2025:PHHC:065560

129 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-10336-2025
DECIDED ON:30.04.2025

RAVINDER SINGH

....PETITIONER

VERSUS

RAJ BEHAL @ RAJ

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. J.S. Grewal, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

The present petition under Section 528 of BNSS, 2023 is directed against an order dated 06.11.2024 (hereinafter referred to as 'the impugned order') arising from criminal complaint No. NACT-191 of 2023, titled as 'Ravinder Singh Vs. Raj Behal @ Raj' under Section 138 of ‘The Negotiable Instruments Act, 1881’ (hereinafter referred to as ‘NI Act’) whereby learned Judicial Magistrate Ist Class, Fatehgarh Sahib dismissed an application under Section 143-A NI Act filed by the petitioner seeking interim compensation to the extent of 20% of the cheque amount.

BRIEF FACTS:

2. The petitioner instituted a complaint case under Section 138 NI Act against the respondent on averments that respondent-accused and her husband are in visiting terms with the petitioner. In the month of August, 2022, the respondent-accused borrowed a sum of Rs.9,50,000/- for her business purpose and domestic needs. The respondent and her husband assured that they would return loan amount within 7 months. Thereafter, again the respondent asked

the petitioner to pay an amount of Rs.6,50,000/- for their business needs.

3. The respondent issued post dated cheque of her account vide Cheque No. 003944 dated 31.03.2023 in the sum of Rs. 16,00,000/- in the name of the petitioner drawn on 'State Bank of India, Branch Guru Ki Nagri, Mandi Gobindgarh' towards repayment of loan amount. On presentation, the banker of the respondent returned the said cheque unpaid with endorsement 'Funds Insufficient' vide bank memo dated 05.04.2023.

4. The petitioner sent a demand notice dated 10.04.2023 to the respondent. The respondent was served with demand notice. However, the respondent failed to make payment of cheque amount. Hence, the petitioner filed complaint case under Section 138 NI Act.

THE APPLICATION UNDER SECTION 143A NI ACT:

5. The petitioner-complainant sought interim compensation to the extent of 20% of the cheque amount on grounds as under:

(a) The respondent has entered appearance and pleaded not guilty;
(b) Provision under Section 143A NI Act empowered the trial Court to order interim compensation to the extent of 20% of the cheque amount; and
(c) The defence of the respondent cannot be considered at the stage of grant of interim compensation.

REPLY FILED BY THE RESPONDENT:

6. In reply, the respondent contested the said application stating that she respondent had not issued the said cheque in discharge of any liability and has never borrowed any alleged amount from the complainant. Further asserted that the blank cheque of the respondent-accused was in possession of one Kulwinder Singh Head Granthi of Gurdwara Shri Pathsahi Shevi, as security cheque in lieu of committees and the said cheque is being misused by him through complainant.

THE IMPUGNED ORDER:

7. The trial Court, vide the impugned order, dismissed the application under Section 143-A NI Act. The relevant part of the impugned order is as under:

> "*The complainant has alleged that the accused had borrowed a sum of Rs. 9,50,000/- for business and domestic purpose on dated 02.08.2022 with the undertaking of returning the same within period of 7 months and when on dated 01.03.2023, the complainant demanded back the said amount, then the accused again requested the complainant to pay her Rs. 6,50,000/- more for their business needs and further promised to issue post dated cheque for total amount of Rs. 16,00,000/- and then the complainant paid more Rs. 6,50,000/- on 01.03.2023 and on the same date, the accused issued cheque in question to the complainant which on presentation had returned back with the memo "Funds insufficient". However the accused in his reply to the application under Section 143-A of NI Act had denied of receiving any such amount from the complainant and the fact of issuance of any such cheque to the complainant. He has come up with the plea that a blank cheque of the accused was in possession of one Kulwinder Singh who had taken the said cheque as a security in lieu of committees and the said cheque is being misused by him through complainant. The complainant in order to make the payment of Rs. 16 lacs has not placed on record any such document. He has not even placed on record his bank statement regarding withdrawl Rs. 9.5 lacs from his Bank account on different dates as pleaded in the complaint. The complainant was required to convince the Court regarding the existence of prima facie case in order to claim the compensation under Section 143-A of the NI Act which he has not able to do so. Hence, I am of the considered opinion, no prima facie case is made out in favour of the complainant for grant of compensation under Section 143-A of NI Act. In this view of the matter and without commenting anything upon the merits of the case, the application in hand stands dismissed.*"

GROUNDS OF THE PETITION

8. Feeling aggrieved by the impugned order, the petitioner preferred the petition on the following grounds:

(a) The trial Court denied interim compensation to the petitioner on vague and evasive defence;

(b) The impugned order is against object of provision of Section 143-A NI Act;

(c) The petitioner fulfilled twin requirements for grant of interim compensation under Section 143-A NI Act;

(d) The respondent did not deny that the said cheque is bearing her signature;

(e) The trial Court cannot consider defence of the respondent at the stage of consideration of application under Section 143A NI Act; and

(g) The impugned order suffers from non-application of judicial mind.

