IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.9872-2018(O&M)
Date of decision:04.04.2019

M/s Ginni Garments and another ….Petitioners

Versus

M/s Sethi Garments …Respondent

CRM-M-49024-2018(O&M)
Gold Field Shiksha Sanstha and another ….Petitioners

Versus

Dr. Shrikant Bhutani …Respondent

CRM-M-49054-2018(O&M)
Shashi Adlakha and another ….Petitioners

Versus

M/s Mahalakshmi Innovation Engineers Pvt. Ltd. …Respondent

CRM-M-49055-2018(O&M)
Shashi Adlakha and another …..Petitioners

Versus

M/s Mahalakshmi Innovation Engineers Pvt. Ltd. …Respondent

CRM-M-49182-2018(O&M)
Gold Field Shiksha Sanstha and another ..…Petitioners

Versus

Dr. Shrikant Bhutani …Respondent

CRM-M-49216-2018(O&M)
Gold Field Shiksha Sanstha and another …Petitioners

Versus

S.D.Jain(now deceased) through his LRs ….Respondent

CRM-M-61716-2018(O&M)
Gold Field Shiksha Sanstha and another ….Petitioners

Versus

Dr. Shrikant Bhutani ….Respondent

CRR-721-2019(O&M)

Kuldeep ….Petitioner

Versus

Subhash Chand and another ….Respondents

CRR-746-2019(O&M)

Amritpal Singh …..Petitioner

Versus

Satnam Singh …..Respondent

CRM-M-15297-2019(O&M)

Baldev Singh ….Petitioner

Versus

State of Punjab and another …..Respondents

CRM-M-12625-2019(O&M)

Bhagat Singh ….Petitioner

Versus

Shish Pal Singh ….Respondent

CRM-M-13892-2019(O&M)

Kuldeep Singh …Petitioner

Versus

M/s Jaswinder Singh Balwant Singh Commission Agent ....Respondent

CRM-M-13039-2019(O&M)

Gajraj Singh …Petitioner

versus

State of Haryana and another ….Respondents

CRM-M-14462-2019(O&M)

Ram Mehar …Petitioner

Versus

Jagdish Chand **…Respondent**

Coram: **Hon'ble Mr. Justice Rajbir Sehrawat**

Present: Mr. Ferry Sofat, Advocate and
Mr. Gurjot Singh Mangat, Advocate
for the petitioner (in CRR-9872-2018)

Mr. Dinesh Arora, Advocate
for the petitioners (in CRM-M-49024, 49054, 49055, 49182, 49216 and 61716 of 2018)

Mr. Manoj Pundir, Advocate
for the petitioner (in CRM-M-13892-2019)

Mr. T.S.Sidhu, Advocate
for the petitioner(in CRM-M-15297-2019)

Mr. Johan Kumar, Advocate
for the petitioner (in CRM-M-12625-2019)
for respondent No.1 (In CRM-M-49054, 49055-2018)

Mr. Shashi Kumar Yadav, Advocate
for the petitioner (in CRR-721-2019)

Mr. Ramnish Puri, Advocate
for the petitioner(in CRR-746-2019)

Mr.Aditya Sanghi, Advocate
for the petitioner (in CRM-M-13039-2019)

Mr. Chiranshu Bansal, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner(in CRM-M-14462-2019)

Mr. Naveen Sharma, Advocate
for the respondent (in CRR-9872-2018)

Mr. Rajesh Sethi, Mr. Arun Biriwal, Ms. Sukhpinder Kaur, Mr. Gaurav Kamboj, and Mr. Tushar Gera, Advocates for the respondents. (CRM-M-49216-2018).

Rajbir Sehrawat, J.(Oral)

This Order shall dispose of a bunch of 14 petitions, challenging the Orders passed by the Trial Courts in the trials under Section 138 of the Negotiable Instruments Act 1881(hereinafter referred to as'the Act'),

whereby the Trial Courts have ordered the accused/petitioners to pay 20% or less of the cheque amount to the complainant under Section 143-A of the Act, as well as the petitions challenging the Orders passed by the Appellate Courts directing the convicts/appellants/petitioners herein to deposit 20% or more of amount of fine or compensation awarded by the Trial Court, during the pendency of the appeal, by exercising powers under Section 148 of the Act.

CRM-M-13039-2019,CRM-M-13892-2019,CRM-M-14462-2019 CRR-9872-2018 are the petitions wherein the Orders passed by the Trial Court under Section 143-A of the Act are under challenge and the CRM-M-49024-2018, CRM-M-49216-2018, CRM-M-49054-2018, CRM-M-49055-2018, CRM-M-49182-2018, CRM-M-12625-2019, CRM-M-15297-2019, CRM-M-61716-2018, CRR-721-2019, CRR-746-2019 are the petitions where in the Orders passed by the Appellate Court under Section 148 of the Act are under challenge.

It deserves to be noted that there is no dispute on facts of the case in either of the petitions. The Orders have been impugned in all these petitions only on purely legal ground that under Section 143-A and Section 148 of the Act, the Courts below cannot be deemed to have any authority, retrospectively, to pass the Order imposing the liability of payment of the amounts, mentioned in the impugned orders, in the pending trial or in the pending appeals.

Another aspect which deserves to be clarified at the outset is that the Orders impugned in these petitions have been passed by the Courts below by virtue of the powers conferred under Section 143-A of the Act during the trial, and under Section 148 of the Act during the pendency

of appeal. Both these sections were not in existence in the Act earlier. Both these sections were added vide Amendment No.20 of 2018. In none of the petitions, the vires of these provisions are under challenge. Hence, this Court is proceeding on the presumption that the sections introduced by the Amendment Act, are validly operating law.

