

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

**CRM-M-29424 of 2022
Date of Decision:- 27.01.2023**

Vikas

....Petitioner

Vs.

Jai Shree Balaji Electrical

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Ashwani Gaur, Advocate
for the petitioner.

Mr. Yogesh Goel, Advocate
for the respondent.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner against the order dated 27.05.2022, Annexure P-7, passed by JMIC Sirsa in criminal case NACT 737/2021 titled Jai Shree Balaji Electricals Vs. Vikas, whereby the petitioner has been directed to pay interim compensation of 20% of the cheque amount in the light of provisions of Section 143A of Negotiable Instruments Act(for brevity, the Act).

The brief facts of the case are that respondent has filed the aforesaid criminal complaint against the present petitioner under Section 138 of Act with regard to dishonour of cheque. On the completion of preliminary

evidence the petitioner was summoned and he appeared before the trial Court and was granted bail. On 27.05.2022 the Trial Court passed the impugned order in following manner:-

*“Present: Complainant with Sh. Pukhraj Singh
Chauhan Ld. Adv.*

*Accused on bail with Ms. Renu Bala, Ld.
Adv.*

Arguments on notice of accusation heard. After going through the record of the case, this Court is of the considered view that there exists prima facie case against the accused person for the offence punishable under Section 138 of N.I Act. Accordingly, the notice of accusation for the offence under Section 138 of NIA is put to the accused person, to which he pleaded not guilty and claimed trial.

Plea of defence under Section 263(g) of accused is also recorded.

At this stage, an application under Section 145(2) of Negotiable Instrument Act for allowing the accused to cross-examine the complainant has been filed. Keeping in view the facts as mentioned in the application, the same is considered and allowed. Adjournment has been sought. Now, the case is adjourned to 27.7.2022 for cross-examination of the complainant on self responsibility.

In the present case, cause of action arise after 1.9.2018 precisely same after insertion of 143A. Accused has already pleaded not guilty and has claimed trial. Considering the legislative intent of Section 143 A and in absence of any other material on record to deny the case of prosecution,

availability of presumption of Section 139 prompts, this Court to order the accused to deposit 20% of the cheque amount i.e. Rs.4,00,000/- within 60 days from today. Accused has been clearly informed by this Court regarding the coercive methods i.e. attachment of movable/immovable property, which shall be adopted by this Court, in case accused does not pay the interim compensation amount within the given period. Accused is hereby directed to deposit the interim compensation amount on or before the date fixed.

Date of Order: 27.05.2022

*Sd/
JMIC, Sirsa”*

The petitioner has not challenged the aforesaid order to the extent whereby notice of accusation was served upon him. However, he being aggrieved of the order passed by the trial Court under Section 143A of the Act, the petitioner has filed the present petition.

The counsel for the petitioner contended that the impugned order whereby the petitioner has been directed to pay interim compensation to the complainant as per the provisions of Section 143A of the Act, is totally illegal, being passed in a mechanical manner without application of mind. The counsel further contended that recently the High Court of Judicature at Bombay (Nagpur Bench) in Criminal Writ Petition No.48 of 2022, titled *Mr. Ashwin, Ashokrao Karokar Vs. Mr. Laxmi Kant Govind Joshi, decided on 7.7.2022*, held that the provision of Section 143A of the Act, is directory and not mandatory in nature.

The counsel for the petitioner further contended that the trial Court passed the impugned direction, under the impression that the aforesaid

provision is mandatory in nature. The counsel further contended that the impugned order to the extent stated above is liable to be set aside.

The present petition is contested by the counsel for the respondent who, while supporting the impugned order submitted that there is no illegality in the same as the learned trial Court is having wide powers under Section 143A of the Act to grant compensation to the complainant.

I have considered the submissions made by counsel for the parties.

From a perusal of the impugned order, it appears that no application was moved by the respondent under Section 143A of the Act and no opportunity of hearing was given to the petitioner before passing the impugned order whereby the direction was given to the petitioner to pay the interim compensation in terms of Section 143A of the Act. It appears that the Trial Court granted interim compensation under Section 143A of the Act in a casual manner without application of mind, as to how the said compensation was calculated and awarded. It appears that the Trial Court misconstrued the said provision as mandatory in nature, whereas the legal position is just contrary, as has been discussed below.

Hon'ble Delhi High Court in *CRL.MC 2663 of 2021 M/s Jsb Cargo and Freight Forwarder Pvt. Ltd Vs. State and another*, decided on 20.12.2021, held that provision of Section 143A Negotiable Instruments Act, essentially is directory and cannot be termed as mandatory in nature. Even the Nagpur Bench of Bombay High Court also held in *Ashwin Ashokrao*

Karokar's case (supra) that Section 143A of Negotiable Instruments Act, is discretionary and not mandatory.

Even the Coordinate Bench of this Court in *Dharampal & Anr. Vs. Om Parkash, 2022(2) RCR(Crl.) 621* set aside the order passed by the learned trial Court under Section 143A of the Act while observing that the discretion vested in the trial Magistrate is not to be exercised capriciously and arbitrarily. The exercise of discretion by the learned trial Magistrate has to be done in a thoughtful and sagacious manner.

In light of the above, the impugned order whereby interim compensation has been ordered to be paid by the petitioner under Section 143A of the Act, is liable to be set aside being non-speaking and contrary to the settled position of law as has been discussed above.

Consequently, the present petition is hereby allowed and the impugned order dated 27.05.2022, Annexure P-7, to the extent stated above, is hereby set aside and the matter is remanded back to learned Trial Court to dispose of the issue regarding grant of interim compensation to the complainant/respondent under Section 143A, in accordance with law within one month of the receipt of certified copy of this order.

The parties are directed to appear before the Trial Court on the date already fixed in the trial.

(KARAMJIT SINGH)
JUDGE

27.01.2023

P. Chawla/ Jiten

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No