

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 135 of 2020

Nokibuddin Shekh, age 47 years, son of late Samsul Haque
resident of village Udaynarayanpur, P.O. Jhikarhari, P.S-Pakur
(M), District Pakur (Jharkhand) Petitioner

Versus

1.The State of Jharkhand
2.Md. Mikail Firdaus son of late Latifur Rahman aged about 63
years, resident of Taziya Chowk, Harindanga Bazar, P.O. Pakur,
P.S Pakur (Town), District-Pakur Opp. Parties

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner : Mr. Suraj Singh, Advocate
For the State : Mr. Navin Ganjhu, APP
For the O.P. No.2 : Mr. Sachi Nandan Das, Advocate

12/Dated:18th March, 2025

I.A. No.1254 of 2024

This Criminal Revision Application has been filed on behalf of the petitioner challenging the order dated 03.12.2019 passed in Cr. Appeal No.23 of 2018 by learned Principal District and Sessions Judge, Pakur by which the appeal filed on behalf of the petitioner has been dismissed for not depositing the fine amount of Rs.4,37,500/- in compliance of the order dated 14.08.2018 and also the judgment of conviction and order of sentence dated 19.06.2018 passed by Shri Sandeep Kumar Bartam, learned S.D.J.M, Pakur in connection with P.C.R Case No.61 of 2017 (T.R No.1000 of 2018) by which the petitioner has been convicted for the offence under Section 138 of the N.I. Act and sentenced to undergo S.I. for one year and to pay the fine amount of Rs.4,37,500/- @ 4% simple interest per annum from the date of issuance of cheque.

2. I.A. No.1254 of 2024 has been filed on behalf of the petitioner for grant of bail to the petitioner, during pendency of the present Criminal Revision Application.

3. Heard Mr. Suraj Singh, learned counsel for the petitioner, Mr. Navin Ganju, learned APP for the State and Mr. Sachi Nandan Das, learned counsel for the O.P. No.2.

4. Learned counsel for the petitioner submitted that the impugned Order passed by the Appellate Court and the judgment and order passed by the learned Trial Court are illegal, arbitrary and not sustainable in the eye of law. It is submitted that it is a case of civil dispute as the petitioner had purchased a land and for which he had paid certain amount in cash to the O.P. No.2 which was received by the O.P. No.2. But, when he applied for mutation then he learnt that he has been cheated by the complainant-O.P. No.2 as the land does not belong to the O.P. No.2. It is submitted that the petitioner is in custody since 27.01.2025 and hence, the petitioner may be enlarged on bail.

5. On the other hand, learned APP has opposed the prayer for bail.

6. Learned counsel for the O.P. No.2 has also opposed the prayer for bail and submitted that cheque issued by the petitioner has bounced.

7. Having heard learned counsel for both the sides and on going through the records of this Criminal Revision Application, it appear to be a case of civil dispute between the parties

8. Considering the custody of the petitioner and on the facts and in the circumstances of the case, the petitioner namely, Nokibuddin Shekh is directed to be released on bail, on furnishing bail bonds of Rs.10,000/- (Ten thousand only) with two sureties of the like amount each, to the satisfaction of Shri Sandeep Kumar Bartam, learned S.D.J.M, Pakur/or his

Successor Court, in connection with P.C.R Case No.61 of 2017, (T.R No.1000 of 2018).

9. Thus, I.A. No.1254 of 2024 is allowed and stands disposed of.

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10. However, during course of further argument, learned counsel for the petitioner has confined his argument only on the point of challenging the appellate order dated 03.12.2019 passed by the learned Principal District and Sessions Judge, Pakur.

11. Learned counsel for the petitioner submitted that the order dated 03.12.2019 passed by the learned Principal District and Sessions Judge, Pakur is illegal, arbitrary and not sustainable in the eye of law. It is submitted that the Appellate Court vide order dated 14.08.2018 directed the petitioner to deposit total fine amount of Rs.4,37,500/-. It is submitted that the learned Appellate Court below committed error by directing the petitioner to deposit the entire fine amount of Rs.4,37,500/- in violation of Section 143 A of N.I. Act as the provision of Section 143 A of the N.I. Act cannot be applied retrospectively in the instant case because the complaint case was filed on 06.03.2017 whereas Section 143 A was incorporated by amendment in the year 2018 and it was made effective with effect from 01.09.2018 and thus in the earlier N.I. Act there was no provision to deposit the entire fine amount of Rs.4,37,500/-.

12. In support of his contention, learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court passed in the case of *G.J. Raja versus Tejraj Surana* reported in *2019 SCC OnLine SC 989*, at para-14, 15, 18 and 23.

