

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-5951 of 2024 (O&M)

Date of Decision: February 05, 2024

Gurvinder Singh @ Goldi

.....Petitioner

versus

Umed Singh

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Karan Garg, Advocate
for the petitioner

Harpreet Singh Brar, J. (Oral)

1. The present petition has been filed under Section 482 Cr.P.C. seeking setting aside of order dated 09.02.2023 passed by Additional Sessions Judge, Fatehabad (Annexure P-3) passed in Criminal Appeal bearing No. CRA 65 of 2023 dated 09.02.2023 vide which the petitioner is directed to deposit 20% of the compensation under Section 148(2) of the Negotiable Instrument Act, 1881.

2. Brief facts of the case are that a complaint was filed by the respondent against the petitioner under Sections 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') on the ground of dishonouring of cheques bearing No. 806402 dated 06.01.2017 amounting to Rs. 10 lacs issued in favour of the respondent by the petitioner in discharge of his liability. Respondent No. 2 filed a complaint against the petitioner in which vide order dated 12.01.2023 passed by Sub Divisional Judicial Magistrate, Ratia, he was sentenced to undergo simple imprisonment for one year and to pay compensation

of Rs. 10,00,000/- to the respondent. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Sessions Judge, Fatehabad. Vide order dated 09.02.2023, learned Additional Sessions Judge, Fatehabad while disposing of the application for suspension of sentence directed the petitioner to deposit 20% of compensation amount i.e. Rs. 10,00,000/- within a period of 60 days.

3. Learned counsel for the petitioner *inter alia* contends that the learned lower Appellate 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.”

4. Having heard learned counsel for the petitioner and after perusing the judgment passed 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 09.02.2023 (Annexure P-3) whereby, the condition of depositing 20% of compensation amount awarded has been imposed is hereby set aside. The learned lower Appellate Court is directed to re-examine the case after granting an opportunity to the petitioner to make submissions regarding the exceptional circumstances and decide whether it is a fit case that warrants waiver of the requirement of deposit of 20% of the compensation awarded by learned trial Court.

5. 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)***.

6. The petition is disposed of accordingly.

February 05, 2024
reena

(HARPREET SINGH BRAR)
JUDGE

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