The only challenge raised by the respective petitioners, in all these petitions, is that since the Amendment Act has been enforced with effect from 02.08.2018, therefore, these provisions cannot be made applicable to the cases, where the trials for offence under Section 138 of the Act were already pending or where the appeals have arisen from such trials, which were pending on the date of the enforcement of these provisions. Hence, in essence, the grounds for challenge, in all the petitions, is that applying these provisions to the cases already pending before the Courts would tantamount to giving these provisions retrospective operation, although, the Amendment Act does not prescribe for retrospectivity in application of these provisions. Hence these provisions have to be taken as applicable only prospectively, to the cases which arise after introduction of these provisions.

Before proceeding further, it is apposite to take note of the provisions, which have been introduced by Section 143-A and Section 148 of the Act, which are as reproduced herein below:-

> *"**143-A. Power to direct interim compensation**---(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), 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 years, 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(2 of 1974).

(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 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.

148.Power of Appellate Court to order payment pending appeal against conviction-----*(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:*

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section(1) shall be deposited 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 appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal.

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, 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."*

As stated above, the above said provisions were added to the Negotiable Instruments Act by Amendment Act No.20 of 2018. Section 1 (2) of the above said Amendment Act read as under:-

> *(2) It shall come into force on such date as the Central Government may, by the notification in the Official Gazette, appoint.*

The Central Government had published this amendment in the notification dated 02.08.2018; after the same having received assent of the President of India on the same date.

The Statement of Objects and Reasons of the above said amendment reads as under:-

> "*The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bill of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonor of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonor cases. This is because of delay tactics of*

unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments(Amendement) Bill, 2017 to provide, inter alia, for the following, namely:-

***(i)** to insert a new section 143A in the said Act to provide that the Court trying an offence under Section 138, may order that drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he plead not guilty to the accusation made in the complaint;*

and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) *to insert a new section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial court.*

4. The Bill seeks to achieve the above objectives."

A bare perusal of the newly added Sections 143-A and 148 of the Act would show that these sections have been added with '*Non-Obstante'* clause qua the provisions of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'). The provisions of both these Sections have common elements of; giving power to the Trial Court and the Appellate Court to order compensation in favour of the complainant/holder of the cheque in due course. Further, common element in both these sections is that; in case the accused is acquitted then the complainant would be required to return the amount so obtained through the court orders, with Bank rate interest. However, there are certain striking differences between the provisions as contained in these two sections. Whereas Section 143-A of the Act gives power to the Trial Court to direct the accused to '*pay'* an interim compensation which cannot be more than 20% of the '*cheque*

amount', at the same time Section 148 of the Act empowers the Appellate Court to direct the accused/appellant to '*deposit'* minimum of 20% of '*fine'* or '*compensation'* awarded by the Trial Court. Hence, whereas the Trial Court cannot award more than 20% of the cheque amount, the Appellate Court is ordained to award not less than 20% of the fine or compensation. Furthermore, under Section 143-A of the Act, the Trial Court is required to order the accused to pay the said amount as interim compensation directly to the complainant. Under Section 148 of the Act, the Appellate Court is required to direct the accused/appellant to 'deposit' the said amount with the Court, which the court may subsequently order disbursal to the complainant/holder of the cheque in due course. As per the provision of Section 148 of the Act, the amount ordered by the Appellate Court shall be in addition to any interim compensation already paid by the accused under the order of the Trial Court. Still further, difference between these two provisions is that under Section 143-A of the Act, the amount of interim compensation awarded by the Trial Court is prescribed to be recovered under Section 421 of Cr.P.C, if not paid within specified time, whereas there is no such corresponding provision in Section 148 of the Act. Section 148 of the Act does not prescribe any mode of recovery of amount of interim compensation awarded by Appellate Court.

Further, a perusal of the statement of object and reasons for introducing these provisions also shows that the provisions are being added with a view to address the issue of undue delay in final resolution of the cheque dishonor cases and to provide interim relief to the holder of the cheque in due course, as well as, to discourage the frivolous and unnecessary litigation; besides strengthening the credibility of the cheques

as mode of payment; so as to help the trade and commerce in general and the lending institutions and the banks in particular in extending financial facilities to productive sectors of economy. It is in this gamut of statutory provisions; that the present petitions have arisen.

While arguing the case, Mr. Ferry Sofat, learned counsel for the petitioners have submitted that since the newly added provision of Section 143-A of the Act is not specifically made retrospective in operation by the Amendment Act and it casts a new '*obligation'* upon the accused and this obligation is substantive in nature, therefore, the provision cannot be made applicable to the trials in pending cases. Learned counsel has relied upon the judgment rendered in ***RE; School Board Election For the Parish of Pulborouogh***;**1894 Queen's Bench Division(725),** to support his contention that any law; which seeks to impose any new obligation or liability upon a party; cannot be made applicable to the proceedings already pending before the Court before introduction of such a provision. To support his arguments he has also relied upon the judgment of the Hon'ble Supreme Court rendered in ***Hitendra Vishnu Thakur and others etc versus State of Maharashtra and other; AIR 1994 Supreme Court 2623, Maharaja Chintamani Saran Nath Chahdeo versus State of Bihar; 1994 (4)R.C.R.(Civil) 715*** and another judgment of Hon'ble Supreme Court rendered in ***Nani Gopal Mitra versus State of Bihar; AIR 1970 Supreme Court 1636.*** Explaining his argument further, learned counsel has further submitted that since the liability imposed upon the petitioner, by the newly introduced provision, is in the nature of legally enforceable liability, therefore, it is a new and substantive obligation as per the law and not merely a part of the procedure. Learned counsel has submitted that had the

present provision been procedural in nature then the same may have been applied to the pending cases, however, since it affects the substantive rights of the accused/petitioners, therefore, it cannot be applied to the pending cases; by giving retrospectivity to this provision.

