

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

CRR-250-2024

DECIDED ON: 29.02.2024

SURENDER

.....PETITIONER

VERSUS

HDFC BANK LTD

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S. Sahu, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 401 Cr.P.C., 1973, assailing the order dated 20.01.2024, passed by the Additional Sessions Judge, Sirsa, whereby the bail of the petitioner stands cancelled along with his bail/surety bonds were forfeited to the State and issued warrants of arrest of the petitioner for 04.03.2024.

2. A perusal of the impugned order dated 20.01.2024 further refers to an order dated 15.12.2023 on which the statement on oath has been made by the petitioner being a convict that he would make the payment of 20% on account of compensation within a period of one month which lapsed on 14.01.2023.

3. Interestingly, the petitioner instead of complying with the aforesaid statement given before the Court on oath, moved an application seeking exemption from deposit of such payment and the Court below dismissed he said application for exemption while cancelling bail along with bail/surety bonds vide its order dated 20.01.2024. Since the petitioner has

now been summoned through warrant of arrest for 04.03.2024 along with a notice to his surety for the date so fixed, the petitioner has rushed to this Court seeking an exemption to make the payment of 20% that would come to Rs.7,80,000/- of the total amount of compensation assessed at Rs.39 lacs as awarded by the trial Court in its judgment dated 13.03.2023 and quantum of sentence dated 15.03.2023 in a dispute arising out of dishonouring of cheque under Section 138 of the Negotiable Instruments Act. Mr. S.S. Sahu, learned Advocate for the petitioner vehemently urges and admits to make out a case of exemption while submitting that he is not in a position to deposit the said amount of 20% i.e. Rs.7,80,000/- having no source of income other than agricultural income, which also got damaged due to flood and Pink Valorem Attack damaging the entire cotton crop due to this reason.

4. Though the counsel relies upon a judgment passed by Apex Court in ***Jamboo Bhandari versus M.P. State Industrial Development Corporation Limited and Others***”, passed in Criminal Appeal No.2471 of 2023, submitting that in exceptional cases which warrants grant of suspension, the Appellate Court may consider waiving of the addition to deposit 20% of the total compensation amount.

5. Once questioned by this Court, Mr. Sahu, learned Advocate for the petitioner was not able to refer to any application moved for such exemption and even the order dated 15.12.2023 was found to be not placed on record, whereby the statement on oath was given by the petitioner to deposit the amount within a period of 30 days to the tune of 20% of the total compensation amount.

6. 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 making a statement before the Lower Appellate Court on 15.12.2023 and obtained the order for suspension of sentence subject to deposit of 20% of the total compensation amount within a period of 30 days and later on once his sentence was suspended showing trust upon him by the Court, he cleverly moved an application seeking exemption to deposit the said amount raising a lame excuse which was not supported by any evidence whatsoever.

7. 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."

8. In the light of above-said discussion and also being sanguine to the conduct of the petitioner who not only made a wrong statement before the Court with mischievous intent while obtaining an order for suspension of

sentence on 15.12.2023, but subsequently, moved an application for exemption on lame excuses but has also before this Court deliberately withheld the application for exemption filed before the Lower Appellate Court in support of his averment to establish the ground on which he was seeking exemption and order dated 15.12.2023, whereby his statement on oath was recorded by the Lower Appellate Court, this Court with a considered view that law will come to the rescue of a litigant who approaches the Court with clean hands and not for a convict who still dares enough to play smart with the judicial system and adopts all kind of clever tactics in an attempt to derail the process of law.

9. In the background of such circumstances and having considered the submissions made by Mr. S.S. Sahu, learned Advocate for the petitioner, neither the question of law stands fulfilled for him nor the law of equity would fall to any such benefit, therefore, the present petition is dismissed.

10. However, in the larger interest of justice at this stage, this Court though was inclined to exemplary costs but restrained itself from passing any further order.

(SANDEEP MOUDGIL)
JUDGE

29.02.2024
Poonam Negi

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