

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

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CRM-M-37130-2022(O&M)

Date of decision: 11.10.2023

Sukhwinder Singh

...Petitioner

Versus

Didar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Mehak Sahwney, Advocate for
Ms. Samridhi Sareen, Advocate for the petitioner

None for the respondent.

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 29.03.2022, passed by Judicial Magistrate 1st Class, Abohar in case bearing NACT-806-2022 dated 20.07.2020, whereby the lower Court has allowed the application filed by the respondent-complainant under Section 143-A Negotiable Instruments Act (hereinafter referred as “the Act”) and has directed the petitioner to deposit 20% of cheque amount to the complainant-respondent within 60 days from the date of the order.

2. Learned counsel for the petitioner would contend that the trial Court erred in passing the impugned order under Section 143A of the Act, presuming it to be mandatory in nature, even though, as is apparent from the provision, it is directory, thus, prayer for setting aside the same was made.

3. Despite service, none has appeared for the respondent.

4. Heard.

5. It is apposite to refer to Section 143A of the Act, which came into force with effect from 1st September, 2018, which reads thus:

“143A - Power to direct interim compensation-

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

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

(b) in any other case, upon framing charges.

(2) The interim compensation under sub-section

(1) shall not exceed twenty per cent 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 Criminal Procedure Code, 1973 (2 of 1974).

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Criminal Procedure Code, 1973 (2 of 1974).”

6. The provision aforesaid, that opens up with a non-obstante clause, envisages twin conditions namely; the complaint being tried as a summary trial and the charge/notice having been framed against the petitioner to which he pleaded not guilty, for granting interim compensation not exceeding 20% of the cheque amount.

7. The usage of the word 'may' in Section 143A NI Act, being the sole basis of the argument raised by counsel for the petitioner, for it to be termed as directory in nature, a categoric reference is pertinent to be made to the interpretation rendered by Hon'ble The Supreme Court of India in **Surinder Singh Deswal vs. Virender Gandhi** (2020) 2 SCC 514, albeit with regard to Section 148 NI Act, wherein also the expression used was the same, it was observed that, “considering the amended Section 148 of the Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the Act, was given that the word "may" used in the amended Section 148 of the Act, to be construed as a “rule” or “shall” and in case the appellate Court was not to order to deposit, that would be as an exception, for which special reasons are to be assigned.”
8. Adverting to the case at hand, the impugned order directing the petitioner to pay 20% of the amount of the cheque, was passed by the trial Court by observing thus:

“...The complainant requested for a direction to the accused to make payment up to 20% of the cheque amount during the pendency of the complaint. After the amendment of Negotiable Instruments Act, 2018 the legislature has inserted section 143-A in the original Act of 1881 under Section 143-A of Negotiable Instruments Act, the provision for interim compensation to the complainant has been incorporated where the accused pleaded not guilty to the accusation in the complaint. Vide clause (2) of Section 143-A, maximum 20% of the cheque amount as compensation can be awarded with the discretionary power to direct the interim compensation to the complainant in case where the accused pleaded not guilty to the notice of accusation of the complaint under Section 138 of N.I. Act. Since the offence under Section 138 of N.I. Act is to be tried as summons case and the accused has not pleaded guilty and has claimed trial by examining the complainant evidence as well as leading evidence. Therefore, as per Section

143-A, the accused is hereby directed the deposit 20% of the cheque amount in the question payable to the complainant within 60 days from the date of order...”

9. In **D.L.Sadashiva Reddy vs. V.G. Kona Reddy**, CRLP No. 3904/2021 dated 01.06.2021, passed by the Karnataka High Court, it was observed and held that “according to Section 143A(a), if the accused does not plead guilty, the Court may pass an order directing him to pay interim compensation to the complainant and this amount shall not exceed 20% of the cheque amount. Sub Section(4) of Section 143 makes it very clear that if the accused is acquitted, the Court will direct the complainant to re-pay the amount with interest. Therefore it is very clear from the language of the Section that the accused may be directed to pay interim compensation if he pleads not guilty. In the case on hand, having noticed that the petitioner pleaded not guilty, the Court below directed him to pay interim compensation to the complainant. I do not think that the accused should be heard in detail before passing the order under Section 143A. It need not be a detail order also. There is no infirmity in the impugned order. Petition is dismissed.”

10. Hon'ble The Supreme Court affirming the aforesaid decision, dismissed the SLP No.10151/2021 on 07.01.2022, by observing that, “though the power under Section 143A of the Negotiable Instruments Act is discretionary power, we, having considered the matter on merits, find that the direction to deposit 20% of the amount is perfectly justified. As such, in the facts and circumstances of the case, we do not find any ground to interfere with the order impugned in this petition.”

11. Circling back to facts of the present case, the solitary argument raised on behalf of the petitioner is that the provision of Section 143A NI Act is

directory in nature, which stands negated from the law as explicated in the afore referred judgments. Further still, since the provision itself also envisages that in the event of acquittal of the accused, the Court will direct the complainant to repay the amount with interest, thus, it cannot be said that any prejudice has been caused to the petitioner, to whom, the complainant-respondent had purportedly leased out a piece of land and an orchard for a total sum of Rs.20,00,000/-. Half of the said amount was stated to have been already paid and for the remaining, the cheque in question was issued, that came to be dishonoured upon presentation, with the remarks of “funds insufficient”, leading to filing of the complaint under Section 138 of the Act.

12. As a fall out and consequence of above, this Court finds there to be neither any infirmity nor illegality in the impugned order warranting any intervention and thereby the same stands affirmed. The present petition being sans merit, is accordingly dismissed.

(AMAN CHAUDHARY)
JUDGE

October 11, 2023
M.Kamra

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No