

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-12973 of 2024
Date of Decision: March 14, 2024

Nishan Singh

.....Petitioner

versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Manpreet Singh Dua, 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 10.10.2023 passed by Sessions Judge, Fazilka (Annexure P-3) passed in Criminal Appeal No. 398 of 2023 dated 10.10.2023 titled as *Nishan Singh vs. M/s Khalsa Traders* filed by petitioner against the judgment dated 16.09.2023 passed by the Court of learned Chief Judicial Magistrate 1st Class, Fazilka in case NACT/710/2018 titled as *M/s Khalsa Traders vs. Nishan Singh* to the extent of depositing 20% of the total compensation amount i.e. Rs. 18,50,000/- as awarded by learned trial Court.
2. Brief facts of the case are that a complaint was filed by respondent No. 2 against the petitioner under Sections 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') on the ground of dishonouring of cheque bearing No. 120567 dated 04.06.2018 amounting to Rs. 18,50,000/- issued in favour of respondent No. 2 by the petitioner in discharge of his liability. Respondent No. 2 filed a complaint against the petitioner in which vide order dated 16.09.2023

passed by Chief Judicial Magistrate, Fazilka, he was sentenced to undergo simple imprisonment for one year and to pay compensation equal to the amount of cheque to the complainant as per provisions of Section 357(3) of Cr.P.C. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Sessions Judge, Fazilka. Vide order dated 10.10.2023, learned Sessions Judge, Fazilka while disposing of the application for suspension of sentence directed the petitioner to deposit 20% of compensation amount within two months.

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

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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 10.10.2023 (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.

(HARPREET SINGH BRAR)
JUDGE

March 14, 2024

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No