13. It is submitted that in view of the above the impugned order dated 03.12.2019 is illegal and may be set aside.

14. Learned APP for the State has opposed the prayer.

15. Learned counsel for the O.P. No.2 however, has also fairly admitted and submitted that the Section 143 A of the N.I. Act is effective from 01.09.2018 as per the amended provisions of the N.I. Act and hence necessary order may be passed.

16. Having heard learned counsel for both the sides and from going through the records, it appears that the complaint case was filed on 06.03.2017 and the Trial Court has passed the judgment on 19.06.2018. Thereafter the petitioner had preferred appeal vide Cr. Appeal No.23 of 2018 before the learned Principal District and Sessions Judge, Pakur and surprisingly vide order dated 14.08.2018 the learned Principal District and Sessions Judge directed the petitioner to deposit the fine amount of Rs.4,37,500/- as security amount while admitting the Cr. Appeal No.23 of 2018 and observed this amount will be subject to final disposal of the appeal and refused to confirm the provisional/ ad-interim bail granted by the Lower Court on 19.06.2018 by directing the petitioner to deposit the fine amount in Nazarat.

17. It has been held by Hon'ble Supreme Court in the case of ***G.J. Raja versus Tejraj Surana*** reported in ***2019 SCC OnLine SC 989***, at para-14, 15, 18 and 23 as follows:-

“Para-14:- In the present case, the complaint was lodged in the year 2016 that is to say, the act constituting an offence had occurred by 2016 whereas, the provision concerned viz. Section 143-A of the Act was inserted in the statute book with effect from 1-9-2018. The question that arises therefore is whether Section 143-A of the Act is retrospective in operation and can be invoked in cases where the offences punishable under Section 138 of the Act were committed much prior to the introduction of Section 143-A. We are concerned in the present case only with the issue regarding applicability of said Section 143-A to offences under Section 138 of the Act, committed before the insertion of said Section 143-A.

“Para-15:- While considering general principles concerning “retrospectivity of legislation” in the context of Section 158-BE inserted in the Income Tax Act, 1961, it was observed by this Court in CIT v. Vatika Township (P)

Ltd. [CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1] as under: (SCC pp. 21-22, para 28)

*“28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in *Phillips v. Eyre* [*Phillips v. Eyre, (1870) LR 6 QB 1*], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.”*

Para-18:- *The provisions contained in Section 143-A have two dimensions. First, the Section creates a liability in that an accused can be ordered to pay over up to 20% of the cheque amount to the complainant. Such an order can be passed while the complaint is not yet adjudicated upon and the guilt of the accused has not yet been determined. Secondly, it makes available the machinery for recovery, as if the interim compensation were arrears of land revenue. Thus, it not only creates a new disability or an obligation but also exposes the accused to coercive methods of recovery of such interim compensation through the machinery of the State as if the interim compensation represented arrears of land revenue. The coercive methods could also, as is evident from provision like Section 183 of the Maharashtra Land Revenue Code, in some cases result in arrest and detention of the accused.*

Para-23:- *In our view, the applicability of Section 143-A of the Act must, therefore, be held to be prospective in nature and confined to cases where offences were committed after the introduction of Section 143-A, in order to force an accused to pay such interim compensation.”*

18. The order passed by the learned Appellate Court is also illegal as the provision of Section 143 A of the N.I. Act was effective from 01.09.2018. Moreover, even the amended

provision prescribes for depositing 20% of the fine amount not the entire amount as per section 143 A (2) of N.I. Act.

19. It further transpires that by impugned order dated 03.12.2019 passed by the learned Principal District and Sessions Judge, Pakur, the appeal was dismissed for not depositing the fine amount of Rs.4,37,500/- in the Nazarat as security amount, although even on the date of passing order impugned 03.12.2019 the petitioner was ready to pay Rs.2,37,500/- in cash to the O.P. No.2 and remaining amount was to be paid on 15.01.2020.

20. The Appellate Court has passed the impugned Order dated 03.12.2014 casually and without taking into consideration the legal aspect of the matter.

21. Accordingly, the Order dated 03.12.2019 passed in Cr. Appeal No.23 of 2018 by learned Principal District and Sessions Judge, Pakur is set aside. The Cr. Appeal No.23 of 2018 is revived and the matter is remitted to the Court of the learned Principal District and Sessions Judge, Pakur and the learned Appellate Court is directed to hear the appeal on merit expeditiously without asking for any security deposit.

22. Both the parties are directed to appear before the learned Court below on 16.04.2025 for fresh hearing of the Criminal Appeal.

23. Thus, Cr. Revision No.135 of 2020 is allowed.

24. However, it will also be open to the parties to take steps for compromise before the learned Court below.

25. I.A. No.2936 of 2020 is disposed of as not pressed for.

(Sanjay Prasad, J.)