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

CRM-M-12523-2024

Date of decision: 13.03.2024

Gurpreet Singh

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Birinder Pal, Advocate for
Mr. Neeraj Jain, Advocate
for the petitioner.

Mr. Subhash Godara, Addl.A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 of Cr.P.C. seeking quashing of order dated 05.12.2022 (Annexure P-1) passed by the learned Additional Sessions Judge, Mansa, vide which the petitioner has been ordered to deposit 20% of the compensation amount.

2. The brief facts of the case are that a complaint was filed by respondent No.2 against the petitioner alleging that the petitioner along with his father had borrowed a joint house loan amounting to Rs.12 lakhs on 26.02.2024 from respondent No.2-Bank and an amount of Rs.13,23,200/- was outstanding as on 14.02.2019 along with interest. Thereafter, in discharge of his liability, the petitioner had issued a cheque bearing No.354220 dated 14.02.2019 amounting to Rs.13,20,000/- which was dishonoured and returned unpaid with

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memo dated 21.02.2019 with remarks 'payment stopped by drawer.' Therefore, the respondent filed a complaint against the petitioner in which he was convicted and sentenced to undergo rigorous imprisonment for a period of 02 years for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and was further directed to pay compensation to the complainant/respondent No.2 double the amount of the cheque along with simple interest @ 9% per annum from the date of issuance of the cheque. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Mansa. The learned Appellate Court vide impugned order dated 05.12.2022 (Annexure P-1) suspended the sentence of the petitioner subject to depositing 20% of the compensation amount. Thereafter, the petitioner has filed the petition bearing CRM-M No.59648 of 2022 titled as 'Gurpreet Singh Vs. Allahabad Bank' before this Court for grant of some more time to comply with the order dated 05.12.2022 and the same was allowed and the time for deposit of 20% of the awarded amount was extended upto 04.02.2023.

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** titled as '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 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 05.12.2022 (Annexure P-1), 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

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of judgment passed by the Hon'ble Supreme Court in *Jamboo Bhandari's case (supra)*.

6. The present petition is disposed of accordingly

(HARPREET SINGH BRAR)
JUDGE

13.03.2024
Neha

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