

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**1. CRM-M-3913-2024 &
2. CRM-M-3928-2024
DECIDED ON: 12.03.2024**

JASWANT SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rahul Garg, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

The jurisdiction of this Court has been invoked under Section 482 Cr.P.C. for setting aside the impugned order dated 21.11.2023 (Annexure P-5), whereby the petitioner has been directed to deposit 20% of the cheque amount in Appeal No.379 of 2023, titled as “Jaswant Singh versus Gurdeep Singh”, dated 20.11.2023, pending before the learned Additional Sessions Judge, Jalandhar for 08.02.2024, filed a complaint under Section 138 of Negotiable Instruments Act vide complaint No.NACT-20-2019, dated 29.01.2019 titled as “Gurdeep Singh versus Jaswant Singh” before learned Sub Divisional Judicial Magistrate, Nakodar.

A perusal of the impugned order dated 21.11.2023 reveals that statement on oath has been made by the petitioner being a convict that he would make the payment of 20% of the cheque amount on account of compensation within a period of sixty days which lapsed on 21.01.2024.

Learned counsel for the petitioner has relied upon a judgment of Hon’ble Supreme Court passed in Criminal Appeal No.2741 of 2023 titled

as ***“Jamboo Bhandari versus M.P. State Industrial Development Corporation Ltd. & Ors.”***, decided on 04.09.2023, whereby heavily referring to concluding part of the judgment that in case the appellant shows sufficient cause before the Court it may waive off the statutory provision of 20% deposited out of compensation amount/fine.

At the same time, this Court in ***“Rajni Dhingra versus Sanjeev Chugh” (CRM-M-28681-2022)***, decided on 11.08.2023, considered the question of validity for imposing the restriction to deposit 20% of the compensation amount as a pre-requisite for suspending the sentence on the touchstone of the decision in ***“Surinder Singh Deswal @ Col. S.S. Deswal & Ors. Vs. Virender Gandhi”, (2019) II SCC 34***, wherein the Apex Court, after having considered the provisions of Section 148 of the NI Act and the objects and reasons for its enactment by way of Amendment No.20/2018, held that the power of the Appellate Court in directing the accused to deposit more than 20% of the fine is mandatory in nature and as such upheld such stipulation for suspension of sentence. The relevant portion of *Rajni Dhingra* reads as under:-

"21.It is also well known to this Court that certain unscrupulous and notorious drawers of the dishonored cheque have been misusing the procedural delay to their advantage after obtaining stay on the proceedings which only frustrates the basic object and reason of incorporation of Section 138 of the Negotiable Instruments Act, 1881.

The amendment in Section 148 of the said Act has been cautiously effected primarily having at the back of mind to expedite the disposal of proceedings under the

Negotiable Instruments Act and by no stretch of discussion, it could be said that the substantive right of appeal of the accused-appellant has been taken away/or effected.

22. Further the Apex Court in Surender Singh Deswal (supra) has observed that amended Section 148 of NI Act, 1881 has purposively interpreted in such a manner it is done so as to provide, inter alia, speedy disposal of cases considering the fact that once after easy filing of the appeals and obtaining stay in the proceedings, injustice creep in to the payee of a dishonored cheque, who is forced to spend considerable time and resources in litigation to realise the value of the cheque resultantly compromise the sanctity of the cheque transaction.

23. In the light of discussions made hereinabove and the case law Surender Singh Deswal (supra), the petitions hereby are dismissed being devoid of merits. The petitioners-accused are directed to deposit the amount as ordered by the Lower Appellate Court within the stipulated time of 60 days, which may be further extended by 30 days.

24. It is however further made clear that the period of 60 days shall now be counted from the date a certified copy of the order received by the trial Court."

This very fact cannot be lost sight by this Court that there may be circumstances in cases which may warrant invoking of exceptional clause from Section 141 Cr.P.C. which is enunciated in the case of Jamboo Bhandari's case (supra) but the case in hand is totally distinct in facts and circumstances changing the whole legal proposition in itself wherein the petitioner at the first instance seems to have acted smartly while moving an

application before the learned Lower Appellate Court on 21.11.2023 and obtained the order for suspension of sentence subject to deposit of 20% of the total compensation amount within a period of 60 days and once his sentence was suspended showing trust upon him by the Court, he cleverly comes before this Court seeking setting aside the above-said order.

In the instant petition, the petitioner has failed to make out his case in bringing the same under such exemption and explanation for this Court to carve out granting him waiver or any concession in the fine/compensation to the tune of 20% which is required to be deposited at the time of filing of appeal.

Order dated 21.11.2023 would clearly reveal that the sentence of the petitioner was suspended during the pendency of appeal before it subject to deposit of 20% of the cheque amount within a period of 60 days and to that the petitioner did not move any application before the said Court for bringing his case under any of the exemption as to how he is not in a position to deposit the aforesaid statutory amount.

Hence, the present petition being devoid of any merits as no sufficient ground has been raised even before this Court, stands dismissed.

12.03.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No