

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.703 OF 2023

Swaran Singh Sohal

..... Petitioner

Versus

Ashok Kumar Bhasin

and another

.... Respondents

Ms. Asha Kanzariya, Advocate i/b. Vijay Upadhyay, for the
Petitioner.

Mr. Kuldeep U. Nikam, Advocate for the Respondent No.1.

Mr. Arfan Sait, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 04th NOVEMBER, 2023

P.C. :

1. Heard learned counsel for the parties. Rule. Rule
is made returnable forthwith with consent of the parties.

2. The Petitioner is the original accused in S.C.C.
No.2181/2018 pending before the Judicial Magistrate, First
Class, Cantonment Court, Pune. The Respondent No.1 is the
original complainant. He has filed complaint against the
Petitioner. It is the case of the complainant that he had
advanced soft-loan of Rs.95,55,000/-. In part payment
thereof, a cheque dated 31.3.2018 for the amount of

Rs.15,55,000/- was issued by the Petitioner to the complainant. That cheque was dishonored and after following due process of issuing notice the complaint was filed. The legal notice was issued by the complainant on 24.7.2018. It was served on the Petitioner on 27.7.2018. According to the complainant himself the cause of action arose on 11.8.2018. Thereafter the complaint was filed on 10.9.2018. In this background the complainant made an application at Exhibit-27 in the same case under Section 143-A of the N.I.Act for directions to the Petitioner to deposit 20% amount of the cheque which would come to around Rs.3,11,000/- by way of interim compensation. Said application was allowed vide order dated 6.12.2022 passed by the learned Magistrate. Said order is under challenge.

3. Learned counsel for the Petitioner submitted that amendment by way of Section 143-A was introduced in the N.I. Act w.e.f. 1.9.2018. In the present case, the cheque was issued on 31.3.2018. The statutory notice was issued on 24.7.2018 and after that the cause of action arose on

11.8.2018. All these dates were prior to the amendment by way of Section 143-A of the N.I. Act because the amendment was carried out after the cause of action had arisen. Learned counsel relied on the observations of the Hon'ble Supreme Court in the case of **G.J. Raja Vs. Tejraj Surana** as reported in **(2019) 19 SCC 469**.

4. Learned counsel for the Respondent No.1 opposed these submissions. According to him, the learned Magistrate has given the proper reasons.

5. I have considered these submissions. Learned Magistrate had referred to **G.J. Raja's** case. According to learned Magistrate, the complaint was filed after the amendment and, therefore, the amendment was applicable to the present case.

6. In this background, it is necessary to refer to the relevant paragraphs in **G.J. Raja's** case. Those paragraphs are paragraphs-21 & 22, which read thus :

“21. In our view, the applicability of Section 143A 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 143A, 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 and Ors. v. Virender Gandhi*, (2019) 8 SCALE 445, where Section 148 of the Act which was also introduced by the same Amendment Act 20 of 2018 from 01.09.2018 was held by this Court to be retrospective in operation. As against Section 143A 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 143A of the Act. However, as a matter of fact, no such provision akin to Sub-section (5) of Section 143A 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 143A of the Act. Therefore, the decision of this Court in *Surinder Singh Deswal*, (2019) 11 SCC 341 stands on a different footing.”

7. From this discussion in the said judgment, it is now clear that Section 143-A can be applied or invoked only in cases where the offence under Section 138 of the N.I. Act

was committed after introduction of Section 143-A of the N.I. Act.

8. In the complaint itself it is mentioned that the cause of action arose on 11.8.2018 and, therefore, said amendment will not be applicable in the present case. To that extent, the observations of the learned Magistrate is not correct. Therefore, the impugned order is liable to be set aside. Hence, the following order :

:: O R D E R ::

- i. The order dated 6.12.2022 passed by the Judicial Magistrate, First Class, Cantonment Court, Pune below Exhibit-27 in S.C.C. No.2181/2018 directing the Petitioner to pay the interim compensation of Rs.3,11,000/-, is set aside.
- ii. Rule is made absolute in the aforesaid terms.
- iii. It is made clear that the trial shall proceed on its own merits.
- iv. The Petition is disposed of accordingly.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
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(SARANG V. KOTWAL, J.)