

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

CRM-M-5497-2023

Date of Decision: 02.02.2023

Salesh Kumar Rai @ Shailesh Kumar Rai and another
..... Petitioners

Versus

State of Haryana and another Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Surinder Singh Duhan, Advocate, for the petitioners

Rajesh Bhardwaj, J.

The petitioners have approached this Court impugning the order dated 01.12.2022 passed by the learned Addl. Sessions Judge, Jind in CRA/208/2022 titled as Shailesh Kumar Vs. Balraj qua depositing of 20% of cheque amount either in the shape of FDR or otherwise in the Court within 60 days from the order under Section 143-A of the Negotiable Instruments (Amendment) Act, 2018 (for short, 'the Act').

It has been vehemently contended by learned counsel for the petitioners that false and frivolous prosecution under Section 138 of the Act was launched against the petitioners by respondent No.2-complainant, namely Balraj son of Jagar Ram. He has submitted that after the trial the learned trial Court convicted the petitioners for the offence under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of one year and further directed to pay compensation of Rs.35 lacs to the complainant under Section 357(3) Cr.P.C. It was also directed that the amount of compensation would be payable to the complainant after the prescribed period for presenting the appeal has elapsed or if any appeal is presented after the decision of the appeal. He has submitted that aggrieved

by this order, the petitioners filed an appeal before the Court of learned District and Sessions Judge, Jind. He has submitted that at the time of admission of the appeal, the learned Appellate Court has fallen in error in directing the petitioners to deposit 20% of the cheque amount either in the shape of FDR or otherwise in the Court within 60 days from the date of order under Section 143-A of the Act. He has submitted that the Appellate Court has passed the order for depositing 20% of the cheque amount under Section 143-A of the Act, which is totally unsustainable in the eyes of law. He has submitted that the amendment in the Act came into operation w.e.f. 01.09.2018 and Section 143-A and Section 148 of the Act were incorporated in the amendment by the Legislature. Learned counsel for the petitioners advanced his argument that the learned trial Court had directed at the time of pronouncement of the judgment that the compensation of Rs.35 lacs awarded to the complainant under Section 357(3) Cr.P.C. would be payable after the prescribed period for presenting the appeal has elapsed or if any appeal is presented, then after the decision of the appeal. He has submitted that once the appellant-petitioners have filed an appeal, then the compensation awarded cannot be released to the complainant before the decision of the appeal. He has submitted that the trial Court has restrained the Appellate Court from releasing the compensation during the pendency of the appeal, the Appellate Court had no jurisdiction to award the interim compensation @ 20% of the cheque amount as directed by the Appellate Court. He further emphasizes that this order has been passed under Section 143-A of the Act, which power is not available to the Appellate Court. He has submitted that respondent No.2-complainant never filed any application for grant of interim compensation and thus, the Appellate Court had no

jurisdiction to grant the interim compensation *suo moto*.

Heard.

Admittedly, the petitioners were convicted and sentenced by the trial Court vide order dated 03.11.2022. The learned trial Court at the time of convicting the accused also granted compensation to the tune of Rs.35 lacs and further directed not to release the compensation to the complainant before the decision of the appeal. After hearing learned counsel for the petitioners and perusing the statutory provisions, this Court does not find any merit in the arguments advanced by the learned counsel for the petitioners. Sections 143-A and 148 of the Act were incorporated by way of amendment by the Legislature, which came into effect from 01.09.2018. A perusal of the same would show that Section 143-A of the Act provides jurisdiction to the trial Court for granting interim compensation to the complainant during the trial of the complaint filed under Section 138 of the Act. On presentation of the appeal before the learned Appellate Court, the relevant Section incorporated in the Act i.e. Section 148, which empowers the Appellate Court to order the deposit of such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. Perusal of statutory provisions makes it clear that the Appellate Court even *suo moto* can exercise its discretion to order payment pending appeal against conviction, which shall be minimum of 20% of the fine or compensation. Even if, the learned trial Court directed not to release the compensation before the decision of the appeal that would not affect the jurisdiction of the Appellate Court in granting the interim compensation to the complainant as the trial Court issued direction which was beyond its jurisdiction. Needless to say that the order passed by the trial Court is

already under challenge by way of appeal before the Appellate Court and hence, the Appellate Court has the complete jurisdiction to re-appreciate the evidence led by both the sides and decide the appeal. Though the impugned order mentions Section 143-A of the Act, but the relevant Section for the Appellate Court is Section 148 of the Act, which empowers it to grant the interim compensation. Moreover, as per the Section 148 of the Act, the interim compensation is in addition to the compensation awarded by the trial Court. Hence, accepting the arguments raised by learned counsel for the petitioners that the Appellate Court cannot grant the interim compensation *suo moto* and further, the compensation to be paid after the decision of the appeal, would totally frustrate the objective of the amendment made by Legislature in incorporating Sections 143-A and 148 in the Act.

Finding no merit in the present case, this Court does not find any infirmity in the impugned order passed by the learned Appellate Court. Resultantly, the present petition, is hereby dismissed.

02.02.2023
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Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No

(RAJESH BHARDWAJ)
JUDGE