

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

CRM-M-62125-2018

Date of Decision: 15.11.2022

KRISHAN KUMAR

..... Petitioner

Versus

MADHUBIR YADAV AND ANOTHER

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sudhir Rana, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

The petitioner through instant petition is seeking quashing of order dated 19.11.2018 (Annexure P-3) whereby learned JMIC, Rewari, had directed the petitioner to pay interim compensation of Rs.2,60,000/- to the complainant in complaint No.1178/2017 dated 07.11.2017.

The direction has been issued by learned Trial Court in terms of Section 143A of Negotiable Instruments Act, 1881 (for short 'N.I Act'), which was introduced w.e.f. 01.09.2018.

Learned counsel for the petitioner submits that in the present case cheque in question was dishonored on 21.09.2017 on account of 'insufficient funds'. The legal notice was sent on 10.10.2017 and complaint was filed on 03.11.2017. The entire process of filing complaint took place prior to insertion of Section 143A of N.I Act. In spite of the fact that Section 143A of N.I. Act is not retrospective in nature, learned Trial Court vide impugned order dated 19.11.2018 (Annexure P-3) has directed the petitioner to pay a sum of Rs.2,60,000/-

as interim compensation within 60 days to the complainant. In support of his arguments, learned counsel for the petitioner cited judgment of Hon'ble Supreme Court in '**G.J. Raja Vs. Tejraj Surana 2019(19) SCC 469**'. A two judge Bench of Hon'ble Supreme Court while dealing with question of retrospective applicability of Section 143-A of N.I. Act has held:

“21. In our view, the applicability of Section 143-A of the Act must, therefore, be held to be prospective in nature and confined to cases where offences were committed after the introduction of Section 143-A, in order to force an accused to pay such interim compensation.

*22. We must, however, advert to a decision of this Court in Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341 : (2019) 3 SCC (Cri) 461 : (2019) 3 SCC (Civ) 765 : (2019) 8 Scale 445 where Section 148 of the Act which was also introduced by the same Amendment Act 20 of 2018 from 1-9-2018 was held by this Court to be **retrospective** in operation. As against Section 143-A of the Act which applies at the trial stage that is even before the pronouncement of guilt or order of conviction, Section 148 of the Act applies at the appellate stage where the accused is already found guilty of the offence under Section 138 of the Act. It may be stated that there is no provision in Section 148 of the Act which is similar to sub-section (5) of Section 143-A of the Act. However, as a matter of fact, no such provision akin to sub-section (5) of Section 143-A was required as Sections 421 and 357 of the Code, which apply post-conviction, are adequate to take care of such requirements. In that sense said Section 148 depends upon the existing*

machinery and principles already in existence and does not create any fresh disability of the nature similar to that created by Section 143-A of the Act. Therefore, the decision of this Court in Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341 : (2019) 3 SCC (Cri) 461 : (2019) 3 SCC (Civ) 765 : (2019) 8 Scale 445 stands on a different footing

23. *In the ultimate analysis, we hold Section 143-A to be prospective in operation and that the provisions of said Section 143-A 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 143-A in the statute book. Consequently, the orders passed by the trial court as well as the High Court are required to be set aside. The money deposited by the appellant, pursuant to the interim direction passed [G.J. Raja v. Tejraj Surana, 2019 SCC OnLine SC 1064] by this Court, shall be returned to the appellant along with interest accrued thereon within two weeks from the date of this order.”*

In view of the law laid down by Hon'ble Supreme Court in **G.J. Raja (Supra)**, the impugned order dated 19.11.2018 (Annexure P-3) passed by learned JMIC, deserves to be quashed and accordingly quashed.

The petitioner and respondent would appear before the Trial Court on the date fixed which is stated to be 06.12.2022.

The petition is allowed in above terms.

(JAGMOHAN BANSAL)
JUDGE

15.11.2022
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No