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

CRM-M-17350-2023
Date of Decision: 18.05.2023

Manish Choudhary ..... Petitioner

Versus

Green Agrevolution Pvt. Ltd. ....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ashok Kumar Khunger, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

The petitioner has approached this Court by way of filing the present petition under Section 482 Cr.P.C. seeking following reliefs:-

> (i) Quashing of complaint bearing No.NACT/39108/2021 titled as Green Agrevolution Pvt. Ltd. vs. CR Agro Industries, filed by the respondent.
> (ii) Quashing of summoning order dated 14.12.2021 passed by the learned JMIC, Gurugram.
> (iii) Quashing of order dated 07.01.2023 passed by the learned JMIC, Gurugram directing the petitioner to pay 20% of the cheque amount i.e. amounting to Rs.11,52,817.82.
> (iv) And further quashing/setting aside of impugned order dated 02.03.2023 passed by the learned Additional Sessions Judge, Gurugram, dismissing the revision petition filed by the petitioner.

As per facts of the case, the respondent-complainant filed a complaint against accused No.1-M/s CR Agro Industries and accused No.2- i.e. petitioner Manish Choudhary. It had been alleged that the respondent, who is the complainant of the complaint, is a company registered under the Companies Act and engaged in the business of providing end-to-end solutions and services to the farming community in India. M/s CR Agro Industries i.e. accused No.1 through Mr. Manish Choudhary i.e. the petitioner accused No.2 in the complaint, is a mass dealer and sells various commodities like Bajra, Groundnut through-out India. The petitioner approached the complainant and entered into an agreement for purchase of Bajra from the complainant. Thereafter, starting from 20.11.2020 till 31.12.2020, the respondent sold a total quantity of 560,285 metric tons of Bajra amounting to a total Rs.77,59,947/- to accused No.1. In order to discharge its part liability, the petitioner paid an amount of Rs.20,00,000/- to the respondent-compainant and assured that the remaining amount would be paid shortly. To discharge its remaining liability, the petitioner on behalf of accused No.1 i.e. M/s CR Agro Industries, signed and issued a cheque bearing No.003107 dated 28.02.2021 drawn on ICICI Bank, MP Nagar, Bikaner for a total amount of Rs.57,64,089/-. However, on presentation of the cheque, the same was dishonoured by the concerned Bank with remark of "Stop Payment" and the same was returned to the respondent-complainant. The respondent sent a demand legal notice regarding dishonoured cheque but despite service, accused No.1 through accused No.2 failed to make the payment within the stipulated time given in the notice and hence, the respondent-complainant filed the complaint under Sections 138 and 141 of the Negotiable Instruments Act, 1881 (for short, 'the Act') against accused No.1 i.e. M/s CR Agro Industries and accused No.2-Manish Choudhary i.e. the petitioner. The respondent-complainant led preliminary evidence before the trial Court and thus, finding sufficient ground, the petitioner was summoned by the trial Court vide impugned summoning order dated 14.12.2021. During the pendency of the same, the complainant-respondent filed an application under Section 143-A of the Act seeking payment of interim compensation @ 20% of the cheque amount. After hearing both the sides, the learned trial Court allowed the same vide impugned order dated 07.01.2023. Aggrieved by the summoning order dated 14.12.2021, the petitioner-accused approached the Court of learned Additional Sessions Judge, Gurugram, who after hearing both the sides, dismissed the revision filed by him vide order dated 02.03.2023. Aggrieved by the complaint filed by the complainant and the summoning orders dated 14.01.2021 and 02.03.2023 as well as the impugned order dated 07.01.2023, the petitioner has approached this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that the petitioner has been prosecuted on false and frivolous complaint filed by the respondent, which is totally an abuse of the process of the Court. He submits that the respondent supplied a poor quality of Bajra to the petitioner, which was duly informed to the respondent-company and a request was made to change the same, but the same was not adhered to. It was submitted that the petitioner informed the respondent-complainant that he would stop the payment for purchase of Bajra in case the poor quality supplied to him was not replaced, however, instead of redressing the grievance of the petitioner, the respondent company threatened the petitioner by presenting the cheque given to it as security and it is because of this, the petitioner instructed the concerned Bank to stop the payment of the said cheque given to the respondent-company. It is submitted that the respondent filed a false and frivolous complaint under Sections 138 and 141 of the Act, which is totally an abuse of the process of the Court. He further submits that the learned trial Court as well as the revisional Court without taking into consideration the grievance raised by the petitioner have summoned him in a mechanical manner. He submits that no *prima facie* case was made out against the petitioner in view of the record made available and thus, the impugned summoning orders dated 14.12.2021 and 02.03.2023 totally unsustainable in the eyes of law. He further submits that the impugned order dated 07.01.2023 by virtue of which the trial Court has allowed the application filed by the respondent under Section 143-A of the Act, is also unsustainable in eyes of law as the trial Court accepted the same without taking into consideration the statutory provisions and the law settled. He submits that as per the provisions of Section 143-A of the Act, statutory provisions are not mandatory in nature and they are only directory. He submits that the trial Court neither appreciated the statutory provisions or the law settled and thus, allowed the application by passing the impugned order dated 07.01.2023 in a capricious manner. He relies upon the judgment of this Court in Dharampal and another vs. Om Parkash, passed in CRM-M-49965-2021 on 10.12.2021. He submits that in the overall facts and circumstances of the case, the impugned complaint and the impugned orders dated 14.12.2021, 07.01.2023 and 02.03.2023 deserve to be set aside being an abuse of the process of the Court.

Heard.