Mr. Dinesh Arora, learned counsel who is appearing for the petitioners in the cases arising out of the appeals, has submitted that any law which creates a new responsibility upon the appellant during the appeal can also not be applied retrospectively. Hence the provision contained in newly added Section 148 of the Act cannot be applied to the appeals which were pending on the date of enforcement of the amendment, or to the appeals filed in those cases where the trials were pending on the date of enforcement of the amended provision. To substantiate that this provision casts a new substantive obligation upon appellant, the counsel has submitted that although at the conclusion of trial, the Trial Court can award a compensation in favour of the holder of the cheque in due course, however, since appeal is in continuation of the trial, therefore, fine or the compensation awarded by the Trial Court cannot be taken as final. However, under the new provision the fine or compensation awarded by the Trial Court have been given attributes of finality. Under the amended provisions, it has been provided that the compensation ordered by the Trial Court or the Appellate Court under provision of Section 143-A of the Act or Section 148 of the Act, would be recoverable as per the procedure prescribed for recovery of fine. Hence, the '*interim compensation'* has been raised to the level of '*finality of the fine'* which can be recovered under Section 421 of Cr.P.C. This tantamounts to treating the petitioners as guilty even before finalization of their trials and the appeals and thus subjects the

appellant to the rigour of Section 421 Cr.P.C; for the purpose of recovery of the interim compensation. However, section 421 Cr.P.C itself invites drastic and substantive measures qua the person against whom fine has been imposed, including attachment and sale of his properties. Therefore, since; even property right of the petitioners have been subjected to final consequences; even during pendency of the appeal against their conviction, therefore the provision has the effect of infringing upon the substantive rights of the petitioners. Therefore, the consequence of application of this section are in the nature of '*punishment'*. Hence, such a provision cannot be made applicable to the appeals arising from conviction for a transaction of cheque default, which had taken place before enforcement of the Amendment Act. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in ***T.Barai versus Henry Ah Hoe and another;*****1983 AIR (SC) 150, *Dayal Singh versus State of Rajasthan; 2004 AIR SCC 2608*, *Basheer @ N.P.Basheer versus State of Kerala;2004(1) R.C.R (Criminal)1008.*** Learned counsel has further argued that the object and reasons of the Act as well as the parliamentary debates, which had taken place at the time of enacting these provisions, also shows that the provision is not procedural in nature. The debates and the objects and reasons; would show that the idea behind this amendment was not to streamline any procedure. Rather the idea is to grant relief to the complainant/holder of the cheque in due course; during the trial itself, at the cost of the accused, even before the latter is held guilty of the offence. Hence, application of this provision to pending appeals is introducing a kind of presumpting punishment in retrospectivity, which is prohibited by Article 20 of the Constitution of India.

Mr. Manoj Pundir, learned counsel for another petitioner has relied upon the judgment of the Hon'ble Supreme Court rendered in ***Anil Kumar Goel versus Kishan Chand Kaura;2008(1)R.C.R(Criminal)290*** to submit that in case of another provision of the same Act, whereby the power was sought to be given to the Magistrate to extend the time period for filing of the complaint, Hon'ble Supreme Court has held such a provision to be substantive in nature and the same was held inapplicable to the cases where time of 30 days for filing complaint had already expired before that amendment. The same is the situation qua the present amendment also since this also; affects the substantive right of the petitioners. Hence, being a substantive provision, the provision of Section 143-A and Section 148 of the Act cannot be made applicable restrospectively; to the cases which were already pending on the date of enforcement of these provisions.

The other learned counsels appearing for the petitioners have also argued on the similar lines; by emphasizing that any provision which has the potential of effecting the substantive right of a litigant cannot be applied to the pending cases so as to give retrospectivity to the same unless the same is made retrospective by the Act itself. It is further pointed out by the learned counsels that the Courts below have passed the conditional orders of granting bail during pendency of the appeal; subject to deposit of the amounts ordered by the Appellate Court. This kind of condition is violative of the right of the appellant to seek suspension of sentence. Hence, the petitioners could not be subjected to this kind of onerous condition by introducing a new provision during pendency of the trial or the appeal arising therefrom. It is submitted by them that the Hon'ble Supreme Court has already held in some of the cases that even though the Appellate Court

may impose condition of deposit of some amount for suspending of the sentence, however, such an amount has to be reasonable and not excessive. By virtue of the present amendments the petitioners have been subjected to payment of compensation upto 40-50% of the cheque amount or of the compensation, only for suspension of their sentence. Therefore, the provision creating this kind of unreasonable condition could not have been applied retrospectively. It is further argued by the counsels that even at the stage of trial, the amount ordered by the Trial Court to be paid as interim compensation, in a given case, can be such an excessive and prohibitive amount that the accused may not be able to arrange for the same. In such a situation, the accused would not be left with any alternative but to suffer in silence the consequences of coercive procedure of recovery of the amount as fine, as prescribed under Section 421 Cr.P.C. Hence, the provision being extremely substantive in nature, could not have been applied by the Courts below to the pending cases; so as to confer retrospectivity upon it.

