

CRM-M-38595-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38595-2022
Reserved on: 29.08.2022
Pronounced on: 05.09.2022

Baldev Singh ...Petitioner

Versus

Gurmukh Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ramesh Sharma, Advocate for the petitioner.

ANOOP CHITKARA, J.

Criminal Complaint	No. 218 dated 11.09.2018, under Section 138 of the Negotiable Instruments Act, 1881 District Jalandhar,
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Aggrieved by the direction to deposit 20% of the cheque amount by the trial court, on an application filed under Section 143-A of the Negotiable Instruments Act, 1881, (NIA), the accused has come up before this court.

The nature of order this court proposes to pass is based squarely on law, and would not be prejudicial to the complainant, as such no notice is required to be issued to the private respondent.

A reading of the para 8 of the complaint Annexure P-1 reveals that the cheque bounced on 18 July 2018. The complaint was drafted on 11-09-2018, and as evident from the case number mentioned on complaint, Annexure P-1, the case was instituted on the same date, i.e., 11-09-2018.

During the pendency of the complaint, the complainant filed an application under section 143-A of the NIA claiming 20% of the cheque amount. Vide impugned order dated 6-6-2022, Ld. trial court allowed the application because the court was of the opinion that since the complaint was filed on 11-09-2018, i.e., after Sep 1, 2018, when the NIA was amended, as such the complainant was entitled to such claim.

A perusal of the complaint reveals that the cheque had been dishonored on 18-07-2018, i.e., before the amendment. Thus prima facie the date of offence is 18-07-2018, when the cheque was dishonored, and it would not be the expiration of the time of legal notice because it is to prove an opportunity to the accused to save from criminal

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prosecution by making up the payment.

On insertion of section 143-A in the Negotiable Instruments Act, 1881 by Amendment Act 20 of 2018, from 01.09.2018, the complainant is entitled to ask for 20% of the cheque amount from the accused. In G.J. Raja v. Tejraj Surana, (2019) 19 SCC 469, the Hon'ble Supreme Court holds section 143A to be prospective in operation and that the provisions of said Section 143A 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 143A in the statute book.

Given above, the petition is allowed, and the impugned order is set aside, and Ld. Trial court is requested to decide the application in the light of the judicial pronouncement in G.L. Raja (*supra*), and after a fact check of dates.

Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments and decide the application after hearing the parties and without being influenced by the discussions made above.

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

05.09.2022
anju rani

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