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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-583-2024 (O&M)
Date of decision: 19.03.2024

Suchitra Chhabra

... Petitioner

Vs.

M/s Sandeep Gilhotra Enterprises

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manu Loona, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

CRM-12680-2024

1. The present application under Section 5 of Limitation Act has been filed praying for condonation of delay of 49 days in filing the revision petition.

2. In view of the averments made in the application, same is allowed and delay of 49 days in filing the revision petition is condoned.

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3. The present revision petition has been filed under Section 397 read with Section 401 Cr.P.C. for quashing the order dated 27.10.2023 passed by the learned Additional Sessions Judge, Fazilka, in Criminal Appeal

No.420 of 2023 titled as '*Suchitra Chhabra Vs. M/s Sandeep Gilhotra Enterprises*', whereby the petitioner has been ordered to deposit 20% of the compensation amount awarded by the trial Court within a period of 60 days.

4. In brief, facts of the case are that a complaint was filed by the respondent against the petitioner under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as the 'NI Act') on the allegation that in discharge of its liability, petitioner on behalf of M/s Bala Ji Food Rice Mills-accused No.1 issued a cheque bearing No.699585 dated 30.08.2017 for an amount of Rs.16,54,573/- drawn on Punjab National Bank in favour of the complainant. On presentation, the aforesaid cheque was dishonoured by HDFC Bank on 01.09.2017 with the remarks "Funds Insufficient". Thereafter, the complainant apprised the accused persons about dishonouring of the cheque in question, but to no effect. Ultimately, the respondent-complainant sent a demand notice dated 08.09.2017 demanding the cheque amount, however, the petitioner failed to discharge the legal liability. The respondent-complainant filed a complaint under Section 138 of the NI Act, in which the petitioner stood convicted by the learned Judicial Magistrate 1st Class, Fazilka, vide judgment and order of sentence dated 25.09.2023 and sentenced to undergo simple imprisonment for a period of one year and further to pay compensation to the tune of cheque amount along with interest @6% per annum from the date of issuance of cheque till passing of the judgment of conviction. Against the aforesaid judgment of conviction and order of sentence, the petitioner preferred an appeal before

the learned Additional Sessions Judge, Fazilka, who, vide order dated 27.10.2023, 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.

5. 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.

6. 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.

7. 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.”

8. 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 27.10.2023 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).

9. 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