On the other hand, Mr. Rajesh Sethi**,** learned counsel, appearing for the complainant/respondent in revision petitions arising from the Orders passed in appeals, have submitted that, in the first instance, the provision introduced by Section 143-A and 148 of the Act are not substantive in nature. These provisions have been created only as steps in procedure to streamline the same, so as to cut the unnecessary delays in conclusion of the trials. This is so specifically stated as well, in the objects and reasons of the amendment. While interpreting such a provision, the Court should adopt a purposive interpretation, to give effect to the intention of the legislator, which in the present case is to curb the delay in trial and to discourage default in Negotiable Instruments. Learned counsel has further submitted

that to arrive at a correct purposive interpretation, the Court can very well take help of the internal aids of interpretation, such as language, title and positional sequence of the provision and the external aid of interpretation like the objects and reasons and the parliamentary debates. If all these things are commulatively seen in the present case; then the only predominant intention of the legislator is to curb the delay in procedures. Hence, the amendment is only procedural in nature. It is further submitted that the fact that the provisions are procedural in nature is also clear from the fact that these sections have been added in the statute at a place after the sections defining the penal provisions, and has been put alongwith the provisions dealing with the procedure. Learned counsel has further submitted that even if the provision is taken to be affecting some aspect of right of party to the lis; still the same can be applied to the pending proceedings. Every provision effecting some part of right of party to the lis cannot be taken to be a provision effecting the substantive right of the party. Referring to the judgment of the Hon'ble Supreme Court rendered in ***Shyam Sunder and another versus Ram Kumar and another; 2001 AIR (SC)2472;*** learned counsel has submitted that in that case the right of the co-sharer under Punjab Pre-emption Act was abolished by way of Amendment Act. The same was upheld and made applicable even to the pending cases, except to those where the right of such a co-sharer had already crystalised by way of decree of the Court. Hence, unless a right is a vested right; by way of decree of the Court or made so by the provision of the Act, the applicability of the amendment qua such right cannot be questioned only on the ground that some aspect of such right of the party is taken away by the amendment. To buttress his argument further, learned

counsel for the respondent has proceeded further that if after filing of the suit the Court fees is enhanced by amending an Act, the applicability of such a provision to the appeal arising from the suit cannot be excluded merely on the ground that the amendment to the Court Fee Act was made during pendency of the suit. Still further it is submitted by learned counsel that if a provision essentially relates to the procedure then merely because it can, collaterally, has some effect on substantivity, cannot be precluded from application to the appeals; which are already pending. Citing an another example, learned counsel for the respondent has submitted that Section 100 of Civil Procedure Code was amended to provide that second appeal would lie only in those cases which involves substantial questions of law. This provision was held applicable even to the pending cases by the Hon'ble Supreme Court, despite the fact that it had the effect of summary dismissal of the appeal in those cases where no such substantial question of law was involved. In such a situation, the appellant cannot claim that his right to file appeal has been adversely affected, therefore, such a provision should not be applied to the pending cases.

Extending his argument further, learned counsel for the respondent has submitted that in case of a trial; a right can be said to be a substantive right only if it affects right to prosecute or to defend the charge. However, in the present case, the provision no where affects the right of the accused to defend himself. The provision, *per se,* does not prescribe for any disqualifying consequences; in case of non-deposit of the amount as ordered by the Appellate Court, qua the right of the accused/appellant to prosecute his appeal or to defend himself. Hence, the provision has been enacted only by way of streamlining the procedure and practice of the Court, and if

provision relates to the procedure and practice of the Court, the same can be applied to the pending cases. In the end, it is submitted by learned counsel for the respondent that right to appeal is only a statutory right. A person cannot claim a right to file or to prosecute the appeal in any particular manner or according to particular procedure or provision. The appeal has to be filed and carried on only subject to the provisions governing such an appeal at the relevant stages. Hence, any provision which is created during the pendency of the appeal, qua filing or prosecuting the appeal has to be made applicable to all the cases pending at the time or to be filed after the date of enforcement of the provision.

Having heard the learned counsel for the parties and perusing the documents on record, it is clear that the dispute between the parties is relating to the applicability of Section 143-A and Section 148 of the Act, introduced vide Amendment dated 02.08.2018, to the cases which were already pending at the stage of the trial; or to the appeals arising from such trials, whether filed before or after the enforcement of the above-said provisions. Another significant aspect to be noted is that the Amendment Act has not specifically made the amendment to be applicable retrospectively. The notification of the amendment also does not specify any other date for the amendment to come in operation. In such a situation, Section 5 of the General Clauses Act would be of some help, which is reproduced below:-

> ***5 Coming into operation of enactments.***
> *(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent,*

> *(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and*
>
> *(b) in the case of an Act of Parliament, of the President.*
>
> *(3)Unless the contrary is expressed, a [Central Act] or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.*

A bare perusal of this provision would make it clear that any Act of Parliament shall come into operation on the day on which it receives the assent of the President. Unless it is expressed to become operational on any other date and unless a contrary intention is expressed, the Act shall come into effect qua all cases on the day of its commencement. In the present case, the Act of Parliament has specified that it shall come into operation on the date specified in the notification. The notification has been issued by the Parliament on 02.08.2018. It is stated to have received the assent of the President on 02.08.2018 only. Hence, the same can be safely taken to be operational with effect from 02.08.2018. As stated above, the vires of the provision are not under challenge in these petitions, therefore, for the purpose of the present petitions, this Court has to assume that the Amendment Act, and the provisions contained therein, have validly come into operation on 02.08.2018.

