



In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-42946 of 2023 (O&M)

Reserved On: 18.05.2026

Pronounced On: 21.05.2026

Devender Khurana

... Petitioner(s)

Versus

Kuldeep Kumar Jain

... Respondent(s)

CORAM: Hon'ble Mr. Justice Surya Partap Singh.

Present: Mr. Neeraj Gupta, Advocate
for Mr. Gaurav Gupta, Advocate
for the petitioner(s).

Mr. Mohit Kakkar, Advocate
for the respondent(s).

Surya Partap Singh, J.

1. The instant petition under Section 482 of 'the Code of Criminal Procedure, 1973', hereinafter being referred to as "Cr.P.C." only, has been filed for quashing of judgment dated 07.08.2023 passed by the court of learned Additional Sessions Judge, Gurugram, in a criminal revision petition preferred by the petitioner. By virtue of above-mentioned judgment a revision petition, filed by the petitioner has been dismissed.

2. In addition to above, the order dated 04.07.2023, hereinafter being referred to as 'the impugned order' only, passed by the court of learned Judicial Magistrate 1st Class, Gurugram, hereinafter being referred to as 'the trial Court' only, has also been challenged. The petitioner, while seeking the setting aside of both the above-mentioned orders, has sought for

dismissal of application under Section 143A of the Negotiable Instruments

Act, 1881, hereinafter being referred to as 'the NI Act' only.

3. In nut-shell, the facts emerging from the record are that, for the commission of offence punishable under Section 138 of the NI Act, a complaint has been filed by the respondent/complainant, hereinafter being referred to as 'the respondent' only, against the petitioner/accused, hereinafter being referred to as 'the petitioner' only. The above-mentioned complaint has been filed on the premise that in discharge of his legally enforceable debt, the cheque was issued in favour of the respondent, and that the above-mentioned cheque, when presented before the Banker of the petitioner, was dishonoured. It has also been alleged by the respondent that on receipt of information with regard to dishonour of cheque, a notice was served upon the petitioner, calling him upon to make the payment of requisite amount, but the petitioner failed to do so and therefore, the complaint under Section 138 of the NI Act has been filed.

4. In the above-mentioned complaint, the petitioner also filed an application under Section 143A of the NI Act. By virtue of above-mentioned application, the respondent sought for a direction to the petitioner to pay 20% of the cheque amount. The above-mentioned application filed by the respondent has been allowed by the learned trial Court by virtue of order dated 04.07.2023 (i.e. by virtue of impugned order). Vide impugned order, the petitioner has been directed to pay 20% of the cheque amount.

5. Aggrieved of the above-mentioned impugned order the Revision Petition No. 108 dated 01.08.2023 was preferred by the petitioner in the court of Sessions. The above-mentioned revision petition was dealt with by the learned Additional Sessions Judge, Gurugram. However, by

virtue of order dated 07.08.2023, while upholding the impugned order passed by the learned trial Court, the revision petition was dismissed. Hence, the present petition.

6. Heard.

7. It has been contended by learned counsel for the petitioner that the impugned order passed by the learned trial Court, as well as by the learned revisional court, are perverse and contrary to the principles of law. According to learned counsel for the petitioner, while passing the impugned order, the learned trial Court the learned revisional court failed to appreciate the fact that under Section 143A of the NI Act, the highest limit for payment is 20% of the cheque amount, and that it is not mandatory for the trial Court to issue direction in each and every case, unless the prevailing circumstances force to do so.

8. The learned counsel for the petitioner has also contended that otherwise also as per stipulated principles of law even if the learned trial Court deems it appropriate to issue a direction for deposit of money, only a reasonable amount, below 20% of the cheque amount should be ordered, but in the present case by virtue of impugned order the maximum possible amount, which could have been ordered under Section 143A of the NI Act, has been ordered.

9. In addition to above, the learned counsel for the petitioner has also contended that the dispute between the petitioner and the respondent is primarily a dispute of civil nature and with regard to recovery of cheque amount, the civil suit is already pending and thus, the direction for payment of 20% of the cheque amount is unwarranted in the present case. As per

learned counsel for the petitioner despite the knowledge of above-mentioned fact the learned trial Court has issued the above-mentioned direction which has been erroneously upheld by the learned revisional court.

