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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14245-2024 (O&M)
Date of decision: 19.03.2024

Gurmail Singh

... Petitioner

Vs.

Gurdev Singh Chera

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Chandan Singh Rana, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing the order dated 11.01.2024 (Annexure P-3) passed by the learned Additional Sessions Judge, SBS Nagar, in Criminal Appeal No.4 of 2024 dated 11.01.2024 titled as '*Gurmail Singh Vs. Gurdev Singh Chera*' in Criminal Complaint No.NACT/156/2020 dated 17.06.2020 under Section 138 of Negotiable Instruments Act, 1881 (for short 'N.I. Act') titled as '*Gurdev Singh Chera Vs. Gurmail Singh*', whereby the petitioner has been ordered to deposit 20% of the compensation amount awarded by the learned trial Court within a period of 60 days.

2. In brief, facts of the case are that a complaint was filed by the

respondent-complainant through his Power of Attorney Deepak Sethi, against the petitioner under Section 138 of N.I. Act on the allegation that he is a property dealer and the petitioner invested some amount in the property business. When the respondent-complainant requested the petitioner to settle the account, he issued a cheque dated 20.09.2019 for an amount of Rs.20.00 lacs in favour of the respondent-complainant. On presentation, the aforesaid cheque was dishonoured and thereafter, the respondent filed a complaint under Section 138 of N.I. Act. In January, 2020, the petitioner-accused entered into a compromise with the respondent-complainant and agreed to pay total amount of Rs.50.00 lacs and in case of default, he was to pay Rs.77.00 lacs in the monthly installments of Rs.1.00 lac each. In view of the compromise, the petitioner issued three cheques bearing No.000061 dated 28.02.2020, No.000062 dated 05.04.2020 and No.000063 dated 05.05.2020. When the cheque bearing No.000062 dated 05.04.2020 was presented with Yes Bank Ltd., Nawanshahr on 24.04.2020, same was dishonoured with the remarks "Funds Insufficient". Thereafter, the respondent-complainant sent a legal notice on 05.05.2020, however, the petitioner failed to discharge his legal liability. The respondent-complainant filed the present complaint under Section 138 of the NI Act, in which the petitioner stood convicted by the learned Judicial Magistrate 1st Class, SBS Nagar, vide judgment dated 11.12.2023. Against the aforesaid judgment, the petitioner preferred an appeal before the learned Additional Sessions Judge, SBS Nagar, who, vide order dated 11.01.2024, directed him to pay 20% of the compensation within

a period of 60 days, while suspending sentence of the petitioner. Against this order, the petitioner approached this Court by way of instant petition.

3. Learned counsel for the petitioner *inter alia* contends that while allowing the application of the petitioner seeking suspension of sentence, imposition of condition to deposit 20% of the compensation amount is unjust and arbitrary and against the proposition of law settled in the judgment passed by the Hon'ble Supreme Court in ***Jamboo Bhandari Vs. MP Industrial Development Corporation Ltd. and others 2013 (12) SCALE 611***, wherein it is held that deposit of minimum 20% of the compensation amount is not an absolute rule. It is further contended that deposit of 20% of the compensation amount cannot be a condition precedent, while allowing bail to the petitioner and the learned Appellate Court ought to have considered the exceptional circumstances for waiving off the said condition.

3. Having heard learned counsel for the petitioner and after perusing the record of the case, it transpires that the lower Appellate Court has passed the impugned order without considering the exceptional circumstances qua imposition of condition of deposit of 20% of the compensation amount.

4. A two Judge Bench of the Hon'ble Supreme Court in ***Jamboo Bhandari's case*** (supra), speaking through Justice Abhay S. Oka has held as under:-

“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 conclusion must be recorded.”

5. In view of the settled law, the lower Appellate Court was required to consider whether the present case falls in the exception or not. Consequently, the impugned order dated 11.01.2024 is set aside to the extent of imposition of condition of depositing 20% of the compensation amount and the matter is remanded back to the lower Appellate Court 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 awarded by the learned trial Court, in the light of judgment passed by the Hon’ble Supreme Court in *Jamboo Bhandari’s case* (supra).

6. The instant petition stands disposed of in above terms.

19.03.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No