

(2020) 02 MP CK 0182

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 46612 Of 2019

Sanjay Singh Goud

APPELLANT

Vs

M/S Firm Swariya Kisan Sewa Kendra Devgad Through And
Anr

RESPONDENT

Date of Decision : 27-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 357, 421, 482
Negotiable Instruments Act, 1881 — Section 138, 143, 143(A)

Citation : (2020) 02 MP CK 0182

Hon'ble Judges : S. K. Awasthi, J

Bench : Single Bench

Advocate : M.A. Mansoori, Nilesh Dave, Manoj Kumar Sahani, Sapnesh Kumar Jain, Vinod Thakur, Devendra Patel, Mohit Pandya

Final Decision : Allowed

Judgement

1. The applicant/accused has preferred this petition under Section 482 of the Cr.P.C. against order dated 18/07/2019 passed by Judicial Magistrate

First Class, Bagli, District-Dewas in Criminal Case No. 63/2017, whereby the application filed by the respondents/complainant under Section 143-A of

the Negotiable Instruments Act, 1881 (in brief 'NI Act') has been allowed and the applicant is directed to pay 20% of the cheque amount to the

respondents/complainant as interim compensation.

2. Briefly stated facts rising to the present petition are that the respondents/complainant has filed a criminal complaint against the applicant before the

Court of Judicial Magistrate First Class, Bagli alleging that the applicant has purchased the diesel worth of Rs.7.0 Lacs on credit from the petrol pump

of the respondents/complainant and for the payment of the aforesaid amount, the applicant has issued cheque No. 000460 amounting to Rs. 7.0 Lacs

in favour of the respondents/complainant, which was dishonoured by the Bank with a remark 'insufficient funds'. Thereafter, the

respondents/complainant gave statutory notice to the applicant for payment of the cheque amount, however, even after service of the said notice, the

applicant has not made any payment to the respondents/complainant, therefore, the respondents/complainant filed the complaint under Section 138 of

the NI Act against the applicant, which was got registered as Criminal case No. 63/2017. The applicant was summoned and after his appearance the

particular of offence read over to him and the case was fixed for recording of the evidence.

3. On 18/07/2019, the respondents/complainant moved an application under Section 143-A of the NI Act before the trial Court, the same was allowed,

vide impugned order and the trial Court direct that 20% of the cheque amount be made over by the applicant to the respondents/complainant as interim

compensation in accordance with the provisions of Section 143 A of the NI Act. Being aggrieved with the aforesaid order, the applicant has preferred

the present petition before this Court.

4. Having heard learned counsel for the parties and perused the record.

5. With effect from 01/09/2018, Section 143-A was inserted in the NI Act by Amendment Act 20 of 2018. Said Section is to the following effect:-

â??143 A. 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 complainantâ?

(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 percent. of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (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.â??â??.

6. Learned counsel for the applicant has placed reliance on the judgment passed by the apex Court in the case of G.J. Raja Vs. Tejraj Surana , 2019

SCC Online SC 989, where the Hon'ble apex Court has held that â?? In the ultimate analysis, we hold Section 143 A to be perspective in operation

and that the provisions of the said Section 143 A 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 143 A in the statute book.â??

7. In the present case, the complaint was lodged on 11/05/2017 i.e. to say, the act constituting an offence had occurred by 2017; whereas, the

concerned provision viz. Section 143 A of the Act was inserted in the statute book with effect from 01/09/2018.

8. In the context of law laid down by the Hon'ble apex Court in the case of G.J. Raja (supra), this Court is of the considered view that the trial Court

has committed error in directing the applicant to pay 20% of the cheque amount to the respondents/complainant as interim compensation. Accordingly,

the present petition filed under Section 482 of the Cr.P.C. is allowed and order dated 18/07/2019 passed by Judicial Magistrate First Class, Bagli,

District-Dewas in Criminal Case No. 63/2017 is hereby set aside.

9. Let a copy of this order be sent to the concerned trial Court for information and necessary compliance.