Having said so, the real dispute starts. Learned counsel for the petitioners have stated that they have no cavail qua the applicability of the amended provisions with effect from 02.08.2018. However, these have to be

applied only to the cases arising from transactions of default of cheques; which take place after the introduction of these provisions. If the cheques already stood defaulted, the complaints already stood filed and the trial or appeal arisen from such transactions are pending, then these provisions cannot be applied to such cases; them because this would tantamount to give the retrospective effect to the amendment, despite the fact that the legislature has not provided for restrospective application of these provisons. As stated above, learned counsels have argued that the amendments create a new liability/obligation upon the accused, although his act; liable to be punished; already stood committed on a prior date, when such an obligation was not contemplated by law. Hence this would tantamount to affecting the substantive right of the accused. Therefore, by no means, such an amendment can be treated to be procedural in nature. Hence, the same does not deserve to be applied to the pending cases.

This Court finds that the Supreme Court has amply clarified the legal proposition that all substantive laws have to be prospective in nature and applicability; unless prescribed to be retrospective, whereas all procedural laws have to be applicable to all cases immediately on their coming into operation, including the pending cases. It is appropriate to have reference to the law pronounced by the Hon'ble Supreme Court in the judgment rendered in ***Anil Kumar Goel versus Kishan Chand Kaura; 2008(1)R.C.R.(Criminal)290,*** which reads as under:-

> *"8. All laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations, unless the legislative intent is clear and*

> *compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous, effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the court has to decide whether, in the light of the surrounding circumstances, retrospective effect should be given to it or not.(See:**M/s Punjab Tin Supply Co., Chandigarh etc. etc. v. Central Government and Ors.,1984(1)RCR (Rent) 168).”***

Clarifying further, the Supreme Court has held that all those laws which affect the substantive and vested rights of the parties have to be taken as substantive law, whereas any provision of law dealing with the form of the trial, mechanism of the trial or procedure thereof, has to be treated as procedural in nature. The relevant part of the judgment of the Hon’ble Supreme Court in case of ***Thirumalai Chemicals Ltd. vs. Union of India and others; 2011(6) SCC 739*** is as follows:-

> *“14. Substantive law refers to body of rules that creates, defines and regulates rights and liabilities. Right*

> *conferred on a party to prefer an appeal against an order is a substantive right conferred by a statute which remains unaffected by subsequent changes in law, unless modified expressly or by necessary implication. Procedural law establishes a mechanism for determining those rights and liabilities and a machinery for enforcing them. Right of appeal being a substantive right always acts prospectively. It is trite law that every statue is prospective unless it is expressly or by necessary implication made to have retrospective operation. Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right; and aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation. Procedural law is retrospective, meaning thereby that it will apply even to acts or transactions under the repealed Act."*

Therefore, the next question to be considered by this Court, in the present case is whether the provisions contained in Section 143-A and Section 148 of the Act are substantive in nature or the procedural one. If the provisions are substantive in nature then the same cannot be applied retrospectively to the pending cases. However, if the same are procedural in

nature then the same has to be applied to all the cases, including the one pending before the Court on the date, the amendment was enforced.

The substantive right of a person is the entitlement which is available to him by virtue of his very existence or which relates to his being, belongings or the estates. Such rights can be human rights, constitutional rights or statutory rights. Such substantive rights can have variety of facets; depending upon the factual situation in which such right is to be considered. The substantive rights can be governed by the constitutional or statutory provisions. The statutory provisions created by the competent legislature can prescribed certain conditions for crystallizing the substantive right of the person. In such a situation, once the conditions prescribed for crystallizing such right are fulfilled, such substantive right of a person becomes vested right as well. So all substantive rights are not vested rights but all vested rights are substantive rights.

On the other hand, statute can prescribe the procedure for protection, determination or regulation of the substantive rights as well. The procedure would, essentially, be relating to providing remedy, form of adjudication of such a remedy, procedure to be followed by adjudicatory a forum or the mechanism prescribed for enforcement of decision of such forum. Hence, a law which essentially deals with forums of adjudication, procedure of adjudication and the mechanism for enforcement of result of such an adjudication, would essentially be procedural in nature. All rights granted by procedural law would be only procedural rights. As a corollary to this, no procedural right can be either substantive or vested right.

Coming to the facts of the present case, the provisions of Section 143-A and Section 148 of the Act reveals that these Sections of the

Act start with a *non-obstante* clause against Code of Criminal Procedure. However, the Hon'ble Supreme Court has already clarified in judgment rendered in ***Central Bank of India vs. State of Kerala and others***;***2010(8) RCR(Civil)3195*** that *non-obstante* clause, used in provision of a law has to be given only a contextual interpretation and not to be taken as an absolute exclusion or over-riding of the law contained in provisions qua which the *non-obstante* clause has been used. In this regard, it is relevant to have a reference to the observation made by Hon'ble Supreme Court in paragraph Nos. 28 and 29 of above-said judgment, which are reproduced herein below:-

> *28. A non obstante clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. While interpreting non obstante clause, the Court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used. This rule of interpretation has been applied in several decisions. In State of West Bengal v. Union of India [(1964) 1 SCR 371], it was observed that the Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs.*
>
> *29. In Madhav Rao Jivaji Rao Scindia v. Union of India and another [(1971) 1 SCC 85] Hidayatullah, C.J. observed that the non obstante clause is no doubt a very potent*