I have heard learned counsel for the petitioner and perused the record. It is apparent from the reading of the complaint that the petitioner entered into an agreement with the respondent-company for the purchase of Bajra and thereafter, the same was supplied. To discharge his liability, the petitioner signed a cheque bearing No.003107 for an amount of Rs.57,64,089/- with an assurance that the same would be encashed on presentation before the concerned Bank. However, on presentation of the same, the cheque was dishonoured with the remark of "Stop Payment". It is not disputed that the petitioner has not signed the cheque. It has been contended that the cheque had been issued as a security and thus, the issuance of the cheque and signing of the same is not controverted by the petitioner. Learned trial Court has appreciated the evidence of the complainant, who appeared as CW-1 and Mr. Amar Bhardwaj, Branch Manager, who appeared as CW-2. The other relevant documentary evidence produced was also appreciated and it was on the appreciation of the documentary and the oral evidence, the trial Court came to the conclusion that there was sufficient ground making out a *prime facie* case for summoning the petitioner and thus summoned the petitioner vide order dated 14.12.2021. It is pertinent to note that the petitioner assailed the same by way of filing revision petition before the learned Additional Sessions Judge, Gurugram. The learned revisional Court heard both the sides and found no infirmity in the impugned summoning order dated 14.12.2021 and thus, declined the same vide order dated 02.03.2023. Thus, it is apparent that there is concurrent finding of both the Courts below regarding the summoning of the petitioner. As per the law settled, the trial Court is not supposed to appreciate the evidence in detail rather it is to apply its judicial mind in order to find whether there is any *prima facie* case made out against the petitioner for proceedings. In the facts and circumstances of the case and from the record available, both the Courts i.e. the trial Court and the revisional Court found that there was sufficient ground to proceed against the petitioner and thus, the petitioner was summoned.

This Court in Guljari Lal vs. Kotak Mahindra Bank, 2023 (1) RCR (Criminal) 651 has held as under:-

> "9. So far as the requirement of an inquiry under Section 202 Cr.P.C. is concerned, in Sunil Todi's case (supra), the Hon'ble Supreme Court has made it clear that once the witnesses had been examined on oath, or had deposed even by way of an affidavit, the holding of an inquiry by the Magistrate was not required. In the present case, a perusal of the summoning order would reveal that the Court has clearly opined that the complaint, affidavit and documents on record prima facie established that an offence under the Negotiable Instruments Act had been committed and thereby had proceeded to summon the petitioner. The Revisional Court after considering the arguments raised by the petitioner has reiterated the prima facie findings arrived at by the summoning Court. Therefore, no further enquiry is necessary in the instant case as the summoning order does not in anyway betray non-application of mind."

Now coming to the arguments raised by learned counsel for the petitioner assailing the impugned order dated 07.01.2023, whereby the application filed by the respondent under Section 143-A of the Act, has been accepted and the petitioner has been directed to pay 20% of the cheque amount i.e. Rs.11,52,817.82. It is apparent from the record that a proper application was filed by the respondent-complainant under Section 143-A of the Act for directing the petitioner to pay 20% of the cheque amount as compensation during the pendency of the complaint. Notice had been issued to both the accused and both sides have been heard by the learned trial Court.

For the decision of the controversy raised before this Court, appreciation of statutory provisions of Section 143-A of the Act is essential, which reads as under:-

> **"[143-A. Power to direct interim**

compensation.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to complainant-

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty percent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial years, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section."

It is apposite to mention here that the provisions of Section 143-A and that of Section 148 of Negotiable Instruments Act were not in the original act and the same were incorporated by the Legislature by way of amendment. A perusal of the abovesaid provisions shows that the Court trying offence under Section 138 of the Act may order the drawer of the cheque to pay interim compensation to the complainant and in this regard discretion is vested with the trial Court to direct the accused to pay the interim compensation after recording its satisfaction. The objects and reasons for incorporating these provisions are as follows:-

> "The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions. 2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy. 3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:—
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> (i) to insert a new section 143A in the said Act to

provide that the Court trying an offence under section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial court.

4. The Bill seeks to achieve the above objectives."

From the above, it is clear that the legislature inserted Sections 143-A and 148 in the Act just to award compensation to the complainant who has spent a considerable long time and resources in Court proceedings to realize the value of the cheque and who is sufferer because of dishonour of cheque.

In **Capital Scaffolding through its Proprietor Salim Chohan and another vs. State of Haryana and another,** 2023 (2) RCR (Criminal) 33 and **Kiran Devi vs. Karanjeet Singh,** Law Finder Doc Id # 2123364, this Court has upheld the interim compensation granted under Section 143-A by the learned trial Court.

This is apparent that the learned trial Court has not invoked its power under Section 143-A of the Act *suo moto*, but it has exercised its power on the application filed by the complainant-company. After hearing both the sides, a well reasoned order has been passed by the learned trial Court and this Court does not find that the impugned order was passed in a capricious manner. The impugned order dated 07.01.2023 passed is based on the appreciation of the statutory provisions and the law settled. The judgment relied upon by learned counsel for the petitioner is distinguishable on the facts and circumstances of the present case. The learned trial Court has not exceeded the statutory limit of 20% in allowing the application filed by the respondent.

As far as the arguments regarding quashing of the impugned complaint raised by learned counsel for the petitioner is concerned, Hon'ble the Supreme Court in the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharastra and another, 2021 SCC Online SC 315** has held that the High Court should exercise the power of quashing under Section 482 Cr.P.C. sparingly with circumspection in the rarest of rare cases and also criminal proceedings ought not to be scuttled at the initial stage.

Weighing the facts and circumstances of the case on the anvil of the law settled, this Court finds no infirmity in the impugned orders passed and resultantly the same is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

18.05.2023
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Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No