IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

113 **CRM-M-30711-2022**
Date of decision: 19.01.2023

M/S MALWA AGRO INDUSTRIES
...Petitioner

VERSUS

HARINDER SINGH MAND
...Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Rishab Kumar Jain, Advocate
for the petitioner.

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DEEPAK MANCHANDA, J.(ORAL)

This petition has been filed under Section 482 Cr.P.C. for quashing of order dated 26.04.2022 (Annexure P-3) passed by Judicial Magistrate First Class, Jagraon in complaint under Section 138 of Negotiable Instruments Act, bearing number COMA/66/2021 dated 05.04.2021 titled as *"Harinder Singh Mand versus M/S Malwa Agro Industries"* vide which the petitioner has been directed to pay 7% of the cheque amount in the form of interim compensation.

The facts emanating from the pleadings of the present case are that the complainant/respondent herein is proprietor of the firm M/S Mand Agro Industries, Village Akalgarh Khurd, Tehsil Raikot, District Ludhiana. The parties to the complaint are close friends of each other and used to help each other during odd hours. Around three years back, petitioner (Ravinder Singh), Proprietor of M/S Malwa Agro Industries was having financial crises as well as lack of paddy due to unavoidable circumstances so on the oral request of the petitioner, respondent/complainant supplied 5 wagons of rice for delivery to FCI on the assurance that either rice of the same weight will be returned or the price of the same will be paid and the complainant/respondent stood guarantor for the petitioner but since the petitioner was defaulter, therefore, the respondent was also declared a defaulter. Since the petitioner became defaulter and was not able to return the rice, so in the month of November, 2020 respondent approached the petitioner for the return of 5 wagons of rice or payment of 5 wagons of rice when the petitioner issued a cheque bearing No. 331529 dated 27.11.2020 under his signatures with a request to present the cheque after two months. The said cheque was presented through Punjab National Bank to the bank of the petitioner for payment but the same was returned by the Bank on 05.02.2021 with the remarks “FUND INSUFFICIENT".

Learned counsel for the petitioner contends that the application for interim compensation under Negotiable Instruments Act moved by the respondent was partly allowed vide order dated 26.04.2022 and the petitioner has been directed to make the payment of 7% of the cheque amount amounting to ₹ 2,01,250/-. Learned counsel further contends that the object of incorporation of Section 143-A of NI Act by way of amendment is to expedite the trial whereas in the application no such ground has been pleaded and the only grounds taken in the application is that the payment of 20% of cheque amount is mandatory before the evidence of the complainant/respondent, which is contrary to law. He further argues that while passing the impugned order the trial Court has failed to assign any reason for fastening the liability on the petitioner and relies upon the judgement passed in CRM-M No. 49965 of 2021 dated 10.12.2021 wherein it has been held that the interim compensation is not mandatory rather are directory in nature.

Having heard the learned counsel for the petitioner.

The order dated 26.04.2022 (Annexure P-3) passed by the trial Court reveals that the complaint was filed on 05.04.2021 and the petitioner was summoned on 03.05.2021, whereas the cheque in question is dated 27.11.2020, bank memo is dated 05.02.2021 and despite the issuance of legal notice dated 23.02.2021, the petitioner did not make the payment. Thereafter, the accused/petitioner put in an appearance and notice of accusation was served upon the petitioner on 15.03.2022. As such, the filing of the complaint after amendment and service of notice of accusation is clear and the basic ingredients stand fulfilled. The trial Court allowed the application directing the petitioner/accused to pay 7% of the cheque amount as interim compensation to the respondents/complainant within 60 days from the date of order under Section 143-A of the Negotiable Instruments Act, on the ground that said section empowers the Court for giving directions to the petitioner to pay interim compensation to the complainant where he has not pleaded guilty, upto the limit of 20% of the cheque amount within 60 days from the date of the order, failing which the interim compensation so ordered would be recoverable under Section 421 Cr.P.C. as if it was a fine imposed upon the accused. The trial Court further observed that there is no denial on the part of the petitioner that he has not signed the cheque and its issuance and subsequent dishonour stands prima facie established.

Further, a perusal of the impugned order also reveals that the petitioner has not denied his signatures on the cheque in question and merely stated that the same is a security cheque. The trial Court has rightly observed that if the same is a security cheque then it is up to the petitioner to establish the fact of misuse of security cheque, whereas the same shall be debatable at the time of trial and cannot be adjudicated at the time of granting interim compensation. Moreover, once signatures over the cheque stood admitted by the petitioner, a prima facie case attracting statutory presumptions under the Act was made out in favour of the respondent.

This Court thus, finds no force in the submissions made by the learned counsel for the petitioner that the impugned order was a non-speaking order. Therefore, in the circumstances, even the case laws relied upon by the counsel for the petitioner would not come to his rescue. The trial Court has recorded adequate reasons while passing the impugned order and merely because the petitioner has been directed to pay 7% of the cheque amount as interim compensation, would not by itself mean that there has been an arbitrary exercise of judicial discretion by the Court below.

It would be apposite to point out here that the object behind the insertion of Section 143-A of the Act was to provide for interim compensation to the complainant during the pendency of the proceedings under Section 138 of the Negotiable Instruments Act so as to prevent unscrupulous elements from unnecessarily prolonging proceedings by engaging in dilatory tactics thereby causing grave injustice to the complainant. A perusal of the impugned order also reveals that the complaint was being prolonged on one pretext or the other and the amount involved in the cheque in question is ₹ 28,75,000/- and 7% of which comes to ₹ 2,01,250/-, therefore, directions to deposit 7% of the cheque amount is reasonable.

As a sequel to the above, this Court is not inclined to invoke its inherent jurisdiction under Section 482 Cr.P.C. to interfere with the impugned order dated 26.04.2022. Accordingly, the present petition stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

January 19, 2023 **(DEEPAK MANCHANDA)**
Ajay Goswami/Nisha-II **JUDGE**

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*