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

CRM-M No.5142 of 2023
Date of Decision : 05.12.2023

Baldev Singh Bhullar .....Petitioner

versus

Harpreet Singh .....Respondent

CORAM : HON'BLE MR JUSTICE PANKAJ JAIN

Present : Mr. N.C. Kinra, Advocate
for the petitioner.

Mr. Rajvir Singh, Advocate
for the respondent.

<u>PANKAJ JAIN, J.</u> (Oral)

Present petition is directed against order dated 9th of September, 2022 passed in criminal complaint No.NACT 464 of 5th of July, 2018 whereby application under Section 143-A of the Negotiable Instruments Act, 1881 filed by the complaint has been allowed and the petitioner/accused has been directed to pay an amount of Rs.1,20,000/- i.e. 20% of the cheque amount as interim compensation.

2. Counsel for the petitioner submits that the present complaint was instituted on 5th of July, 2018. Provisions of Section 143-A of the N.I. Act were introduced w.e.f. 16th of August, 2018 and the appointed date is 1st of September, 2018. Thus, as per settled law application filed by the respondent/complainant under Section 143-A

should not have been allowed as operation of Section 143-A of the N.I. Act has been held to be prospective in nature i.e. to be applicable on the complaint(s) filed after 1st of September, 2018. Reliance is being placed upon law laid down by Apex Court in **G.J. Raja vs. Tejraj Surana, (2019) 19 SCC 469**.

3. Counsel for the complainant/respondent is not in position to dispute the aforesaid fact.

4. In **G.J. Raja's** case (supra) Supreme Court observed as under :

> "20. It must be stated that prior to the insertion of Section 143A in the Act there was no provision on the statute book whereunder even before the pronouncement of the guilt of an accused, or even before his conviction for the offence in question, he could be made to pay or deposit interim compensation. The imposition and consequential recovery of fine or compensation either through the modality of Section 421 of the Code or Section 357 of the code could also arise only after the person was found guilty of an offence. That was the status of law which was sought to be changed by the introduction of Section 143A in the Act. It now imposes a liability that even before the pronouncement of his guilt or order of conviction, the accused may, with the aid of State machinery for recovery of the money as arrears of land revenue, be forced to pay interim compensation. The person would, therefore, be subjected to a new disability or obligation. The situation is thus completely different from the one which arose for consideration in Employees' State Insurance Corporation case.
>
> 21. Though arising in somewhat different context, proviso to Section 142(b) which was inserted in the Act by Amendment Act 55 of 2002, under which cognizance could now be taken even in

respect of a complaint filed beyond the period prescribed under Section 142(b) of the Act, was held to be prospective by this Court in ***Anil Kumar Goel v. Kishan Chand Kaura, 2008(1) RCR (Criminal) 290 : (2007) 13 SCC 492***. It was observed:

> "10. There is nothing in the amendment made to Section 142(b) by Act 55 of 2002 that the same was intended to operate retrospectively. In fact that was not even the stand of the respondent. Obviously, when the complaint was filed on 28-11- 1998, the respondent could not have foreseen that in future any amendment providing for extending the period of limitation on sufficient cause being shown would be enacted."

22. 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.

23. We must, however, advert to a decision of this Court in ***Surinder Singh Deswal and Ors. v. Virender Gandhi, 2019(3) RCR (Criminal) 186 : (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 stands on a different footing.

24. In the ultimate analysis, we hold 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. 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 by this Court, shall be returned to the Appellant along with interest accrued thereon within two weeks from the date of this order."

5. Counsel for the petitioner is not in position to dispute the above-stated proposition of law.

6. In view of above, the present petition is allowed. Impugned order 9th of September, 2022 being in the teeth of law laid down by Supreme Court in **G.J. Raja**'s case supra is found to be unsustainable and is hereby set aside.

December 05, 2023 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No