

IN THE COURT OF THE JUDICIAL MAGISTRATE
FAST TRACK COURT (M.L) AT, THENI

Present : Tmt. G. Rubana, B.Sc., M.L.,
Judicial Magistrate,
Fast Track Court (M.L), Theni.

Friday the 16th day of August 2019

Cr.M.P. No:305 of 2019
in
S.T.C. No.01 of 2017

P.Muthukumaran ... Petitioner / Complainant.

// Vs //

K.A.Kannan ... Respondent / Accused.

ORDER

The present petition is filed under Section 143(A) of the N.I. Act seeking interim compensation of 20% out of the cheque amount.

2. The gist of the petition filed by the petitioner / Complainant is as follows: -

The petitioner submits that he is the complainant and that he is doing real estate business all over the Tamil Nadu for the past years and on that basis the accused became friend of him and hence the accused borrowed a sum of Rs.3,00,000/- on the month of July 2016 and issued the disputed cheque bearing No: 000042 dated 10-08-2016 drawn on HDFC Bank, Chennai Branch and the petitioner presented on 10.08.2016 through his banker namely Bank of Baroda, Theni Branch and the same was returned on 12-08-2016 and hence the petitioner issued notice on 23-08-2016 and since the respondent failed to repay the cheque amount he had preferred the complaint and that the accused already pleaded not guilty he has to pay 20% of the cheque amount before this court and prays for order in his favour.

3. The gist of the counter filed by the respondent / accused is as follows: -

(i). The respondent submits that those that are specifically admitted hereunder all other allegations are denied and that the petitioner is doing real estate business and hence the petitioner and the respondent are friends is false and that the respondent is working as an Assistant General Manager and also a Head – Web Technologist in Hindu at Chennai and the petitioner is residing at P.C.Patti, Theni and hence there is no possibility to become a friend and that the petitioner has to prove the borrowal of loan amount and there is no debt subsist and that the petitioner has to prove the issuance of the cheque in dispute and that the disputed cheque was not handed over to the

petitioner at any point of time and that the petitioner filed this false case to grab the money and that the Section 143A of N.I. (Amended) Act, 2018 was inserted by the Act 20 of 2018 effect from 01.09.2018 and the above said provision reveals that the same is not retrospective and hence the above said provision is not applicable to this case and this petition is filed with a view to drag on the proceeding and prays for dismissal of this petition.

4) Now the point to be decided is, Whether this petition could be allowed or not?

(i). Heard, and perused the records.

(ii). The learned counsel for the petitioner / complainant argued that the respondent / accused pleaded not guilty hence he is entitled to interim maintenance.

(iii). The learned counsel for the respondent contended that the complaint has been filed in the year 2017 hence this petition is not maintainable since the Section 143A of N.I. Act has no retrospective effect.

(iv). Brief facts of the case are that the respondent / complainant has filed a complaint under Section 138 and 142 of the N.I. Act against the petitioner/ accused alleging that the accused had borrowed a sum of Rs.3,00,000/- from the complainant on the month of July 2016 and issued cheque bearing no: 000042 dated 10.08.2016 drawn on HDFC Bank, Chennai Branch and that the complainant presented the cheque for encashment on 10.08.2016 through his banker namely Bank of Baroda, Theni Branch and the same was returned on 12.08.2016 with an endorsement as “payment stopped” and hence the complainant issued a legal notice dated 23.08.2016 and the accused did not pay the amount within the stipulated period, it constrained the complainant to file the aforesaid complaint.

(v). The Negotiable Instruments Act was amended during the year of 2018, It received the assent of the President and was notified in the Official Gazette on 02.08.2018 to become an Act called the Negotiable Instruments (Amendment) Act, 2018 (No. 20 of 2018) and the newly inserted **Section 143A :-**

(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 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.”.

(vi). Section 143-A introduced by the Amendment Act No.20 of 2018 in the Negotiable Instruments Act, 1881 empowers the Court to order the drawer of the cheque to pay Interim Compensation to the complainant in case of a summary trial or a summons case, where the drawer pleads not guilty to the allegations made in the complaint and the quantum of Compensation shall not exceed 20% of the amount of the Cheque and shall be paid within 60 days from the date of the order by the court which may be further extended by an additional period of 30 days, subject to the sufficient reasons being shown.

(vii). In the case on hand the respondent / accused appeared on summons and when the substance of accusation was explained under Section 251 of Cr.P.C., he pleaded not guilty and claimed to be tried.

(viii). **G.J.Raja Vs Tejraja Surana in Criminal Appeal No:1160 of 2019 dated: 30-07-2019** the Hon'ble Supreme Court has held in para 24 that " 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 the statute book."

(ix). Eventhough the condition stipulated for the Section 143-A was satisfied, as per the decision of Hon'ble Apex Court Section 143 A of N.I. Act has prespective effect. Since the case in hand, the offence under Section 138 of N.I. Act was committed in the year 2016 Section 143A is not applicable to this case. Hence this court is of the view that this petition is not maintainable.

In result this petition is dismissed. No Cost.

Typed by me in the laptop and pronounced by me in the open court on this the 16th day of August 2019.

Judicial Magistrate,
Fast Track Court (M.L.),
Theni.

Petitioner side witness: - Nil

Petitioner side list of Documents: - Nil

Respondent side witness: - Nil.

Respondent side documents: - Nil.

Judicial Magistrate,
Fast Track Court (M.L.),
Theni.