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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-52860-2022 (O&M)
Date of Decision: 20.01.2023

GAGAN GANDHI

…Petitioner

Versus

RAJ KUMAR SHARMA

…Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Gurmandeep Singh Sullar, Advocate
for the petitioner.

Kr. Prashant Singh Chauhan, Advocate
for the respondent.

HARSH BUNGER, J.

Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, is for quashing of complaint No.NI-1015-2019 dated 10.05.2019, registered under Sections 138/142 of the Negotiable Instruments Act, 1881 titled as ***Raj Kumar Sharma vs Gagan Gandhi*** (Annexure P-1), pending before the Court of learned Additional Chief Judicial Magistrate, Rewari (Haryana) along with all subsequent proceedings arising therefrom.

After arguing for some time, learned counsel for the petitioner restricts his claim only qua order dated 15.09.2021 passed by learned Additional Chief Judicial Magistrate, Rewari, whereby, the petitioner has been directed to pay interim compensation to the complainant as 20% of the cheque amount in terms of Section 143-A of the Negotiable Instruments Act. Said order dated 15.09.2021 reads as under :-

"Present:- Complainant in person with
Sh. Bhupender Sharma, counsel.
Accused on bail with Sh. Ricky Chopra, counsel.

An application for 143(A) of the NI Act for giving directions to the accused to pay 20% of the cheque amount as interim relief to the complainant filed. As per the provisions of Section 143A NI Act, the application is allowed and the accused is directed to pay 20% of the cheque amount to the complainant as interim compensation on the next date of hearing. An application under Section 145(2) of NI Act has been filed for cross-examination of complainant filed. The same is allowed. Now, to come upon 09.12.2021 for cross-examination for complainant as well as payment of interim compensation 20% by the accused."

Learned 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 143(A) of Negotiable Instruments Act, is totally non-speaking and illegal, being passed in mechanical manner without application of mind. He further contended that recently Delhi High Court in ***CRL. MC 2663 of 2021 M/s Jsb Cargo and Freight Forwarder Pvt. Ltd v. State and another; decided on 20.12.2021***, held that provision of Section 143(A) Negotiable Instruments Act, essentially is directory and cannot be termed as mandatory in nature. Learned counsel further contended that it appears that the trial Court gave the impugned direction, having the impression that the aforesaid provision is mandatory in nature.

In support of his contentions, learned counsel for the petitioner relies upon judgment of this Court in ***Harjeet Singh vs Gagandeep Singh***

(CRM-M-20918 of 2022, decided on ***05.07.2022***), judgment of Madras High Court in ***L.G.R. Enterprises vs P. Anbazhagan*** (***Crl. O.P. No.15438 of 2019***, decided on ***12.07.2019***) as well as judgment of Karnataka High Court in ***Smt. Vijaya vs Shekharappa and others 2022(2) Cri.CC 14***.

On the other hand, learned counsel for the respondent has supported the order dated 15.09.2021 passed by learned Additional Chief Judicial Magistrate, Rewari, by submitting that the trial Court has rightly granted interim compensation under Section 143-A of the Negotiable Instruments Act; however, he does not dispute the fact that aforesaid order dated 15.09.2021 is totally non-speaking order.

I have heard learned counsel for the parties and perused the paper book with their able assistance.

From the perusal of impugned order dated 15.09.2021 passed by learned Additional Chief Judicial Magistrate, Rewari, it appears that the trial Court granted interim compensation under Section 143(A) of the Negotiable Instruments Act just in a routine manner and there is no application of mind as to why the said interim compensation has been awarded. The afore-extracted order passed by the Court below does not bear reason as to why 20% of the amount is awarded as interim compensation. It is not that 20% has to be the interim compensation in every case. Here again the discretion is required to be exercised by the learned Magistrate as the interim compensation can vary from 1% to 20% but shall not exceed 20%. The language of Section 143A being couched with such discretion, the discretion if not exercised in a manner known to law, becomes an arbitrary action.

Accordingly, in view of the afore-mentioned facts and circumstances, order dated 15.09.2021 passed by learned Additional Chief

Judicial Magistrate, Rewari, is set aside qua the decision on application under Section 143-A of the Negotiable Instruments Act with a direction to the trial Court to reconsider the issue regarding payment of interim compensation under Section 143-A of the Negotiable Instruments Act afresh by passing a speaking order in accordance with law.

Disposed of accordingly.

Pending application/s, if any, shall also stand disposed of.

January 20, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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