

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 28th OF OCTOBER, 2022

WRIT PETITION No. 23357 of 2022

BETWEEN:-

**SANJAY KUMAR JAIN S/O LATE SHRI HUKUM
CHAND JAIN, AGED ABOUT 54 YEARS,
OCCUPATION: BUSINESSMAN, R/O BESIDE BADA
JAIN MANDIR, GARHA, DISTRICT JABALPUR
(MADHYA PRADESH)**

.....PETITIONER

(BY KU. NEELAM GOEL - ADVOCATE)

AND

- 1. UNION OF INDIA, THROUGH THE
SECRETARY, MINISTRY OF SOCIAL AND
JUSTICE, ROOM NO. 253, A WING, SHASTRI
BHAWAN, NEW DELHI.**
- 2. M/S SHRI SIDDH SALES, PROPRIETOR
NISHPRAHATA JAIN, D/O LATE NAGENDRA
KR. JAIN, R/O 446, INDRALAY GATE NO. 14,
SHANTI NAGAR, DAMOHNKA,
GOHALPUR, DISTRICT JABALPUR
(MADHYA PRADESH)**

.....RESPONDENTS

*This petition coming on for admission this day, Hon'ble Shri Justice
Vishal Mishra passed the following:*

ORDER

The present petition has been filed assailing the order dated 28.07.2022 passed by the Judicial Magistrate First Class, Jabalpur whereby interim compensation has been granted to the respondent No.2 and further the constitutional validity of Section 143-A of the Negotiable Instruments Act, 1881 (in short 'the Act') has been put to challenge.

2. It is the case of the petitioner that respondent No.2 has filed a criminal complaint against the petitioner under Section 138 of the Act and after the lapse of 42 months, the respondent No.2 has filed an application under Section 143-A of the Act seeking interim compensation. The trial Court considering the application has allowed the same and directed to pay interim compensation of 20% of the cheque amount vide order dated 28.07.2022. It is his case that there was no such intention of the legislature by making an amendment and introducing Section 143-A of the Act granting powers to direct for interim compensation. It is argued that Section 143-A of the Act is in violation of principles of *audi alteram partem* where injustice is more likely to happen. Placing reliance upon the judgment passed by this Court in the case of Padmesh Gupta vs. Tirupati Natural resources & Infra Pvt. Ltd. and another in M.Cr.C. No.7943 of 2019, he has prayed for quashment of the impugned order as well as declaring the provisions of Section 143-A of the Act as ultra vires.

3. Heard learned counsel for the petitioner.

4. As far as the argument raised by the petitioner with respect to constitutional validity of Section 143-A of the Act is concerned, the aforesaid provisions have been considered repeatedly by the Hon'ble Supreme Court in large numbers of cases and consistently the Hon'ble Supreme Court has not declared the provisions as ultra vires. The grant of interim compensation depends upon the facts and circumstances of the each case. The Hon'ble Supreme Court in the case of G.J. Raja vs. Tejraj Sharma, (2019) 19 SCC 469 has considered the scope of Section 143-A of the Act and held it to be applicable

only in those offences under Section 138 of the Act which are committed after introduction of Section 143-A of the Act in the statute book. The Hon'ble Supreme Court further held that the trial Court may exercise its jurisdiction under Section 143-A of the Act. It is required to record the reasons as to why the accused persons are required to be directed to pay interim compensation to the complainant. The basis of introduction of provisions of Section 143-A of the Act, we have considered the legislature and it was found that the proceedings under Section 138 of the Act are being delayed unnecessarily, therefore, the provisions for grant of interim compensation is required to be inserted into the Act. The intent behind this provision is to provide aid to the complainant during pendency of the proceedings under Section 138 of the Act, wherein he is already suffering a double-edged sword for loss of receivables by dishonor of cheque and subsequent legal costs in pursuing claim and offences. It was considered that the amendments would reduce pendency in courts because of the deterrent effect on the masses along with ensuring certainty of process that was very much lacking in the past. The changes brought forth by way of 2018 amendment to the Negotiable Instruments Act, 1881 are substantial in nature and focus heavily on upholding the interests of the complainants in such proceedings.

5. The constitutional validity of the provision cannot be challenged owing to the personal inconvenience as has been considered and decided by the Hon'ble Supreme Court in the case of Union of India vs. Vkc Footsteps India Pvt. Ltd. reported in 2022 (2) SCC 603.

6. Thus, considering the aforesaid legal proposition of law and also the aim and object of introducing of Section 143-A of the Act, the same cannot be said to be ultra vires. Accordingly, the plea of the petitioner to declare Section 143-A of the Act as unconstitutional is rejected.

7. As far as passing of the impugned order without providing any opportunity of hearing is concerned, it is totally the discretion of the court to pass an order under Section 143-A of the Act. The basic object of the Act is to

provide some financial help to the complainant who is suffering from a double-edged sword. From the impugned order it is seen that there is no provision in the Act for providing any opportunity of hearing before imposing such a condition. The aforesaid aspect was considered by the Court in the case of Padmesh Gupta (supra).

8. As far as grant of 20% interim compensation is concerned, the aforesaid aspect was considered in the case of Rajesh Soni s/o Shri P. R. Soni Vs. Mukesh Verma s/o Late Shri J. P. Verma, CRMP No.562 of 2021, decided on 30/06/2021, wherein it is held that the word 'may' used is beneficial for the complainant because the complainant has already suffered for mass deed committed by the accused by not paying the amount towards the cheque, therefore, in the interest of complainant as well as accused, 20% of the cheque amount is to be paid by the accused, he may be able to utilize the same for his own purpose, whereas the accused will be in safer side as the amount is already deposited in pursuance to the order passed under Section 143-A of the Act of 1881 and when the final judgment is passed against him he has to pay allowances on the lower side. The provision has been drafted in such a manner that it secures the interest of the complainant as well as that of accused.

9. Learned counsel appearing for the petitioner could not make out the case seeking interference in the impugned order passed by the learned Judicial Magistrate First Class. In such circumstances, no interference is called for in the impugned order. The order is just and proper.

10. The writ petition *sans* merit and is accordingly dismissed. No orders as to costs.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

