IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-48105-2022
Judgement reserved on: 03.02.2023
Date of Decision: 10.02.2023

Mohd. Sultan & another --Petitioners

Versus

Mohd. Salim --Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Ms. Srishti Shukla, Advocate and
Mr. Kulwinder Singh, Advocate for the petitioners.

Mr. Anil Kumar Garg, Advocate for the respondent.

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RAJESH BHARDWAJ.J

The present petition has been filed under Section 482 Cr.P.C praying for quashing of order dated 8.9.2022, passed by learned JMIC, Malerkotla, whereby petitioner was ordered payment of interim compensation to the tune of 20% of the total amount mentioned in the alleged disputed cheque to respondent/complainant under Section 143-A of Negotiable Instruments Act in complaint case no. NACT/609/2021 titled as "Mohd. Salim Vs. Mohd. Sultan".

As per facts of the case, complainant/respondent filed a complaint under section 138 of Negotiable Instruments Act, wherein it was contended that the accused/petitioners borrowed a sum of Rs.10 lakh from the complainant and in consideration of the said amount he issued a post dated cheque no.318836 dated 6.6.2021 in favour of the complainant drawn on State Bank of India, ADB Branch, Moti Bazar, Malerkotla. It was assured to the complainant by the petitioner that the cheque would be honoured on being presented in the bank, however, when the respondent-complainant presented the same before the Axis Bank Branch Malerkotla for its realisation, the same was dishonored vide Bank Memo dated

20.8.2021 with the remarks “Refer to Drawer/Not Arranged for” as there was no amount. A legal notice was issued by the respondent-complainant to the petitioner for making the payment within a period of 15 days but no action was taken by the petitioner nor any payment was made, hence, the complainant filed a complaint under section 138 of Negotiable Instruments Act for the prosecution of the petitioner. Learned Trial Court after hearing the arguments and finding a prima facie case, issued notice to the petitioner. As per provisions of Section 143-A of Negotiable Instruments Act petitioner was directed to pay 20% of the cheque amount as interim compensation to the complainant within a period of 60 days vide impugned order dated 8.9.2022. Aggrieved by the same petitioner has approached this court praying for quashing of the impugned order.

Learned counsel for the petitioner has vehemently contended that the impugned order is totally against the statutory provisions and the law settled. She submits that the petitioner has not availed the facility of loan from the respondent as has been wrongly mentioned in the complaint. She submits that the petitioner's nephew filed a suit for recovery against the respondent-complainant and various police complaints against the respondent for committing the fraud and cheating and hence the complaint filed by the complainant is a counter blast to the suit for recovery and police complaints filed by the family members of the petitioner. She submits that the Trial Court has fallen in error in interpreting the provision of Section 143-A of the Negotiable Instruments Act. She further submits that the statutory provision under Section 143-A of Negotiable Instruments Act makes it clear that the court while trying an offence under Section 138 of Negotiable Instruments Act “may” order the drawer of the cheque to pay interim compensation to the complainant and thus it is a discretion vested in the Trial court for directing the interim compensation and not a mandatory provision to be granted in every case. It is submitted that the court is to see that nobody plays with the law of land and those who are misusing the process of law by harassing the innocent persons like the petitioner without any reasonable cause must be discouraged. She has relied upon the judicial precedent of this court in a bunch of petitions i.e. ***CRM-M-32880-2022 (Shankar Dayal Sharma Vs. Rahul Choudhary) and other connected petitions decided on 1.9.2022*** by this court.

Counsel further submits that the petitioner has not been given any opportunity before passing the impugned order and thus learned Trial Court has passed the impugned order in a cavalier manner without affording any opportunity to the petitioner. It is submitted that the impugned order in view of the law settled, deserves to be quashed.

Learned counsel for the respondent-complainant has vehemently opposed the submissions made by counsel for petitioner. He submits that there is no illegality in the impugned order passed by the Trial Court. He submits that a reading of the impugned order would make it abundantly clear that the judgement relied upon by counsel for the petitioner are distinguishable on the facts and circumstances of the present case. He submits that the impugned order would show that arguments by both the sides were duly heard and contents of the notice were read over and explained to the petitioner in simple Punjabi language to which he pleaded not guilty and claimed trial. It is submitted that once the petitioner pleaded trial, the Trial Court was within its jurisdiction to grant the interim compensation @ 20% of the cheque amount and the same has been rightly awarded by the Trial Court. Counsel has relied upon the judicial precedent of the Hon'ble Supreme Court in case of ***Noor Mohammed Vs. Khurram Pasha, SLP (Criminal) No.2872 of 2022 decided on 2.8.2022*** and submits that the present petition being devoid of any merits, deserves to be dismissed.

I have heard learned counsel for the parties at length and have gone through the case record carefully.

For the appreciation of the controversy involved the provision of Section 143-A of Negotiable Instruments Act is relevant and the same is reproduced hereunder:-

> ***"143-A. Power to direct interim compensation-***
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> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 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 year, 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. 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:—

(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."

The Hon'ble Supreme Court in ***Surinder Singh Deswal alias Colonel S.S. Deswal and others Vs. Virender Gandhi (2019) 11 SCC 341*** has settled the proposition of law that the provisions of Section 143-A of Negotiable Instruments Act are prospective in nature. So far as Section 148 of Negotiable Instruments Act, the same are retrospective in nature. There is no dispute that the complaint in question has been filed after the amendment which came into effect w.e.f. 1.9.2018. Accordingly, the provisions of Section 143-A of Negotiable Instruments Act are very much applicable in the present case. A perusal of the impugned order would show that the learned Trial Court after filing of complaint issued notice to the accused-petitioner and heard both the sides. The contents of notice were also read over to the accused-petitioner in simple Punjabi language to which he pleaded not guilty and claimed trial. The provisions of Section 143-A of Negotiable Instruments Act provide discretion to the Trial Court for granting interim compensation to the complainant in order to meet the objects and reasons behind the amendment. The Trial Court is to exercise its discretion keeping in view the facts and circumstances of every case. From the reading of the case in hand, the Trial Court found the case appropriate wherein cheque of Rs.10 lakh was issued by the accused-petitioner to the complainant, however, the same was dishonored on its presentation. The Act provides the discretion to the court for granting interim compensation not exceeding 20% of the cheque amount. In the present case, learned Trial Court has not exceeded the upper limit of 20%. In all its humility there is no dispute regarding the judgements relied upon by learned counsel for the petitioners, however, the same are distinguishable on the facts of the present case.

Weighing the facts and circumstances of the case on the anvil of the law settled, this court does not find any merit in the present petition and the same is accordingly dismissed.

(RAJESH BHARDWAJ)
JUDGE

10.02.2023
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No