Choudhary

.........Respondent

2. **CRM-M-32887-2022 (O&M)**

Shankar Dayal Sharma

......Petitioner

Vs.

Tanay Verma

.........Respondent

3. **CRM-M-32890-2022 (O&M)**

Shankar Dayal Sharma

......Petitioner

Vs.

Ajay Kumar Chaudhary

.........Respondent

4. **CRM-M-32891-2022 (O&M)**

Shankar Dayal Sharma

......Petitioner

Vs.

Pawan Kumar

.........Respondent

5. **CRM-M-32895-2022 (O&M)**

Shankar Dayal Sharma

......Petitioner

Vs.

Sandeep Kumar

.........Respondent

6. **CRM-M-32896-2022 (O&M)**

Shankar Dayal Sharma

......Petitioner

Vs.

Anmol Rattan

.........Respondent

7. **CRM-M-32899-2022 (O&M)**

Shankar Dayal Sharma

......Petitioner

Vs.

Vijay Kumar Choudhary

.........Respondent

8. **CRM-M-32906-2022 (O&M)**

Shankar Dayal Sharma

......Petitioner

Vs.

Sanjay Kumar Chaudhary

.........Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gaurav Aggarwal, Advocate,
for the petitioner.

Mr. Ashok Paul Batra, Advocate,
for the respondent (s) (in all cases).

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VIKAS BAHL, J. (Oral)

This order will dispose of 08 petitions filed by the same petitioner against the orders passed by the learned Judicial Magistrate Ist Class, Sirsa, vide which the petitioner has been asked to deposit 20% of the cheque amount within a period of 60 days from the date of passing of the said order.

Learned counsel for the petitioner, in all the cases at hand, has raised a common argument and has stated that the impugned order passed is non-speaking and has not taken into consideration the fact that as per the language of Section 143-A of the N.I. Act, it is discretion of the Magistrate to impose the interim compensation which can vary from 1% to 20% and the said discretion, if not exercised in the manner known to law, would become an arbitrary action and the said application of mind in exercising the discretion is discernible only from an order in which the reasons are contained therein.

For the said proposition, learned counsel for the petitioner has relied upon the judgment passed by the Karnataka Dharwad Bench, dated 17.02.2022, passed in Criminal Petition No. 100261/2022, titled as **Smt. Vijaya** vs. **Shekhapappa and another** and has referred to paragraph Nos. 12 and 13 of the judgment, which are reproduced hereinbelow:-

> *"12. The other side of the coin of discretion available to the learned Magistrate is that the amount should not exceed 20%. Therefore, it is not that 20% has to be the interim compensation in every case. Here again the discretion is required to be exercised by the learned Magistrate as the interim compensation can vary from 1% to 20% but shall not exceed 20%. The language of Section 143A being couched with such discretion, the discretion if not exercised in a manner known to law, becomes an arbitrary action.*
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> *13. Application of mind in exercise of discretion is discernible only in an order that contains reasons, and reasons can be found only if they are recorded in writing, and if reasons are recorded in*

writing, it is only then the order will be within the counters of law.”

Reliance has also been placed on the judgment of the Madras High Court dated 12.07.2019 and paragraph 7 of the said judgment has been highlighted, which is reproduced hereinbelow:-

> *“7. In view of the above finding, the word “**may**”, gives the discretion to the trial court to direct the accused to pay interim compensation to the complainant. The exercise of discretion must always be supported by reasons, failing which the exercise of discretion will become arbitrary.”*

Learned counsel for the petitioner has further submitted that in pursuance of the order dated 28.04.2022, the petitioner has deposited 20% of the cheque amount with the trial court in all these cases and has submitted that the impugned order deserves to be set aside on the ground that the same does not reflect the reasoning behind ordering the same, as is required under Section 143-A and has been laid down in the above said judgments.

Learned counsel appearing for the respondents in all these cases has submitted that in case a fresh order is to be passed, then the same be passed after hearing the counsel for the respondent-complaint (s) and the counsel for the respondent-complainant (s) also be permitted to refer to the judgments in the favour of the respondent on the said aspect.

It is further submitted by learned counsel for the complainant (s) that the fresh order be passed as expeditiously as possible, and in case the fresh order is passed in favour of the complainant (s), then the amount that has already been deposited by the petitioner, be released to the complainant (s) in accordance with the fresh order passed.

This court has heard learned counsel for the parties and has perused the record.

During the course of hearing, learned counsel for the complainant in all these cases has submitted that in view of the above, they would have no objection in case the impugned order is set aside and has prayed that the fresh order be passed by the Judicial Magistrate Ist Class, Sirsa,within a period of 15 days from the date of the receipt of the certified copy of the present order.

Keeping in view the aforesaid facts and circumstances and also the stand taken by the counsel for the respondent-complainant (s) the present petitions are allowed and the impugned order in all the cases is set aside with the following directions:-

(i) Counsel for the petitioner, as well as the complainant (s) are directed to appear before the trial court on 07.09.2022 and move a joint application, bringing to the notice of the court the present order passed by this court;

(ii) The Judicial Magistrate Ist Class, Sirsa, would indicate the date to both the parties for finally arguing with respect to the deposit as per the provisions of Section 143-A of the Negotiable Instruments Act, 1881;

(iii) The said date shall fall on or before 23.09.2022 and would be as per the convenience of the court;

(iv) Both the parties would be permitted to make their submissions in support of their respective claims and it would be open to both the parties to refer to any judgments/law on the said aspect;

(v) The Judicial Magistrate Ist Class, Sirsa, is requested to pass a fresh order, after hearing the counsel for both the parties as expeditiously as possible, preferably within a period of 15 days from the date on which the arguments are concluded;

(vi) At the time of the issuance of notice of motion in the present case, this Court had directed the petitioner to deposit 20% of the cheque amount in each of the cases which as per the case of the petitioner, has been deposited with the trial court. The cumulated amount, (which would also include interest, in case the amount has been deposited by way of an FD), shall be released to the parties in accordance with the fresh order passed by the JMIC, Sirsa, after a period of 30 days from the date of the passing of the fresh order by the JMIC, Sirsa.

(v) This Court has not expressed any view in the present case in favour of, or against either of the two parties and the JMIC, Sirsa, shall pass a fresh order on the aspect in question, i.e. the deposit under Section 143-A of the Negotiable Instruments Act, 1881, independently, and without being influenced by the observations made in the present order.

(vi) The trial court proceedings shall not be construed to have been stayed and the stay granted vide order dated 28.07.2022, would continue to operate in accordance with law.

Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

September 01, 2022 **(VIKAS BAHL)**
nitin **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No