



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CRM-M No.49840 of 2021 (O&M)

Date of decision: 18.02.2025

Bharpoor Singh

....Petitioner

Versus

Jagraj Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kanish Jindal, Advocate
for Mr. Arihant Jain, Advocate
for the petitioner.

Mr. J.S. Mundi, Advocate for the respondent.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed against the order dated 14.09.2021 passed by learned Additional Sessions Judge, Sangrur vide which the petitioner has been directed to deposit 20% of the double cheque amount under Section 143-A of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act'), in the case stemming from compliant No.19 dated 04.03.2013 filed under Section 138 of the NI Act.

2. Briefly, the facts, as alleged, are that the petitioner gave a cheque bearing No.917294 dated 27.12.2012 for an amount of Rs. 15,00,000/- in order to repay the debt owed by him to the respondent. However, the same was dishonoured on presentation for encashment vide memo dated 21.01.2013, with the remarks 'funds insufficient.' Consequently, the petitioner was convicted by the learned Judicial

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Magistrate Ist Class, Malerkotla, vide judgment dated 02.02.2018. The petitioner was sentenced to undergo rigorous imprisonment of two years and further directed to pay compensation under Section 357 Cr.P.C. to the tune of double of the cheque amount. Aggrieved by the same, the petitioner preferred an appeal before the learned Lower Appellate Court. The respondent moved an application under Section 143-A of the NI Act, seeking 20% of the compensation amount awarded to him. The same was allowed vide impugned order dated 14.09.2021.

3. Learned counsel for the petitioner, *inter alia*, contends that the learned Court below has fallen into grave error by allowing the application of the respondent in view of the amendment made to the NI Act. The said amendment was effected by the Ministry of Law and Justice vide Notification dated 02.08.2018, while the complaint (*supra*) was filed on 04.03.2013. As such, the amended provision of Section 143-A of NI Act cannot be made retrospectively applicable to the present matter.

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that the petitioner has been asked to deposit 20% of double amount of the disputed cheque. Pertinently, the disputed cheque was for Rs.15,00,000/-. The amendment carried out with respect to Section 143-A of the NI Act does not creates an obligation that is substantial in nature and affects the substantive rights of the petitioner. The Hon'ble Supreme Court in ***Anil Kumar Goel vs. Krishan Chand Kaura 2008(8)***



R.C.R. (Criminal) 290, has categorically held that any provision, which is substantive in nature would not be applicable to the trial of pending cases.

5. Admittedly, the complaint (supra) was instituted on 04.03.2013 while the amendment was introduced on 02.08.2018. Further, the Notification of the amendment also does not specify any other date for it to come into operation, nor has it been expressly provided that it would be applicable to all the pending cases. It is trite law that unless it is expressly provided, applicability of the amended provision would only be from the date of the Notification i.e. 02.08.2018 and as such, in view of the legislative mandate, retrospective application of these provisions is not permissible. Further, a two judge bench of the Hon'ble Supreme Court has clarified the same in **G.J. Raja vs. Tejraj Surana 2020) 3 SCC (Cri) 725**, where, speaking through Justice Uday Umesh Lalit, the following was held:

*“22. In our view, **the applicability of Section 143A 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.***

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*24. In the ultimate analysis, **we hold Section 143A to be prospective in operation and that the provisions of said Section 143A can be applied or invoked only in cases where the offence under Section 138 of the Act was committed after the introduction of said Section 143A in***

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***the statute book.** Consequently, the orders passed by the Trial Court as well as the High Court are required to be set aside. The money deposited by the Appellant, pursuant to the interim direction passed by this Court, shall be returned to the Appellant along with interest accrued thereon within two weeks from the date of this order.”*

6. In view of the discussion made hereinabove, the present petition is allowed and the impugned order dated 14.09.2021, passed by learned Additional Sessions Court, Sangrur, is set-aside qua the petitioner.

7. Pending miscellaneous applications, if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

18.02.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No