> *clause intended to exclude every consideration arising from other provisions of the same statute or other statute but for that reason alone we must determine the scope of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. A search has, therefore, to be made with a view to determining which provision answers the description and which does not.*

Hence Section 143-A of the Act, for that matter Section 148 of the Act have to be read along-with the relevant and applicable provisions of Cr.P.C, as modified/supplemented by provisions of these two sections. Otherwise also, Section 5 of Cr.P.C provides that nothing in the Code shall effect the provisions contained in any other special law. Therefore, these two sections shall be taken to have effected the provisions of Cr.P.C only to the limited extent, to which the specific provision has been made in these sections, qua the aspect mentioned herein. Otherwise, even the aspect mentioned in these provisions, beyond what is specifically prescribed for in these two sections, have to be followed only as provided in the Cr.P.C. Hence, all the provisions relating to punishment, execution thereof, fine and compensation and recovery thereof, as contained in the Cr.P.C, has to be read in conjunction and in harmony with Section 143-A and Section 148 of the Act.

A bare perusal of Section 143-A of the Act shows that this

section has given power to the Trial Court to order the drawer of the cheque/accused in the trial, to pay interim compensation to the complainant, where the accused has not pleaded guilty of the acquisition made against him. Still further, although a limit of '*20% of cheque amount'* has been imposed upon power of the Court for ordering interim compensation, however, it has also been provided that if it is not paid within 60 days from the order or within the time, extended by the Court, if any, then the interim compensation shall be recovered under Section 421 Cr.P.C, as if it were a '*fine'* imposed upon the accused. Although this Section also provide return of the said amount, in case the accused is acquitted, and for adjustment of the said amount of interim compensation towards final compensation or fine; in case of his conviction, however, till any final order is passed, the accused remains liable for recovery of this amount under Section 421 of Cr.P.C. It would be beneficial to have reference to Section 421 Cr.P.C which is reproduced as under:-

> **421** ***Warrant for levy of fine***
>
> *1. When an offender has been sentenced to pay a fine the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may*
>
> *(a) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;*
>
> *(b) issue a warrant to the collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter:*

> ***Provided*** *that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.*
>
> *(2) The State Government may make rules regulating the manner in which warrants under clause (a) of Sub-Section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.*
>
> (3) *Where the Court issues a warrant to the Collector under clause (b) of Sub-Section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:*
>
> ***Provided*** *that no such warrant shall be executed by the arrest or detention in prison of the offender."*

A perusal of Section 421 Cr.P.C shows that this provision is meant for those persons, who have already been sentenced to pay fine. Still further the amount of interim compensation, deemed as fine under Section 143-A of the Act, can be recovered under Section 421 Cr.P.C by attachment and sale of movable and immovable properties of the accused. The same can also be recovered as amounts of arrears of land revenue from movable or immovable property or both, of the accused. Hence, application of this

provision has a drastic effect upon the property rights of the accused, and makes him liable for sale of his properties for recovery of amounts, despite the fact that it is yet to be finally determined whether he is guilty of the offence, and as such liable to pay any compensation to the complainant or not. Accordingly, since the amended provision provides for enforcement of recovery of interim compensation by way of coercive procedure, it is nothing but an obligation imposed upon the accused. Section 3 of the Specific Relief Act has clarified the meaning of term '***obligation'*** by defining that any duty enforceable under law is an obligation. As per General Clauses Act, this definition has to be read in all Central Acts unless defined otherwise in the relevant Act. Such an '*obligation'* having consequences qua the property rights of the accused cannot; but be treated; as substantive provision effecting his substantive right by casting a substantive obligation upon him, to make the payment of money; and if not paid, making him subject to legal deprivement/disability qua his properties. Therefore, it has to be held that Section 143-A of the Act cast a substantive obligation upon the accused and thereby effect the substantive right of the accused. Since the Amendment Act has not made the provision applicable retrospectively, specifically, to pending cases, hence, it cannot be applied retrospectively, to pending cases; which arose from the default of the accused which has taken place before coming into force of this provision.

Another aspect which is clear from Section 143-A of the Act, and which shows that the provision is not procedural, is that this provision is not shown to be as a step toward furtherance of the procedure of trial. The provision is not contemplated as one more step governing, simplifying, or modifying the steps in the trial of the accused by the Court. Accordingly,

this section does not authorize the Trial Court to pass any order, having consequences against the accused qua the steps of the trial; in case of non-payment of interim compensation. This section does not authorize the Court to close the defense or to take any other step for speeding up the trial as such. On the contrary, this provision is intended to create a '*stand alone liability'* which has to be discharged independent of the trial and which shall have consequences outside the trial only. Hence, by no means, this provision can be taken as procedural in nature. Needless to say that everything prescribed as part of procedural provision or every order of Trial Court, passed during the trial cannot, necessarily, be termed as procedural in nature. The test for determining the substantive or procedural nature of the provision or order of the Court would be the consequences; which the affected party invites under such a procedure or order. If the consequences are in furtherance or in commensurance with the proceedings and steps of the trial, the provision/order can be taken as a procedural. On the other hand, if the consequences of provision or the order passed by the Court has nothing to do with the proceedings or steps of the trial, rather, have independent consequences; outside the scope of the trial, and at the same time affects the existential or property rights of the accused, then it has to be taken as a substantive provision only.

