

## BOMBAY HIGH COURT: CHEQUE DISHONOUR CASES, INTERIM COMPENSATION TO HAVE RETROSPECTIVE EFFECT.

### INTRODUCTION

The Bombay High Court in its judgement dated 14<sup>th</sup> March, 2019 in the matters of **Ajay Vinodchandra Shah v. The State of Maharashtra & Anr.** [Criminal Writ Petition No. 258 of 2019, Criminal Writ Petition No. 259 of 2019 and Criminal Writ Petition No.26 of 2019] whilst discussing the amendments to Section 143A and Section 148 of the Negotiable Instruments Act, 1881 (“NI Act”) held that the amendments to the NI Act which came into effect from 1<sup>st</sup> September, 2018 are applicable to the cases filed prior to 1<sup>st</sup> September, 2018 but which are pending in the trial as well as the appellate court. In these cases, if the plea is recorded or the charge is not framed, then the trial Court can invoke its power under section 143A after 1<sup>st</sup> September, 2018 and can impose interim compensation which shall not exceed 20% of the amount of cheque. Similarly, in case in appeals, the Appellate Court can pass interim orders under section 148 of the NI Act.

### FACTS

Cheques of different amounts issued by the Petitioner had bounced. On conviction, the Petitioner filed appeals challenging the conviction orders. The Appellate Court i.e. Sessions Court at the time of entertaining the appeal directed the Petitioner to deposit 25% of the total compensation, failing which the order of suspension of sentence would automatically get vacated.

Aggrieved, the Petitioner filed Writ Petitions challenging the legality and validity of the 3 Orders dated 3<sup>rd</sup> August 2018 in Criminal Appeal Nos. 491

of 2018, 492 of 2018 and 493 of 2018 passed by the Sessions Court directing the Petitioner to deposit 25% of the amount of the total compensation as a condition precedent to maintain the order of bail and to entertain the appeal preferred by the Petitioner in the Sessions Court. The Petitioner prayed that the said orders be quashed and set aside.

### ISSUES

The High Court considered the following questions of law:

- i) Whether the provisions of Sections 143A and 148 of the NI Act can be applied only to those complaints which are filed after 1<sup>st</sup> September, 2018.
- ii) Whether the provisions of section 143A and 148 which are enacted on 12<sup>th</sup> August, 2018 w.e.f. 1<sup>st</sup> September 2018 are ultra vires the Constitution of India.

### SUBMISSIONS

The Learned Counsel appearing on behalf of the Petitioner submitted that every convict has a right to appeal. In the present matter, due to the imposition of condition of depositing 25% of the total compensation, the Petitioner’s right to appeal and bail is taken away. The right to bail should be unconditional. He submitted that when the offence in the matter was committed and the complaint was filed, the two provisions were not in existence then. The amendments to Sections 143A and 148 being substantive in nature, the said provisions cannot be applied retrospectively. The Learned Counsel further submitted that if the convict has no capacity to pay, then, he is bound to lose his right to appeal because of such condition of payment of

20% of the amount of the compensation. It was submitted that the Petitioner had a good case on merits, accordingly, imposing the condition of deposit is unjust and against the principles of Criminal Jurisprudence and of Article 21 of the Constitution of India.

The Learned Counsels for the Respondents argued that the direction of depositing 20% can be given retrospectively since the NI Act is a beneficial legislation which is enacted with an intent to give relief to the complainant and the orders passed by the learned Sessions Judge are in consonance with the scheme of the new provisions under section 143A and 148 of the NI Act.

## JUDGMENT

The Bombay High Court considered the object of the NI Act which is to enhance the acceptability of the cheques in settlement of liabilities by making the drawer liable for penalties in case of dishonour of cheques due to insufficiency of funds. The court further noted the Legislature's intent in amending the NI Act i.e. to curtail the delaying tactics of unscrupulous, dishonest drawers and mounting pendency of the criminal cases and the resulting injustice caused to the payee.

The court stated that the word "Retrospective" is to be understood or read with meaningful, purposive interpretation and held that it is incorrect to accept that the amendments to NI Act are to be made applicable only to cases which are filed after 1<sup>st</sup> September, 2018 and not applicable to the cases pending earlier in the trial as well as the appellate court. In cases where the plea is recorded or the charge is not framed, then the trial Court can invoke its power under section 143A after 1<sup>st</sup> September, 2018 and can impose interim compensation which shall not exceed 20% of the amount of cheque. Similarly, in case in appeals, the Appellate Court can pass interim orders under section 148 of the NI Act.

The High Court further compared the two provisions

i.e. sections 143A and 148 of the NI Act and stated that the one difference between the two provisions is that under section 143A, the accused is yet to face a trial. Under subsection (2) thereof, the interim compensation under sub-section (1) **shall not exceed** twenty percent of the amount of the cheque. However, under section 148, it is stated that the Court may order the appellant to deposit such sum which **shall be a minimum** of twenty percent of the fine. These two clauses in the sections reflect the intention of the Legislature that a person at the stage of trial is always considered innocent till he is found guilty and, therefore, the ceiling of 20% compensation is mentioned. However, in the appeal, after the first Court holds the accused guilty, then the appellate Court is given the power to pass order directing the accused to deposit the amount which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. It is further stated in section 148 of NI Act that the amount payable under this subsection shall be in addition to any interim compensation paid by the appellant under section 143A of the NI Act.

In matters where the accused is not held guilty and acquitted either at trial or in the appeal, the subsection (4) of section 143A and the proviso to the section 148 of the NI Act state that the amount shall be repaid by the complainant to the accused. In the event of acquittal, the said amount shall be paid within 60 days from the date of the order. Accordingly, the High Court held that the issue of the amendments to be made applicable prospectively to the cases only which are filed after 1<sup>st</sup> September, 2018 is not sustainable.

The High Court observed that the power to give compensation is already in existence with the criminal court even before the amendment to the NI Act and stated that under section 357 of Code of Criminal Procedure, 1973, the criminal trial Court has power to grant compensation to the complainant. However, the amendment has clarified the stage at which the compensation can be granted. Both the

sections have an overriding effect to the Code of Criminal Procedure.

On the second issue, whilst the High court observed that the right to be on bail and enjoy liberty should not be taken away in case of bailable offences unless some special ground is made out, it held that sections 143A and 148 of the NI Act are not ultra vires the Constitution of India.

The High Court stated that the criminal courts have been given powers to impose various conditions at the time of granting bail be it at trial or appellate stage. In appeal the accused is not innocent as he is already held guilty by the first court. The appellate Court hence to strike balance by giving justice to both the parties and to protect the interest of the parties adopts a reasonable view by using its power granted under section 148 of the NI Act by imposing some conditions at the time of granting bail or at the time of admission of appeal. The appellate court cannot take away the right to appeal but the same can be protected by applying the principle of reasonability while imposing conditions.

Consequently, while partly allowing the Writ Petitions, the impugned orders were modified and the Petitioner/Accused was directed to deposit 20% of the total amount of compensation. The stipulated time of 60 days to deposit the said amount was extended till 90 days. The condition of cancellation of bail or suspension of sentence in the event of non-payment was set aside.

### **CONCLUDING REMARKS**

The judgment furthers the object of the amendments in NI Act to strengthen the credibility of cheques and further trade and commerce by allowing the lending institutions including banks to continue to extend financing to the productive sectors of economy. Sections 143A and 148 of the NI Act have maintained balance between safeguarding the interest of the lenders and the

rights and liberty of the accused.

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*The content of this article is intended to provide a general guide to the subject matter and should not be construed as legal advice.*

