

CRM-M-2910-2024
Date of decision: 20.01.2024

Harbans Singh ChahalPetitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mohan Singh Chauhan, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition under Section 482 Cr.P.C. has been filed seeking setting aside of order dated 08.08.2022 (Annexure P-3) passed by the learned Special Court, Jalandhar in CRA-140-2022 titled as 'Harbans Singh Chahal Vs. Mohan Singh' vide which the petitioner was directed to deposit 20% of the amount of compensation awarded by the learned trial Court.

Brief facts of the case are that a complaint was filed by respondent No.2 against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') on the ground of dishonouring of cheque bearing No.372214 dated 27.06.2016 amounting to Rs.10 lakhs issued in favour of the complainant/respondent No.2 by the petitioner in discharge of his liability. Respondent No.2 filed complaint against the petitioner in which vide order dated 11.07.2022, he was convicted and sentenced to undergo rigorous imprisonment for two years and was further directed to pay compensation to the tune of Rs.10 lakhs i.e. the amount of cheque along with interest @ 9% per

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annum. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Sessions Court, Jalandhar. The learned Special Court vide order dated 08.08.2022, suspended the sentence of the petitioner subject to depositing 20% of the compensation amount.

Learned counsel for the petitioner *inter alia* contends that the learned lower Court failed to appreciate the facts in the right perspective and imposed the condition to deposit 20% of the compensation and such a condition is illegal, arbitrary and in violation of the law as laid down by the Hon'ble Supreme Court in Criminal Appeal Nos.2741 of 2023 (@ SLP(Crl.) Nos. 4927 of 2023 ***Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. and others***, decided on 04.09.2023. Speaking through Justice Abhay S. Oka, it has been held as follows:-

“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 4 conclusion must be recorded.”

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Having heard learned counsel for the petitioner and after perusing the judgment relied upon in *Jamboo Bhandari (supra)*, undisputedly, the learned Appellate Court has not granted any opportunity to the petitioner for rebutting the application filed by the respondent under Section 148 of the Negotiable Instruments Act.

In view of the law laid down by Hon'ble Supreme Court in *Jamboo Bhandari (supra)*, the lower appellate Court was required to consider whether the present case falls in the exception or not. The impugned order dated 08.08.2022 (Annexure P-3) is set aside. The learned Appellate Court is directed to re-examine the case after granting an opportunity to the petitioner to make submissions regarding the exceptional circumstances which warrants waiver of imposing the condition of requirement of deposit of 20% of the compensation awarded by the learned trial Court.

The matter is remanded back to the learned lower Appellate Court with a direction to decide the matter afresh in accordance with law in the light of judgment passed by the Hon'ble Supreme Court in *Jamboo Bhandari's case (supra)*.

The petition is disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

20.01.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No