2025:PHHC:014418

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-245-2025
Decided on : 29.01.2025

Ramesh Chand . . . Petitioner(s)

Versus

Ram Niwas . . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Amit Kaith, Advocate
for the petitioner(s).

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SANJAY VASHISTH, J. (Oral)

1. Present revision petition has been preferred by the petitioner against the order dated 21.12.2024, passed by the learned Addl. Sessions Judge, Kurukshetra, passed in CRA-287-2024, filed by the petitioner.

2. Counsel for the petitioner submits that respondent – Ram Niwas (complainant) filed a complaint against the petitioner under Section 138 of the Negotiable instruments Act, 1881 (in short, 'NI Act') on the ground that, being in good relations with the complainant, petitioner had borrowed a sum of Rs.6,00,000/- for depositing the education fee of his son. Petitioner had assured the respondent that he would return the said amount within a period of one month and for the said purpose, petitioner issued cheque bearing No. 634997, dated 14.08.2019, for a sum of Rs.6,00,000/-, in favour of the respondent – complainant. However, when the said cheque was presented by the respondent – complainant before the Bank, it was returned by the bank with the report of dishonoured due to "Funds Insufficient" vide memo dated 16.08.2019. After that when the respondent – complainant approached the petitioner for repayment, the petitioner did not pay any heed to his

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request.

Further submits that a complaint u/s 138 of the NI Act was filed by the respondent – complainant, which was decided by the learned Judicial Magistrate Ist Class, Kurukshetra (learned trial Court) vide its judgment of conviction dated 27.11.2024. The learned Trial Court vide order of sentence dated 29.11.2024, sentenced the petitioner to undergo simple imprisonment of six months and also to pay compensation of Rs.9,00,000/- in lieu of the financial loss suffered by the respondent – complainant.

Thereafter, petitioner filed an appeal against the judgment of conviction 27.11.2024 and order of sentence dated 29.11.2024, before the lower Appellate Court along with an application for suspension of sentence during the pendency of appeal.

3. Learned counsel for the petitioner argues that the lower Appellate Court while issuing notice in the said appeal and allowing the bail application of the petitioner vide impugned order dated 21.12.2024, granted bail to the petitioner subject to deposit of 20% of the compensation amount within a period of 60 days from the date of order, as per Section 148 of the NI Act, without recording any reasons and treating it as an absolute rule, warranting deposit of said compensation amount.

4. In support of his contention, counsel for the petitioner has placed reliance upon judgment of Hon'ble Apex Court rendered in ***Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. & Ors., 2023(10) SCC 446 : Law Finder Doc Id # 2313888***, and submits that while considering Section 148 of the Negotiable Instruments Act, the Hon'ble Apex Court held that in a given situation, the requisite deposit of 20% of the

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compensation amount is not absolute and same can either be reduced or be completely exempted for the reasons to be recorded by Appellate Court.

For reference, relevant paragraphs of the aforesaid judgment are reproduced here-under:-

> *"6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.*
> *7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.*
> *8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the Courts to consider the said plea.*
> *9. We disagree with the above submission. When an accused applies under Section 389 of the Cr.P.C. for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exception or not.*
> *10. In these cases, both the Sessions Courts and the High Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.*
> *11. The learned counsel appearing for the appellants, at this stage, states that the appellants have deposited 20% of the compensation amount. However, this is the matter to be examined by the High Court.*
> *12. In these circumstances, we set aside the impugned orders of the High Court and restore the revision petitions filed by the appellants before the High Court. We direct the parties to appear before the roster Bench of the High Court on 09.10.2023 in the morning to enable the High Court to fix a date for hearing of the revision petitions. As the contesting parties are before the Court, it will not be necessary for the High Court to issue a notice of the date fixed for hearing. The High Court, after hearing the parties, will consider whether 20% of the amount is already deposited or not. If the Court comes to the conclusion that 20% of the amount is not deposited, the Court will re-examine the Revision Petitions in the light of what we have observed in this judgment. Till the disposal of the restored Revision Petitions, the interim order passed by this Court ordering suspension of sentence will continue to operate."*

5. Having heard counsel for the petitioner and going through the

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proposition of law, laid down by the Hon'ble Apex Court in ***Jamboo Bhandari's case*** *(supra)*, I am of the considered view that this petition can be disposed of without issuing notice to the other side, by relegating the petitioner to appear before the learned Court below, where the appeal of the petitioner is pending adjudication, with liberty to raise all such pleas there.

6. Accordingly, impugned order dated 21.12.2024, is hereby **set-aside** to the extent of deposit of 20% of the compensation amount within a period of 60 days.

Petitioner through his counsel is directed to appear before the learned Court below on or before 10.02.2025. Upon appearance of the petitioner and hearing him, the learned Court below shall pass fresh orders with regard to the condition of deposit of 20% of the compensation amount.

7. **Petition stands disposed of accordingly**.

(SANJAY VASHISTH)
JUDGE

January 29, 2025
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

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