

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

CRM-M-50363-2022
Date of Decision:-31.10.2022

Sombir Kumar

... Petitioner(s)

Versus

Sandeep Kumar

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Lalit Kumar Narang, Advocate
for the petitioner.

KARAMJIT SINGH, J. (Oral)

The present petition has been filed by the petitioner seeking quashing of the order dated 25.2.2020 (Annexure P-4) passed by learned Sub-Divisional Judicial Magistrate in criminal complaint/NACT-36/2019, titled as Sandeep Kumar vs. Sombir, 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 and further order dated 4.10.2022 whereby the revision petition filed by the petitioner against the said order was dismissed by the Court of learned Additional Sessions Judge, Bhiwani.

The brief facts of the case are that respondent Sandeep Kumar 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 25.02.2020, passed the following order:-

“Present: Sh. VS Dhangar, Advocate for the complainant.

Accused Sombir on bail with his Counsel Sh.
Rakesh Obra, Advocate.

Arguments on notice of accusation heard. On finding a prima facie case punishable under Section 138 of Negotiable Act, the accused has been served notice of accusation accordingly, to which he pleaded not guilty and claimed trial.

In terms of provisions mentioned under Section 143A inserted vide Negotiable Instrument (Amendment) Act 2018 (No. 20 of 2018) (Came into force w.e.f. 01.09.2018 vide notification dated 16.09.2018), the accused is hereby directed to pay the interim compensation to the complainant to the tune of 20% of the amount of cheque in question i.e. the sum of ₹ 2,80,000/- within a period of 60 days from today, failing which the same shall be recovered from the accused as if it were a fine under Section 421 of Cr.P.C.

Accordingly, the accused is directed to comply as ordered above. To come up on 12.05.2020 for the evidence of the complainant to be brought at own responsibility.

(Jogender Singh),
Sub-Divisional Judicial Magistrate,
Tosham, UID No. HR0313.
Dated: 25.02.2020. ”

The petitioner has challenged the aforesaid order to the extent whereby he has been directed to pay the interim compensation under Section 143-A of Negotiable Instruments Act and has also challenged the order passed by the learned Additional Sessions Judge, Bhiwani dated 4.10.2022

whereby the revision filed by the petitioner against the aforesaid direction to pay the interim compensation, was dismissed.

The counsel for the petitioner contended that the impugned order dated 25.2.2020 (Annexure P-4), whereby the learned trial Court directed the petitioner 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 for the petitioner further submits that the provisions of Section 143-A Negotiable Instruments Act essentially is directory in nature. That however the learned trial Court considered the said provision of law as mandatory in nature, while passing the impugned order (Annexure P-4). In support of his contentions, the counsel or the petitioner referred to the judgment passed by Delhi High Court in **CRL.MC 2663 of 2021 M/s Jsb Cargo and Freight Forwarder Pvt. Ltd Vs. State and another**, dated 20.12.2021, wherein it was held that provision of Section 143-A Negotiable Instruments Act, is directory and cannot be treated as mandatory in nature. The counsel for the petitioner further contended that even the order (Annexure P-5) passed by the revisional Court is also illegal as it appears that even the said Court was having the impression that provision of Section 143-A of Negotiable Instruments Act is mandatory in nature. The counsel further contended that the impugned orders to the extent stated above are 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. Further, the Coordinate Bench of this Court in **CRM-M-49965-2021** titled as **Dharam Pal and Another vs. Om Parkash** decided on 10.12.2021 set aside the order passed by the learned trial Court under Section 143-A Negotiable Instruments Act.

In the instant case, it appears that no application was moved by the respondent under Section 143-A Negotiable Instruments Act and no opportunity of hearing was given to the petitioner before passing the impugned order whereby the direction was given to the petitioner to pay the interim compensation under the aforesaid provision of law. From the perusal of the impugned order, it transpires that the trial Court granted interim compensation under Section 143-A of Negotiable Instruments Act in a mechanical manner and without application of mind as to how the said compensation was calculated and awarded. The trial Court misread the provision of 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 orders whereby interim compensation has been ordered to be paid by the petitioner under Section

143-A of Negotiable Instruments Act are liable to be set aside being contrary to the settled position of law as detailed above.

Consequently, the present petition is hereby allowed and both the impugned orders to the extent stated above, are 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 143-A Negotiable Instruments Act, in accordance with law within one month of the receipt of certified copy of this order.

The petitioner is directed to appear before the trial Court on the next date already fixed there.

(KARAMJIT SINGH)
JUDGE

31.10.2022
Gaurav Sorot

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No