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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-22458-2019
Date of decision : 29.04.2024

Shiv Parkash Petitioner

versus

Vijay Parkash and another Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Tejas Bansal, Advocate
for the petitioner.

None for the respondents.

PANKAJ JAIN, J. (Oral)

1. As per the office report, respondent No.2 remains unserved having not been found at home. It is stated that his wife refused the summons.
2. Counsel for the petitioner submits that the trial Court ought not have invoked Section 143A of the Negotiable Instruments Act as the provision was not even on the statute on the date the complaint was filed. The complaint was filed on 31.08.2018 and the amending Act came into being w.e.f. 01.09.2018. The issue is no more *res integra* and has been answered by Supreme Court in the case of *G.J. Raja vs. Tejraj Surana* holding as under:-

“xx xx xx

20. It must be stated that prior to the insertion of Section 143A in the Act there was no provision on the statute book whereunder even before the pronouncement of the guilt of an accused, or even

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before his conviction for the offence in question, he could be made to pay or deposit interim compensation. The imposition and consequential recovery of fine or compensation either through the modality of Section 421 of the Code or Section 357 of the code could also arise only after the person was found guilty of an offence. That was the status of law which was sought to be changed by the introduction of Section 143A in the Act. It now imposes a liability that even before the pronouncement of his guilt or order of conviction, the accused may, with the aid of State machinery for recovery of the money as arrears of land revenue, be forced to pay interim compensation. The person would, therefore, be subjected to a new disability or obligation. The situation is thus completely different from the one which arose for consideration in *Employees' State Insurance Corporation* case.

21. Though arising in somewhat different context, proviso to Section 142(b) which was inserted in the Act by Amendment Act 55 of 2002, under which cognizance could now be taken even in respect of a complaint filed beyond the period prescribed under Section 142(b) of the Act, was held to be prospective by this Court in *Anil Kumar Goel v. Kishan Chand Kaura*, (2007) 13 SCC 492. It was observed:-

“10. There is nothing in the amendment made to Section 142(b) by Act 55 of 2002 that the same was intended to operate retrospectively. In fact that was not even the stand of the respondent. Obviously, when the complaint was filed on 28-11- 1998, the respondent could not have foreseen that in future any amendment providing for extending the period of limitation on sufficient cause being shown would be enacted.”

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22. In our view, the applicability of Section 142A of the Act must, therefore, be held to be prospective in nature and confined to cases where offences were committed after the introduction of Section 143A, in order to force an accused to pay such interim compensation.”

3. Complaint has been placed on record as Annexure P-2. Cheque is dated 19.06.2018. The same was dishonoured vide memo dated 26.06.2018. Complainant served notice on the petitioner on 23.07.2018. Complaint was filed on 31.08.2018. Section 143A of the Code was born on statute on 01.09.2018. The same having been held prospective in operation, trial Court erred in invoking Section 143A of the Code in the present case. Thus, the impugned order deserves to be set aside.

4. Since the matter involves pure question of law which already stands settled by Apex Court, present petition has been decided on merits despite the fact that respondents have opted not to appear. However, in case the respondents feel aggrieved of this Court, they shall be at liberty to move an appropriate application seeking revival of the present petition.

5. Petition stands allowed accordingly. It is ordered that impugned order dated 23.04.2019 (Annexure P-1) is hereby set aside.

(PANKAJ JAIN)
JUDGE

29.04.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No