IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on 12th of December, 2023
Pronounced on 8th February, 2024

CRM-M No.39235 of 2023 (O&M)

Gajjan Singh ....Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vijay Rana, Advocate
for the petitioner.

Mr. Kunal Vinayak, Asstt. Advocate General, Punjab.

Mr. Bhupinder Singh, Advocate
for respondent No.2.

PANKAJ JAIN, J.

This petition filed under Section 482 Cr.P.C. is directed against the order dated 21st of March, 2023 passed by JMIC, Fatehgarh Sahib in Complaint Case bearing NACT No.326 dated 1st of August, 2022 titled as 'Gajjan Singh vs. Darshan Kaur'.

2. Petitioner is a complainant in proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'). After the accused was summoned to face trial petitioner filed application seeking directions to the accused to deposit 20% of the cheque amount. The same was contested by the accused/respondent.

Trial Court vide impugned order dismissed the application holding that provision as contained in Section 143-A of N.I. Act is directory and not mandatory. The complainant is yet to prove his case by leading cogent evidence and accused is yet to plead evidence in defence and thus it would not be appropriate to grant compensation under Section 143-A of the N.I. Act at this stage.

3. While assailing the impugned order Ld. Counsel submits that the Trial Court has completely misdirected itself in dismissing the application preferred by the petitioner. He thus submits that Section 143-A was incorporated by way of amendment with an aim to strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy and the Court has been provided with the power to order the drawer of the cheque to pay interim compensation to the complainant in summary trial or summon cases where he pleads not guilty to the accusation made in the complaint. At this stage, Trial Court failed to appreciate that there was a presumption that the cheque has been issued in discharge of legally enforceable debt and liability. The legislature has taken due care and caution in enacting the provision as in case the accused is able to make out a case for his acquittal, complainant is bound to return the interim compensation granted under Section 143-A

(1) along with interest.

4. Per contra, counsel for the accused has argued that the Trial Court has passed a well reasoned order and has rightly held that till the accused is not able to prove his case by leading cogent evidence there was no question of granting compensation.

5. Having heard rival contentions and after perusing the record, this Court finds that the Trial Court has completely misread the provision. Section 143-A of the N.I. Act reads as under :

> [**143A. Power to direct interim compensation.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 per cent. of the amount of the cheque.
>
> (3) The interim compensation shall be paid within sixty days from the date of the order under subsection (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.]

6. The provision itself provides that the same deals with interim compensation. The requisite for considering an application filed by the complainant seeking interim compensation in summary trial or summon cases is that the accused should have pleaded not guilty to the accusation made in the complaint. Interim compensation can't exceed 20% of the cheque amount. Section 143-A(4) provides sufficient cushion and protection to the rights of the accused. The objective behind the provision has been spelled out in the statement of objects and reasons preceding the Amending Act :

> "Statement of Objects And Reasons
>
> The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government as been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. <u>This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to</u>

easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured, cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions".

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:-

(i) to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent, of the amount of the cheque; and

(ii) to insert a new section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent, of the fine or compensation awarded by the trial court. 4. The Bill seeks to achieve the above objectives. "

(emphasis supplied)

7. Dishonour of negotiable instruments has been provisioned as an offence under Negotiable Instruments Act, 1881 in order to provide sanctity to the Negotiable Instruments. Basic object is that monetary transactions by way of Negotiable Instruments add to the velocity of money and aid economy. Since its enactment, the Legislature as well as the Judiciary have been struggling with an aim to provide speedy disposal of the complaints filed under Section 138 of the N.I. Act so that the legislation its achieves objective and does not end up counter productive to the system. It is in these circumstances as can be gathered from the perusal of statement of objects and reasons that provision under Section 143-A has been enacted. Trial Court has totally misread the provision and the scheme of the Act. The reason assigned by the Trial Court is rather *sine qua non* for invoking Section 143-A of the N.I. Act.

8. While deciding the plea of complainant seeking interim compensation under Section 143-A of the N.I. Act, the Courts are required to see whether :

(a) the accused has pleaded not guilty on having been served with notice of accusation;

(b) the accused has made out a circumstance warranting refusal of directions to grant compensation; as an illustration circumstance can be a material concealment by the complainant which has a bearing on the outcome of trial or a probable defence raised by accused in reply to statutory notice served before filing of complaint. These circumstances are merely for illustrative purpose and are not exhaustive.

(c) In case, the Court comes to the conclusion that there is no exceptional circumstance being pleaded by the accused that warrants dismissal of application seeking interim compensation, the next question is what should be the interim compensation. 20% of the cheque amount is ceiling. It could be less than 20% as well.

9. In view of discussion held hereinabove, this Court finds that the impugned order passed by the Trial Court cannot be sustained and is hereby ordered to be set aside. The petition is allowed.

10. Trial Court is directed to reconsider the application filed by the petitioner seeking interim compensation within a period of 2 weeks from the date of receipt of certified copy of this order.

11. This Court is quite sanguine that the Trial Court before passing order shall consider the observations made hereinabove.

12. Pending application, if any, shall also stands disposed off.

February 08, 2024 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes

Whether reportable : Yes