10. While assailing the impugned order on the ground that it is not sustainable as per parameters prescribed under the law, the learned counsel for the petitioner has sought indulgence and interference of extraordinary jurisdiction vested in this Court by virtue of Section 482 Cr.P.C. It has been prayed that by accepting the present petition the impugned order passed by the learned trial Court, upheld by the learned revisional court, be quashed.

11. In support of his arguments, the learned counsel for the petitioner has referred to the principles of law laid down by the Hon'ble Supreme Court of India in the case of 'Rakesh Ranjan Shrivastava v. The State of Jharkhand and Another' (2024) 4 Supreme Court Cases 419 and by the Division Bench of this Court in the case of 'Rishipal v. Kulwinder Singh' [Criminal Misc. No. M-14140 of 2023, decided on 10.09.2024].

12. The above-mentioned arguments have been controverted by the learned counsel for the respondent. The learned counsel for the respondent has contended that the factual matrix of the present case is different from the facts which are pleaded normally in the complaints under Section 138 of the NI Act. As argued by learned counsel for the respondent, the present litigation is the second round of litigation between the petitioner and the respondent under Section 138 of the NI Act. According to learned counsel for the respondent in fact with regard to due payments of respondent towards the petitioner, cheques were issued by the petitioner in favour of respondent and when the above-mentioned cheques were dishonoured the

respondent filed the complaint under Section 138 of the NI Act. As per learned counsel for the respondent, during the pendency of above-mentioned complaint, a memorandum of understanding was reduced into writing between the parties and in view of above-mentioned memorandum of understanding the complaints filed by the respondent against the petitioner were withdrawn as the petitioner had issued fresh cheques in favour of respondent. According to learned counsel for the respondent, those cheques, too, were dishonoured by the banker of the petitioner which had led to the present complaint, wherein the application under Section 143A of the NI Act was filed by the respondent, which has been allowed by virtue of impugned order.

13. The learned counsel for the respondent has further contended that in view of malafide intentions, which writ large in view of the conduct of the petitioner, a right direction has been issued by the learned trial Court under Section 143A of the NI Act, and that the discretion has been rightly exercised by the learned trial Court and there is no scope for indulgence and interference in the findings recorded by the learned trial Court by virtue of impugned order.

14. The record has been perused carefully.

15. A perusal of the record shows that in the present case following are the points qua which, virtually, there is no dispute:-

- i) that the complaint under Section 138 of the NI Act has been filed by the respondent against the petitioner, because the cheque issued by the petitioner in favour of the respondent, has been dishonoured;

- ii) that in the above-mentioned complaint, an application under Section 143A of the NI Act was filed by the respondent;
- iii) that the above-mentioned application has been allowed by the learned trial Court by virtue of impugned order, and a direction has been issued to the petitioner to deposit 20% of the cheque amount;
- iv) that earlier also the complaints were filed by the respondent against the petitioner for dishonour of cheque;
- v) that in those complaints, the petitioner & respondent arrived at a compromise and a memorandum of understanding/complaint was reduced into writing;
- vi) that the former complaints were withdrawn by the complainant, in view of the fact that as per memorandum of understanding/compromise fresh cheques were issued by the petitioner with an assurance that the same would be encashed;
- vii) that the above-mentioned cheques were dishonoured by the banker of the petitioner; and
- viii) that the civil litigation with regard to recovery of money between the parties is already in progress.

16. Taking into consideration the above-mentioned admitted position, now it has to be determined -

- I) whether the learned trial Court was competent to issue a direction under Section 143A of the NI Act; And

II) whether the discretion has been rightly exercised by the learned trial Court.

Point No. I

17. As far as this point of determination is concerned, Section 143A of the NI Act provides that-

“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.

(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, shall be reduced by the amount paid or recovered as interim compensation under this section.”

18. The above-mentioned bare provision enshrined under the NI Act has been upheld by the Hon’ble Supreme Court of India in the case of ‘Rakesh Ranjan Shrivastava’ (supra). The dictum of above-mentioned judgment, is that a jurisdiction is vested in the learned trial Court, under Section 143A of the NI Act, to order the payment of interim compensation. Although in the case of ‘Rakesh Ranjan Shrivastava’ (supra), the Hon’ble Supreme Court of India observed that the word “may” used in Section 143A of the NI Act cannot be construed or interpreted as ‘shall’, yet, the discretion lies with the learned trial Court to issue a direction for payment of interim compensation.

