

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

113.

CRR No.548 of 2024 (O&M)

Date of Decision:18.03.2024

Raj Kumar (ZYM Wala)

... Petitioner

Versus

M/s K.S.M. Finance Co.

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ankit Joshi, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed challenging the order dated 06.02.2024 passed by the learned Additional Sessions Judge, Sangrur in Criminal Appeal No.72 of 2024 whereby the petitioner has been directed to deposit 20% of the compensation amount as awarded by the learned trial Court within a period of 60 days from the date of passing of the said order.

2. 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 the petitioner had borrowed a sum of Rs.13 lakhs on 04.04.2019 from the respondent-complainant and in discharge of said legal debt liability, petitioner issued two cheques in favour of the respondent-complainant. However, on presentation of aforesaid cheques for encashment, they were dishonoured with remarks 'funds insufficient'. Thereafter, the respondent-complainant sent a legal notice dated 19.06.2019 demanding the cheque amount, however, the petitioner failed to discharge his 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,

Malerkotla vide judgment and order of sentence dated 25.01.2024 and sentenced to undergo simple imprisonment for a period of one year and further to pay compensation to the tune of Rs.13 lakhs/- i.e. equivalent to the cheques amount. Against the aforesaid judgment of conviction and order of sentence, the petitioner preferred an appeal before the learned Additional Sessions Judge, Sangrur, who vide order dated 06.02.2024 directed him to pay 20% of the compensation within a period of 60 days while ordering suspension of sentence of the petitioner till the decision of the appeal. 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 06.02.2024 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.

(HARPREET SINGH BRAR)
JUDGE

March 18, 2024
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No