

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-5315-2024 (O&M)
Date of Decision: 1.2.2024

Sunil Rana

....Petitioner

VERSUS

State of Haryana and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present : Mr. Parveen Kumar, Advocate for
Mr. Abhimanyu Singh, Advocate,
for the petitioner.

KARAMJIT SINGH, J.

Present petition has been filed by the petitioner/accused against the order dated 12.1.2024 (Annexure P-12) passed by the Court of Sub Divisional Judicial Magistrate, Bawal, District Rewari whereby the petitioner has been directed to make payment of 20% of the cheque amount to the complainant/respondent No.2 in a criminal complaint titled Madhumati v. Sunil Rana filed by respondent No.2 under Section 138 of Negotiable Instruments Act.

2. Brief facts of the case are that respondent No.2 has filed aforesaid criminal complaint against the present petitioner under Section 138 of Negotiable Instruments Act with regard to dishonor of the cheque. On completion of preliminary evidence, the petitioner was summoned and he appeared before the trial Court and was served notice of accusation, to which, he pleaded not guilty and claimed trial and then the trial Court fixed the case for recording of evidence of the complainant as well as for consideration on application filed by the complainant under Section 143A

of the Negotiable Instruments Act.

3. The said application was disposed of by the learned trial Court vide impugned order dated 12.1.2024 (Annexure P-12) which is reproduced hereinbelow : -

“Case was fixed for complainant evidence as well as for payment of 20% of the cheque amount. One CW is present for her cross examination. Proxy counsel for accused requested for adjournment for cross examination of above said witness because main accused is out of station. Counsel for the complainant has strongly opposed the submission and stated that the present witness is already deferred who is appearing before the court on each and every date. Therefore, if adjournment is granted for cross examination cost be imposed. On request cross examination of CW1 is deferred subject to payment of Rs.2000/- to be paid to deferred witness CW1 on the next date of hearing. Present witness is discharged today and bound down for 13.02.2024. Now, case is adjourned to 13.02.2024 for cross examination of CW1 as well as for remaining complainant evidence and for payment of 20% of the cheque amount.

4. Counsel for the petitioner, while assailing the impugned order whereby the petitioner has been directed to pay 20% of the cheque amount as interim compensation to the complainant-respondent No.2, *inter alia* contends that the impugned order was passed by the learned trial Court in a mechanical manner without giving any opportunity of hearing to the petitioner. He further submits that the provision of Section 143A of the Negotiable Instruments Act is directory in nature; that, however, learned trial Court gave aforesaid directions under the impression that the said provision of law is mandatory in nature. Counsel for the petitioner further

submits that the impugned order being illegal, deserves to be set aside.

5. I have considered the submissions made by the counsel for the petitioner.

6. After going through the impugned order Annexure P-12, it appears that the same was passed by the trial Court without granting any opportunity of hearing to the petitioner. From the perusal of order dated 16.12.2023 (Annexure P-11), it is apparent that the criminal complaint was adjourned on that date by the trial Court to 12.1.2024 for evidence of the complainant and to hear arguments on the application filed by the complainant seeking payment of 20% of the cheque amount. On the very next date i.e. 12.1.2024, the impugned order as has been reproduced above, was passed by the learned trial Court. From the perusal of the same, it is clear that the impugned order whereby the petitioner was given directions to pay 20% of the cheque amount is a non speaking order passed without application of mind and it is not clear as to how said interim compensation was calculated and awarded. It appears that the trial Court misread the said provision of Section 143A of the Negotiable Instruments Act as mandatory in nature, whereas the legal position is otherwise.

7. Hon'ble Delhi High Court in Crl. MC 2663 of 2021; **M/s Jsb Cargo and Freight Forwarder Private Limited v. State and another**, decided on 20.12.2021 held that provision of Section 143A of Negotiable Instruments Act essentially is directory and cannot be termed as mandatory in nature. Even Nagpur Bench of Bombay High Court also held in **Ashwin Ashokrao Karokar v. Mr.Laxmi Kant Govind Joshi** decided on 7.7.2022 that Section 143A of Negotiable Instruments Act is discretionary and not mandatory.

8. Even Coordinate Bench of this Court in **Dharampal and another v. Om Parkash** 2022 (2) RCR (Criminal) 621 set aside the order passed by the learned trial Court under Section 143A of the Act while observing that the discretion vested in the trial Magistrate is not to be exercised capriciously and arbitrarily. The exercise of discretion by the learned trial Magistrate has to be done in a thoughtful and sagacious manner.

9. For the foregoing reasons, the impugned order whereby interim compensation has been ordered to be paid by the petitioner under Section 143A of the Negotiable Instruments Act to respondent No.2 is liable to be set aside being non-speaking and contrary to the settled position of law as discussed above. Consequently, the present petition is hereby allowed and the impugned order dated 12.1.2024 (Annexure P-12) to the extent stated above is hereby set aside and the matter is remanded back to the trial Court to dispose of issue regarding grant of interim compensation to the complainant under Section 143A of the Act in accordance with law within one month of the receipt of certified copy of this order.

10. The petitioner is directed to appear before the trial Court on the date already fixed in the trial.

11. Present petition is disposed of without issuing any notice to respondent No.2 keeping in view the nature of the order. In case respondent No.2 is not satisfied with the present order, he is at liberty to approach this Court for redressal of his grievance.

(KARAMJIT SINGH)
JUDGE

February 1, 2024
Paritosh Kumar