

**CRM-M-11114-2024**  
**Date of decision: 01.03.2024**

**...PETITIONER**

V/S

## ...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Ms. Geeta Sharma, DAG, Haryana.

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**HARPREET SINGH BRAR J. (ORAL)**

The present petition under Section 482 Cr.P.C. has been filed for setting aside of order dated 17.11.2023 (Annexure P-3) passed by the Court of learned Additional Sessions Judge, Fatehabad in CRA-456 of 2023 titled as Ajmer Singh Vs. State of Haryana etc. (Annexure P-2) in complaint bearing No.NACT/1119/2017 titled as Ram Niwas vs. Ajmer Singh filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'), whereby the suspension of sentence has been granted to the petitioner subject to the condition to deposit 20% amount of the compensation awarded.

2. The complainant's case in brief is that the complainant is C & F agent of Indo Israel Crop Science Company and petitioner is the authorized distributor of the abovesaid company. It has been further submitted that petitioner purchased the products i.e. pesticides, cherricals of abovesaid company from the complainant from time to time and there was an outstanding balance of Rs.11,17,435/- against the petitioner and he was under lawful liability to pay Rs.11,17,435/- to the complainant. It has been further

submitted that petitioner in discharge of his liability issued a cheque bearing No.785252 dated 23.09.2017 in favour of the complainant amounting to Rs.11,17,435/- drawn on his account No.7303002100000273 maintained by him with the Punjab National Bank, Branch Mirchpur, Hisar. It has been further submitted that the complainant presented the said cheque for payment in State Bank of India, Branch Bhuna for clearance but the cheque was dishonoured with the remarks 'Insufficient Funds' vide return memo dated 26.09.2017 (inadvertently written as 26.09.2016 in the complaint). Thereafter, complainant served the accused with a legal notice dated 24.10.2017 through his counsel Sh.Rakesh Kumar Garg, Advocate, Fatehabad thereby calling upon him to make the payment Rs. 11,17,435/- to the complainant within 15 days of the service of this notice and the same was duly served to the petitioner but he neither made the payment nor filed any reply to the legal notice. It has been further submitted that despite the issuance and service of legal notice to the petitioner, he has failed to make the payment of cheque amount to the complainant. Hence the present complaint has been filed against the petitioner.

3. Respondent filed a complaint against the petitioner, in which, vide order dated 19.10.2023, passed by learned Judicial Magistrate Ist Class, Fatehabad, he was sentenced to undergo simple imprisonment for a period of one year for commission of offence punishable under Section 138 of the Act and was further directed to pay compensation to the tune of Rs.11,20,000/- within two months. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Fatehabad. The learned Appellate Court vide order dated 17.11.2023, suspended the sentence of the petitioner subject to depositing 20% of the compensation amount within 60 days of passing of the order.

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 petitioner 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 17.11.2023 (Annexure P-3), whereby, the condition of depositing 20% of compensation amount has been imposed for granting

suspension of sentence 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 an appropriate 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 revision petition is disposed of accordingly.

March 01, 2024

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(HARPREET SINGH BRAR)  
JUDGE

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|------|---------------------------|--------|
| (i)  | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable        | Yes/No |