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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR No. 421 of 2020 (O&M)
Date of Decision: 28.02.2024

Amit Kapoor

...Petitioner

Versus

Parminder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

HARPREET SINGH BRAR, J.(ORAL)

1. The prayer in the present petition is for setting aside the order dated 20.01.2020 passed by the learned Additional Sessions Judge, Ludhiana whereby the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 30.09.2019 passed by the learned Judicial Magistrate Ist Class, Ludhiana in criminal complaint bearing no. COMA/9661/2017 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act'), has been dismissed solely on the ground that the petitioner has failed to pay 20% of the compensation amount in terms of the provision contained in Section 148 of the NI Act, as directed vide order dated 30.10.2019 (Annexure P-1).

2. Briefly, the facts are that the respondent-complainant gave a friendly loan of Rs. 50,00,000/- to the petitioner-accused in installments of Rs. 10,00,000/- to Rs. 20,00,000/- through September/October, 2016. The

petitioner also agreed to returning the loan amount at an interest of 18% p.a. The respondent requested his money towards the end of May, 2017, therefore, to discharge his liability, the petitioner issued a cheques bearing no. 932788 dated 05.06.2017 for Rs. 25,00,000/-. On presentation for encashment, the same was dishonoured vide memo dated 06.06.2017 with remarks 'exceeds arrangement.'

3. Learned counsel for the petitioner relies upon the ratio of law laid down by the Hon'ble Supreme Court in ***Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. and others (2024) 1 SCC(Cri) 90*** and submits that the provision of Section 148 of the NI Act are not mandatory in nature. The Hon'ble Supreme Court, in a catena of judgments, has observed that the deposit of a minimum 20% of the compensation is not an absolute requirement for suspension of sentence. He argues that even if the petitioner failed to deposit the said amount, at the most his application for suspension of sentence ought to be dismissed and not the appeal itself. The learned lower Appellate Court has fallen into error by dismissing the appeal solely on this ground, causing great prejudice to the petitioner.

4. Having heard learned counsel for the petitioner and after perusing the record of the case, it transpires that the learned lower Appellate Court, vide order dated 30.10.2019, directed the petitioner to pay 20% of the cheque amount as compensation within one month as the condition precedent for suspension of his sentence during the pendency of the appeal. Thereafter, the petitioner moved an application dated 20.01.2020 for extension of time to deposit the said amount. The learned lower Appellate Court, vide order dated 20.01.2020, not only dismissed his application for

exclusively on the ground of his failure to make the requisite payment.

5. Recently, a two Judge bench of the Hon'ble Supreme Court in ***Jamboo Bhandari (supra)***, speaking through Justice Abhay S. Oka, has 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.”

6. In view of the settled law, the lower Appellate Court was required to consider whether the present case falls in the exception or not. Therefore, the order dated 30.10.2019 whereby the condition of depositing 20% of compensation amount was been imposed for granting suspension of sentence and order dated 20.01.2020 vide which the appeal filed by the petitioner has been dismissed, are hereby 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 the requirement of deposit of 20% of the compensation amount.

7. 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***

8. The petition is disposed of accordingly.
9. Pending miscellaneous application(s), if any, shall also stand disposed of.

28.02.2024

(HARPREET SINGH BRAR)

Rajeev (rvs)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No