

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

229

CRM-M-50587-2022

Date of decision: 10.03.2023

DAGDISH SINGH**...Petitioner****VERSUS****AMARDEEP SINGH****...Respondent****CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Ms. Bahaar Ghuman, Advocate
for the petitioner.

DEEPAK MANCHANDA, J.(ORAL)

The present petition has been filed under Section 482 Cr.P.C. for quashing of impugned order dated 24.08.2022 (Annexure P-2) passed by Judicial Magistrate First Class, Patiala in complaint case COMA No.1771 of 2020 dated 21.07.2020 (Annexure P-1) under Section 138 of Negotiable Instruments Act titled as "*Amardeep Singh Vs. Dagdish Singh*" along with all subsequent proceedings arising therefrom and with a further prayer to stay the operation of the impugned order dated 24.08.2022 (Annexure P-2).

Brief facts of the case are that the respondent/complainant and the petitioner/accused were having friendly relations and the petitioner approached the respondent/complainant and made a request for lending an amount of Rs.1,85,000/- for urgent domestic needs with a promise to repay the said amount within 02 months and issued a cheque No.000002 dated 04.06.2020 amounting to Rs.1,85,000/- drawn on Punjab and Sind Bank, Rajbaha Road, Patiala in favour of the respondent. The respondent

presented the said cheque with his bank i.e. Punjab and Sind Bank, Guru Nanak Nagar, Patiala for encashment/clearance but the same was returned with a Return Memo Report dated 18.06.2020 indicating “Funds Insufficient”. The respondent informed the petitioner about the dishonour of the cheque but petitioner refused to give payment of the said cheque. Thereafter, respondent/complainant sent a legal notice dated 25.06.2020 to the petitioner and requested to make the payment within 15 days from receipt of the notice but petitioner still did not pay the cheque amount. Thereafter, respondent has filed the aforesaid complaint against the petitioner under Section 138 of Negotiable Instruments Act read with Section 420 of IPC.

On 24.08.2022, notice under Section 138 NI Act was served upon the petitioner to which he pleaded not guilty and wanted to defend the case of the respondent and desired to cross-examine the complainant’s witness and the Court observed that fair point was involved, therefore, leave to defend was granted to the petitioner. Vide impugned order dated 24.08.2022 (Annexure P-2), the trial Court ordered the petitioner to pay interim compensation under Section 143A Negotiable Instruments Act which was inserted vide Negotiable Instruments (Amendment) Act, 2018 to the tune of 20% of cheque amount of Rs.1,85,000/- on or before 19.09.2022. The petitioner being aggrieved of the order 24.08.2022 passed by the trial Court has filed the present petition.

Learned counsel for the petitioner contends that a reading of Section 143A of NI Act reveals that same is not mandatory and is directory only, considering that Section 143A(1) of the NI Act uses the word ‘may’ in the matter of directing an interim compensation to be paid. It is further

contended, that use of the word “shall”, as occurring in Section 143A(2) of the NI Act is also directory as it merely indicates the limits, within which the interim compensation can be awarded by the Court, 20% of the cheque amount being the outer limit. Learned counsel for the petitioner further contends that the trial Court has misinterpreted and misconstrued the provision of interim compensation provided under the Section 143A of NI Act presuming it to be a mandatory provision and therefore, erred in passing the impugned order dated 24.08.2022 directing the petitioner to pay 20% of cheque amount as interim compensation, which is the highest permissible quantum of such interim compensation in a mechanical manner merely on the grounds that the petitioner-accused has pleaded not guilty and claimed trial. As the petitioner did not plead guilty, cannot be said to be a valid ground for granting interim compensation by the trial Court. Prima facie there is no application of judicial mind by the trial Court as to why the said compensation has been awarded. Section 143A has been completely misread by the Court below that once the accused does not plead guilty, the complainant becomes automatically entitled to 20% of the check amount as interim compensation.

I have heard learned counsel for the petitioner.

Before proceeding further reference may be made to Section 143-A Negotiable Instruments Act and the same is reproduced below:-

*“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 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 (2 of 1974).

(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 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.”

In the instant case, it appears that no application was moved by the respondent under Section 143(A) of Negotiable Instruments 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 under Section 143(A) of Negotiable Instruments Act.

After going through the impugned order, it appears that the Trial Court granted interim compensation under Section 143(A) of Negotiable Instruments Act, in a casual manner, without application of mind, as to how the said compensation was calculated and awarded.

The Trial Court misconstrued the said provision as mandatory in nature, whereas the legal position is just contrary as has been discussed

above.

The co-ordinate Bench of this Court in CRM-M-50569-2022 and CRM-M-49965-2021 have held that provisions in Section 143A are not mandatory in nature rather are directory in nature, given the occurrence therein of the word “may”, and, hence the discretion vested in the trial Magistrate is not to be exercised capriciously and arbitrarily.

In light of the above, the impugned order dated 24.08.2022 (Annexure P-2) whereby interim compensation has been ordered to be paid by the petitioner to the tune of 20% of the cheque amount of ₹ 1,85,000/- under Section 143(A) of Negotiable Instruments Act, is liable to be set aside being non-speaking qua findings with regard to issuance of direction for paying 20% as interim compensation.

Consequently, the present petition is hereby allowed and the impugned order dated 24.08.2022, (Annexure P-2), to the extent stated above, is hereby set aside and the matter is remanded back to 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.

March 10, 2023
Manisha/Nisha-II

(DEEPAK MANCHANDA)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No