IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.113

CRM-M-38819-2021
Date of decision : 12.12.2022

Navneet Kaur Grewal

.....Petitioner(s)

VERSUS

Dhruv Singla

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Naveen Sharma, Advocate for the petitioner

AMAN CHAUDHARY, J.

By this petition the petitioner seeks quashing of the order dated 16.3.2020 passed by learned Sessions Judge, dismissing the revision filed against the order dated 27.1.2020 rendered by learned Judicial Magistrate, 1st Class, Ludhiana vide which the petitioner has been directed to pay 10% of the chqeue amount as interim compensation under Section 143A of the Negotiable Instruments Act (in short 'NI Act').

The complainant-respondent filed a complaint under Section 138 of NI Act stating therein that he advanced an amount of Rs.3,50,000/- as friendly loan to the accused-petitioner on 1.02.2019, on the assurance that the same will be repaid by her within a short period. On demand, to discharge her legally enforceable debt, she issued five cheques in favour of the complainant-respondent, which on presentation were dishonoured with the remarks of “funds insufficient”. On the basis of which, the complaint in question was filed, wherein summoning order was issued to the accused-petitioner, whereafter on him having entered appearance, the respondent filed an application under Section 143A NI Act seeking awarding 20% interim compensation, to which, the petitioner filed a response. The trial Court vide order dated 27.1.2020, directed payment of the interim compensation to the tune of 10% of the cheque amount, within 60 days from the date of order. Aggrieved petitioner filed a revision petition before the learned Sessions Judge, Ludhiana, which came to be dismissed vide order dated 16.3.2020.

Hence, the present petition.

Learned counsel for the petitioner would contend that the learned Courts below erred in passing the impugned orders under Section 143A NI Act, a provision directory in nature. The learned trial Court failed to apply his judicial mind while exercising the discretion of granting interim compensation of 10% to the complainant-respondent, without recording any reason in the impugned order. There is no liability of the petitioner as she had never issued any cheques in order to discharge her debt but were issued as security for the purpose of the chit funds/committee, which were misused. Thus, he prays that the impugned orders be set aside.

Learned counsel for the respondent contends that orders have rightly been passed by the Courts below in consonance with the provisions of the NI Act. Therefore, he prays that the present petition may be dismissed.

Heard.

It is at first apposite to refer to Section 143A of the NI Act which came into force with effect from 1st September, 2018, which reads thus:

> "143A - Power to direct interim compensation-
>
> (1) Notwithstanding anything contained in the Criminal Procedure Code, 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 summon case, where the drawer pleads not guilty to the accusation made in the complaint; and
> >
> > (b) in any other case, upon framing charges.
>
> (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 pad 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 years, 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.
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> (5) The interim compensation payable under this section may be recovered as if it were a find under section 421 of the Criminal Procedure Code, 1973 (2 of 1974).
>
> (6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Criminal Procedure Code, 1973 (2 of 1974)."

The provision aforesaid, that opens up with a non-obstante clause, envisages twin conditions namely; the complaint being tried as a summary trial and the charge/notice having been framed against the petitioner to which he pleaded not guilty, for granting interim compensation not exceeding 20% of the cheque amount.

The usage of the word 'may' in Section 143A NI Act, being the sole basis of the argument raised by counsel for the petitioner, a reference is being made to the interpretation given, though with regard to Section 148 NI Act by Hon'ble The Supreme Court of India in the case of **Surinder Singh Deswal vs. Virender Gandhi** (2020) 2 SCC 514, wherein it was observed therein that, "considering the amended Section 148 of the Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the Act, was given that the word "may" used in the amended Section 148 of the Act, to be construed as a "rule" or "shall" and in case the appellate Court was not to order to deposit, that would be as an exception, for which special reasons are to be assigned."

Adverting to the facts of the case in hand, the impugned order directing the petitioner to pay 10% of the amount of the cheques, was passed by the trial Court and affirmed by the appellate Court by observing as follows:

> "After considering the respective submissions and perusing the record of ld. Trial court, I am of the considered view that Section 143- A of the Negotiable Instruments (Amendment) Act, 2018 was specifically enacted for providing interim compensation to the complainant with a rider that in case of acquittal of the accused, the complainant would be liable to return the said amount to the accused along with interest. The pleas raised by the revisionist that the revisionist has never issued any cheque in order to discharge her legal liability, the cheques were issued for a security for the chit funds/committee to the mother of respondent and the cheques in question were misused by respondent etc., are to be decided in the trial after leading evidence by both the parties. Merit of the case is not to be seen at this stage. At this stage, it is too early to comment on the

> same. Since, there is specific provision in the Act for grant of interim compensation to the complainant. If later on it is proved that respondent/complainant is not entitled to receive the amount of cheques in question then respondent/complainant would be liable for return of the amount of interim compensation."

In view of the above, this Court affirms the aforesaid orders passed by the Courts below, while deriving the strength from the judgment in the case of **D.L.Sadashiva Reddy vs. V.G. Kona Reddy**, by Karnataka High Court, as upheld by Hon'ble The Supreme Court of India, whereby the SLP filed against the same was dismissed.

In the case of **D.L.Sadashiva Reddy** (supra) it has held that "according to Section 143A(a), if the accused does not plead guilty, the Court may pass an order directing him to pay interim compensation to the complainant and this amount shall not exceed 20% of the cheque amount. Sub Section(4) of Section 143 makes it very clear that if the accused is acquitted, the Court will direct the complainant to re-pay the amount with interest. Therefore it is very clear from the language of the Section that the accused may be directed to pay interim compensation if he pleads not guilty. In the case on hand, having noticed that the petitioner pleaded not guilty, the Court below directed him to pay interim compensation to the complainant. I do not thing that the accused should be heard in detail before passing the order under Section 143A. It need not be a detail order also. There is no infirmity in the impugned order. Petition is dismissed."

Hon'ble The Supreme Court of India affirming the aforesaid decision, dismissed the SLP No.10151/2021 on 07.01.2022, by observing that, "though the power under Section 143A of the Negotiable Instruments

Act is discretionary power, we, having considered the matter on merits, find that the direction to deposit 20% of the amount is perfectly justified. As such, in the facts and circumstances of the case, we do not find any ground to interfere with the order impugned in this petition."

Considering the aforesaid, this Court is of the view that the learned trial Court has rightly directed the petitioner to pay 10% of the cheque amount in terms of the provisions, which stands affirmed by the appellate Court.

Resultantly, no illegality or perversity is found in the impugned orders, warranting any interference by this Court. As such, the present petition being bereft of merit is hereby dismissed.

12.12.2022 **(AMAN CHAUDHARY)**
gsv **JUDGE**

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No