There is still another reason why the provision of Section 143-A of the Act cannot be applied to the pending cases. Section 53 of the Indian Penal Code(hereinafter referred to as 'IPC') prescribes only six kinds of punishments, though for the purpose of offences under IPC, which are punishment of death, punishment for imprisonment for life, imprisonment for a term, which can be simple or rigorous, punishment of forfeiture of

property and the punishment of fine. Therefore, under the provisions of IPC forfeiture of property is one of the punishment. Furthermore, there is no provision of imposing sentence of awarding of compensation against an accused and in favour of the complainant. Even if the compensation is awarded that is not the part of the sentence. Even under the Negotiable Instruments Act, Section 138 does not prescribe any sentence other than the imprisonment and the sentence of fine. Hence compensation is not to be awarded as a part of sentence. Although, the fine, provided to be imposed as sentence, ranges upto twice the amount of the cheque, which can be appropriated as compensation in favour of the complainant, however, there is no provision for independently awarding compensation by the Trial Court under the Negotiable Instruments Act. Hence, it is clear that by Section 143-A of the Act, the Trial Court has been permitted to inflict a liability upon accused, as an interim measure, although as a final order, it cannot pass the order of award of compensation as part of sentence. But this interim measure, if enforced through Section 421 Cr.P.C leads to loss of properties by accused, which is a kin to forfeiture of his properties. Hence, essentially the provision enhances the scope and degree of punishment to be awarded to an accused; by awarding compensation and then making the same liable to be recovered as a fine. After all the punishment is nothing but an eclipse or clog upon right to life and liberty of a person or upon right to belongings and estates of such a person, imposed as per the mandate of law. However, under the provisions of Constitution of India, the person cannot be subjected to sentence more than what he was liable to on the date when he conducted himself in a manner which has made him liable for such a sentence. It would be no consolation to the rights of accused to say that the

compensation awarded by the Trial Court is only interim measure and that the accused would get the same back with interest if he is acquitted. By virtue of sheer amount of '*interim compensation'*, which may work out in a particular case in crores of rupees, for a person who is not having means of more than few lakhs of rupees, the consequence under this Section can be totally devastating, irrecoverable and irreparable. Therefore, this provision can at the best be applicable prospectively where prospective accused would be aware of such consequences in advance, and it cannot be applied to the cases where the trial has already commenced qua a default which was suffered; when this provision was not in-existence.

Although the provision of Section 143-A of the Act cannot be applied to the pending trials, however, this Court finds that the situation regarding Section 148 of the Act is drastically different. As observed above, this provision also has to be read in conjunction with the relevant provisions of the Cr.P.C. Further, this Court also finds substance in the argument of learned counsel for the respondent that although '*Right to Appeal', per se,* is a substantive right, however, no person have a substantive or vested right to claim that he would file and prosecute appeal only in accordance with any particular provision. The *Right to Appeal,* being a statutory right, has to be availed only within the parameters provided by the said provision. Therefore, if any provision relating to dealing with the appeal by the Appellate Court is altered, the said provision has to be treated as a procedural provision only. Considering the provision of Section 148 of the Act, this Court finds substance in the argument of learned counsel for the petitioners that the said provision does not, in any way, affects the substantive right of the accused, to defend himself or to

prosecute his appeal. The provision categorically provides that in case the accused/appellant is acquitted by the Appellate Court; then the amount awarded by the Appellate Court as interim compensation shall be returned to him; by the complainant, along-with interest. No other disqualification is to be inflicted upon the accused/applicant qua defense or prosecution of appeal by him.

However, still the essential question to be considered is *whether the provision authorizing the Appellate Court to Order the appellant to deposit a minimum of 20% of the fine or compensation awarded by the Trial Court; is a procedural step or a provision affecting the substantive right of the appellant.* In this regard, it deserves to be noted that when the case reaches before the Appellate Court, the appellant/accused has already acquired a status of '*convict'*, who has already been found guilty of his conduct and sentenced by the Trial Court. In case the Trial Court imposes a fine then making him to pay that amount does not effect his substantive right. Rather it is a matter of procedure only. In case of conviction of an accused, the Trial Court may not impose any fine upon the convict/appellant at all. In such a situation, the Appellate Court would not be able to order the appellant to deposit any amount; because under the provision, Appellate Court is authorized to order deposit of 20% of '*fine'* or '*compensation'* awarded by the Trial Court. If there is no order of fine or compensation then there cannot be any order of deposit of any amount at the appellate stage. In case the Trial Court imposes a fine, which can be up to twice the amount of the cheque and which can be treated as compensation to be paid to the complainant, in that situation, liability of the accused/appellant has already been determined by the Trial Court. The

liability to pay the amount to the complainant already exists at the time when the appellant comes before the Appellate Court. It is discretion of the Appellate Court *whether to suspend the order of imposition of fine or compensation or not.* In case the fine is not stayed by the Appellate Court then the entire amount of fine or compensation, otherwise also, becomes recoverable from the accused/appellant as per the procedure prescribed under Section 421 of Cr.P.C. Hence, if the lower Appellate Court has passed the order of deposit of 20% of amount, then although Section 148 of the Act does not specifically mention that amount ordered to be deposited by the Appellate Court would be recoverable under Section 421 Cr.P.C, however, otherwise being part of fine; the same is liable to be recovered only under Section 421 Cr.P.C. Hence, if the Appellate Court passes the order of deposit of 20% or more of amount of fine or compensation that in fact, is a beneficial order for the accused/appellant; because that would mean that the amount of fine or compensation imposed by Trial Court, beyond that 20%, as ordered by the Appellate Court, is *ipso facto,* being stayed during the pendency of the appeal. Hence instead of prejudicing any substantial right of the appellant this provision is beneficial provision in favour of the accused. Still further there can be a situation where a Trial Court passes sentence of only fine or compensation up to twice the amount of the cheque, without any sentence of imprisonment. In that situation, the fine becomes recoverable immediately. However, Section 424 of Cr.P.C provides that the amount shall be payable in full within 30 days from the date of order of the Trial Court, or at the best in three installments, starting from within 30 days from the order of the Trial Court, and the remaining two installments being paid at the interval of 30 days each. Hence the payment of entire amount of