APPEARANCE:

9. I have heard arguments of Mr. J.S. Grewal, Advocate for the petitioner and examined trial Court record.

CONTENTIONS OF LD. COUNSEL FOR THE PETITIONER:

10. Learned Counsel for the petitioner has contended that the trial Court did not exercise discretion judiciously. He has further contended that the trial Court has not given any cogent reason to refuse interim compensation to the petitioner. Moreover, the defences raised by the respondent cannot be considered at the stage of consideration of application under Section 143-A NI Act. He contended that twin requirements for application of Section 143-A NI Act that the case must be a summon or summary trial and the accused should have pleaded not guilty were fulfilled and the complainant was entitled to interim compensation under Section 143-A NI Act.

11. Learned Counsel for the petitioner contended that there is presumption under Sections 118 and 139 NI Act that the said cheque was drawn towards discharge of a legally enforceable debt or liability. He contended that the petitioner is entitled to interim compensation.

WHETHER THE POWER CONFERRED ON THE TRIAL COURT UNDER SECTION 143A NI ACT IS DIRECTORY OR MANDATORY?

12. The power under Section 143-A NI Act is directory and not mandatory. Hon'ble High Court of Delhi in JSB Cargo & Freight Forwarder

Pvt. Ltd. & Ors. vs. State & Anr., Crl. M.C. 2663/2021 decided on 26.11.2021 held as under:

> *"51.....it becomes apparent that the provision of Section 143-A of the NI Act, 1881 has essentially to be held to be 'directory' and cannot be termed to be 'mandatory' to the effect that the Trial Court has mandatorily to award the interim compensation under Section 143-A of the NI Act, 1881 in all proceedings tried under Section 138 of the NI Act, 1881 on the mere invocation thereof by a complainant and thereby order in terms of Section 143(2) thereof, the interim compensation to the tune of 20% of the amount of the cheque invoked."*

13. Therefore, provision of Section 143-A of NI Act is directory in nature. It does not mandate the trial Court to award interim compensation under Section 143-A of NI Act in every case.

14. In ***JSB Cargo & Freight Forwarder Pvt. Ltd. & Ors. vs. State & Anr.*** (supra), the High Court of Delhi held as under:

> *"53. Furthermore, the observations of the learned Trial Court to the effect that even if it be assumed that the provisions of Section 143A of the NI Act, 1881 is discretionary in nature, the Court is still clothed with the powers to grant interim compensation to the complainant after providing sufficient reasons, it is essential to observe that the award of interim compensation in terms of Section 143A of the NI Act, 1881 has to be after providing sufficient reasons and whilst taking the same into account, the determination of interim compensation directed to be paid by the petitioners herein to the extent of the maximum of 20% of the cheque amount to the complainants without even considering the submissions that have been sought to be raised by the petitioners in relation to bank statements of the complainant and without resorting to the provisions of Section 294 of the Cr.P.C., 1973 cannot be held to be within the contours of Section 143A of the NI Act, 1881 to be with sufficient reasons. Furthermore, there are no inherent powers conferred on a criminal court of a Magistrate dehors enabling provisions of a statute."*

WHETHER THE TRIAL COURT HAS EXERCISED DISCRETION JUDICIOUSLY?

15. On examination of the impugned order, it is apparent that the trial

Court dismissed the said application on the grounds that (1) in order to make the payment of Rs.16,00,000/- the complainant has not placed on record any such document substantiating his claim, (2) the complainant has also not placed on record bank statement showing withdrawal of Rs.9,50,000/- from his bank account on different dates as pleaded in the complaint,

16. This Court does not find any merit in contention of Ld. Counsel for the petitioner that the trial Court did not exercise jurisdiction judiciously. This Court does not find any merit in contention of Ld. Counsel for the petitioner that the trial Court did not furnish cogent reasons for dismissing the application under Section 143-A NI Act.

17. The petitioner paid the said loan amount by way of cash. There was no written agreement between the petitioner and the respondent regarding the said loan transaction. Therefore, it cannot be said that trial Court did not apply its judicial mind to facts and circumstances of the case. There is no arbitrariness or perversity or irrationality in the discretion exercised by the trial Court.

CONCLUSION:

18. The impugned order does not suffer from any legal infirmity or material illegality or jurisdictional error which would occasion injustice, if it is not set-aside. Accordingly, the present petition filed by the petitioner is dismissed.

(SANDEEP MOUDGIL)
JUDGE

30.04.2025
Sham

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