19. Similar view has been taken by the Division Bench of this Court in the case of ‘Rishipal’ (supra). In view of principles of law discussed above, and the bare provision enshrined under Section 143A of

the NI Act, it is hereby observed that it is well within the jurisdiction of a trial Court to issue a direction for payment of interim compensation during the pendency of a complaint under Section 138 of the NI Act. Thus, the point of determination No. (I) is hereby answered, accordingly.

Point No. (II)

20. As far as this point of determination is concerned, the Hon'ble Supreme Court of India in the case of 'Rakesh Ranjan Shrivastava' (supra) has observed that the jurisdiction vested in the learned trial Court under Section 143A of the NI Act is discretionary, which means that it is not mandatory for the learned trial Court to issue such direction in each and every case. However, the guidelines have been prescribed by the Hon'ble Supreme Court of India which prescribes that the following factors should be taken into consideration while exercising the jurisdiction for issuing direction to pay interim compensation:-

- “i) court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application under sub-section (1) of Section 143A;
- ii) the presumption under Section 139 of the N.I. Act, by itself, is no ground to direct the payment of interim compensation. The reason is that the presumption is rebuttable. The question of applying the presumption will arise at the trial;
- iii) only if the complainant makes out a prima facie case, a direction can be issued to pay interim compensation;

- iv) fact that the accused is in financial distress can also be a consideration. Even if the Court concludes that a case is made out for grant of interim compensation, the Court will have to apply its mind to the quantum of interim compensation;
- v) even at this stage, the Court will have to consider various factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant and the paying capacity of the accused;
- vi) if the defence of the accused is found to be prima facie a plausible defence, the Court may exercise discretion in refusing to grant interim compensation; And
- vii) factors required to be considered as set out above, are not exhaustive. There could be several other factors in the facts of a given case, such as, the pendency of a civil suit, etc.”

21. Similar view has been taken by the Division Bench of this Court in the case of ‘Rishipal’ (supra). The Division Bench has observed that “at the stage of passing an objective order, after a deep application of mind being made to the factor(s) supra, the learned trial Judge is also required to be considering various other factors relating to:-

- (i) the nature of the transaction;
- (ii) the relationship, if any, between the accused and the complainant, and
- (iii) the financial capacity of the accused to pay the said sum.

22. As per Division Bench, the learned trial Judge is also required to be *prima facie* stating in the said order, whether the accused has a *prima facie* plausible defence, wherebys, the learned trial Judge concerned may proceed to exercise discretion against the complainant”.

23. If the factual matrix of the present case is analysed in the light of above-mentioned guiding principles, it transpires that -

- a) *firstly*, in view of the fact the former complaint, under Section 138 of the NI Act, was withdrawn in view of compromise/memorandum of understanding executed by the parties and fresh cheques were issued, which are the subject mater of present complaint, *prima facie*, prove that a good case on merit in favour of respondent/complainant is made out;
- b) *secondly*, in view of above-mentioned memorandum of understanding/compromise even if any presumption under Section 139 of the NI Act is not drawn in favour of the respondent in the backdrop of events which have unfolded between the petitioner and the respondent with regard to due payments, a good ground to issue order for payment of interim compensation is made out;
- c) *thirdly*, if all the mitigating circumstances prevailing in the circumstances are consideration co-jointly, nothing comes on surface which may render a direction for payment of interim compensation to be harsh, inequitable or contrary to the principles of law; and

d) *fourthly*, there is no plausible defence of the petitioner against the prosecution under Section 138 of the NI Act.

24. Taking into consideration the cumulative effect of all the above-mentioned factors, it is hereby observed that in the given fact-situation a discretion, vested in the trial court, has rightly been exercised by the learned trial Court, and there is no scope for interference and indulgence in the above-mentioned impugned order passed by the learned trial Court. Thus, point of determination No. (II) is hereby answered accordingly, against the petitioner.

25. Taking into consideration the cumulative effect of both the above-mentioned points of determination, it is hereby observed that in view of peculiar facts and circumstances of the present case a right decision has been taken by the learned trial court, and duly affirmed by the learned revisional court, while issuing a direction to the petitioner to pay 20% of the cheque amount as interim compensation. Hence, it is hereby observed that there is no scope of interference in the impugned order, and that the present petition being devoid of merit deserves dismissal,. Hence, the present petition is hereby **dismissed**, accordingly.

26. The pending miscellaneous application(s), if any, shall stand disposed of.

(Surya Partap Singh)
Judge

May 21, 2026
“DK”

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