

100.

CRR 4082 of 2022
IA No.CRAN 1 of 2024

07.10.2024
Bd.

Sri Soumya Das
-vs-
State of West Bengal & Anr.

Mr. Prasanta Kumar Banerjee
Ms. Indrani Nandifor the petitioner.

Re : CRR 4082 of 2022
+CRAN 1 of 2024

Affidavit of service filed by the petitioner is taken on record. In spite of service private opposite party is not represented.

The short question involved in the present case is that whether Section 143A of the Negotiable Instrument Act (in short N.I. Act) is prospective in nature or such amended legislation is presumed to be intended to have a retrospective operation.

The opposite party no. 2 herein lodged a complaint being C.R. case no. 349 of 2017 under Section 138 of the N.I. Act on 24th May, 2017 against the present petitioner. The petitioner as accused filed a written objection before the trial court in the said criminal proceeding. The opposite party/complainant before the court below made a prayer for a direction upon the petitioner herein for depositing 20% of the cheque amount in terms of Section 143A of the N.I. Act. Learned court below by its order dated 17th June, 2019 was

pleased to direct the accused person to make deposit of 20% of the cheque amount within 60 days from the date of the order. The accused petitioner did not deposit the said amount and by an order dated 17.01.2020, the Court below issued distress warrant to recover it as fine amount and subsequently by an order dated 15th July, 2022 the trial court issued warrant of arrest against the petitioner/accused for non-payment of said amount.

The petitioner accused herein contended that the learned court below without applying his mind allowed the prayer made by the complainant for depositing 20% of the cheque amount, without considering that Section 143A of the N.I. Act, does not provide that the said provision has any retrospective effect. Accordingly, the petitioner has prayed for setting aside the order impugned.

I have considered the submission made by the petitioner. In **G.J.Raja vs. Tejraj Surana, AIR 2019 SC 3817** the Supreme Court held that section 143A of N.I. Act to be prospective in operation. The provisions of Section 143A can be applied as invoked only in cases where the offence under section 138 was committed after the introduction of section 143A. Subsequently, in **Surinder Singh Deswal @ Col. S.S. Deswal & Ors. -vs- Virender Gandhi & Anr.** decided on 8th January, 2020 the Supreme court has referred the case of **G.J.Raja** (supra) and had endorsed the same view.

Section 143A of the N.I.Act has been introduced on and from 1st September, 2018. In the present context offence under section 138 of N.I.Act, was allegedly committed in the year 2017.

It is settled law in view of **Commissioner of Income Tax (Central) vs. I New Delhi vs. Vatika Township Private limited (2015) 1 SCC 1** that unless a contrary intention appears, legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. This principle of law is known as *lex prospicit non respicit* i.e., law looks forward and not backward and a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

In such view of the matter, the orders dated 17.6.2019 and 17.1.2020 and 5.7.2022 in respect of which the court below has asked the accused petitioner to deposit 20% of the cheque amount and for non-compliance of which the court below has ordered to issue distress warrant and thereafter warrant of arrest, are hereby set aside.

Court below is directed to dispose of the main criminal proceeding initiated under Section 138 of the N.I. Act

preferably within a period of three months from the date of communication of the order without granting any unnecessary adjournment to either of the parties.

CRR 4082 of 2022 is accordingly disposed of.

In view of disposal of the main application, CRAN 1 of 2024 is also disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Dr. Ajoy Kumar Mukherjee, J.)