fine or compensation has to be completed within 90 days. The provision of Section 424 Cr.P.C is reproduced below:-

> ***424. Suspension of execution of sentence of imprisonment.***
>
> *(1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may-*
>
> - *(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days;*
> - *(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and if the amount of the fine or of any instalment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.*
>
> *(2) The provisions of sub- section (1) shall be applicable also in any case in which an*

> *order for the payment of money has been made on non- recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment."*

The above-said provision does authorize the Court to suspend the execution of the sentence of '*default imprisonment*', if the convict submits bond for payment of the amount on the dates, as ordered by the Court. However, this section also provides the consequences for non-payment of the amount of fine or compensation as well, which can be cancellation of bond of the accused/convict and sending him to custody, which can be by withdrawal of the order of suspension of sentence, leading the appellants/convict to be landed in jail. From this point also the provision of Section 148 of the Act is far-far beneficial for the accused/convict/appellant in the sense that it permits the Appellate Court to order the convict to deposit only 20% of the fine or compensation, leaving the remaining amount to be paid beyond a period of 90 days; or not to be paid even till conclusion of the appeal.

In view of the above discussion, it is quite clear that the procedure of recovery of fine or compensation from a convict-appellant of pending appeal already existed in CR.P.C; before advent of the provision as contained in Section 148 of the Act. Hence, no new aspect of coercive recovery of fine or compensation from the appellant is being created through this amended provision. On the contrary, this provision provides

more breathing space to the convict/appellant; as compared to the other procedures of recovery, as contemplated under Sections 421 and 424 of Cr.P.C, which is for more onerous in terms of time limit and the consequences. Since the provisions for recovery of fine or compensation from the appellant/convict already existed in the existing procedure relating to the recovery, therefore, the provision introduced vide Section 148 of the Act; which relates only to recovery of amount partly, as interim measure, has to be treated purely procedural only, which is otherwise also beneficial for the appellant as compared to the pre-existing provisions. Hence it has to be held that provision of Section 148 of the Act shall govern all the appeals pending on date of enforcement of this provision or filed thereafter.

This Court does not find any substance in argument of learned counsel for the petitioners that since the object and reasons for introducing the amendment relate to giving benefit to the complainant and do not relate to the procedure of the appeal, therefore, it cannot be treated to be a procedural step. As is noted above irrespective of the object and reasons of the act, the bare language of the provision only authorizes the Court to pass an interim order, which is only in modification of the procedure of recovery which already existed in the general provision of law relating to recovery of fine or compensation. Hence, for obvious reasons, the rationale qua objects and reasons of the Act, which is applicable at the stage of trial; cannot be imported to the stage of appeal. As mentioned above, at the stage of trial, the provision of Section 143-A of the Act has created a new '*obligation'* against the accused, which was not contemplated by the existing law and which created a substantive liability upon him, whereas the provision of Section 148 of the Act only reiterated; and to some extent modified in

favour of the appellant, the procedure of recovery already existing in the statute book. Still further, this Court does not find any force in the argument of the learned counsels for the appellants that Appellate Court could not have made the suspension of sentence of the petitioners conditional upon deposit of amount of interim compensation as ordered by Appellate Court. It deserves to be noted here that even suspension of sentence is in the judicial discretion of the Appellate Court. If the Appellate Court makes such judicial discretion subject to a statutory provision relating to deposit of interim compensation, then no fault could be found with such exercise of discretion. Moreover such a course of action even forms part of procedure prescribed under Section 424 Cr.P.C, though relating to a different type of suspension of sentence. But it shows that if the Appellate Court makes suspension of sentence subject to payment of statutory interim compensation or fine then such an order is in commensurance with the statutory provisions contained in Cr.P.C and the intention of legislatures as contained in Section 148 of the Act.

Accordingly all the petitions, wherein the order of the Trial Courts, directing the accused to deposit up to 20% of the cheque amount as interim compensation; are challenged, are allowed. Consequently, the Orders challenged in those petitions are set-aside.

The petitions where the challenge is to the order of the Appellate Court, directing the appellant to deposit 20% or more of the amount of fine or compensation as awarded by the Trial Court, are dismissed. Consequently, the Orders impugned in these petitions are upheld.

Lest anymore unnecessary litigation should arise under above-

said provisions of Section 143-A and Section 148 of the Negotiable Instruments Act, it would be appropriate that the Trial Courts/Appellate Courts are made aware of the above-said interpretation of these two provisions. Accordingly, the Registrar General of this Court is directed to ensure that a copy of this judgment is sent through e-mail, forthwith, to all the judicial officers in the States of Punjab and Haryana and in U.T. Chandigarh, dealing with cases under the Negotiable Instruments Act, 1881.

4th April, 2019 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No